

**DEFENSE ADVISORY COMMITTEE
ON INVESTIGATION,
PROSECUTION, AND DEFENSE
OF SEXUAL ASSAULT
IN THE ARMED FORCES**



SIXTH ANNUAL REPORT

March 2024

Defense Advisory Committee

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The Honorable Karla N. Smith

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The Honorable Jennifer M. O'Connor

Brigadier General James R. Schwenk, U.S. Marine Corps, Retired

Dr. Cassia C. Spohn

Ms. Meghan A. Tokash

The Honorable Reggie B. Walton

**Defense Advisory Committee on
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THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

March 26, 2024

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Chairs, Ranking Members, and Mr. Secretary:

The Secretary of Defense established the Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) pursuant to Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“FY 2015 NDAA”) (Public Law 113-291), as modified by Section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a). Over the past eight years, the DAC-IPAD’s recommendations have shaped the landscape of major military justice reforms in sexual assault crimes focusing on principles of fairness to crime victims and accused, access to justice, and improved transparency.¹

Some of the most important work of the DAC-IPAD to date includes:

- A three-year project conducting in-depth quantitative and qualitative case reviews of 1,904 criminal investigative cases and related courts-martial cases involving adult penetrative sexual offenses. The DAC-IPAD assessed every investigation with an active-duty Service member as the subject of a penetrative sexual offense against an adult victim conducted by the services’ military criminal investigative organizations (MCIOs) closed between October 1, 2016 and September 30, 2017. The study found a systemic problem with the

¹ For a complete overview of all the DAC-IPAD recommendations, please see the chart of all recommendations attached to this report at Appendix E.

referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction and recommended that Congress amend Article 34, UCMJ, to improve the military's referral criteria.

- The DAC-IPAD recommended the creation and establishment of uniform prosecution standards in Appendix 2.1 of the Manual for Courts-Martial with proposed language in the report on *Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, MCM*. In October of 2023, the Secretary of Defense accepted the DAC-IPAD's recommendation. Now, judge advocates have uniform prosecution standards as a guide to promote the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the UCMJ.
- The DAC-IPAD completed a review of race and ethnicity data for (1) Service members accused of a penetrative or contact sexual offense, (2) Service members against whom such charges were preferred, and (3) Service members convicted of a penetrative or contact sexual offense for all cases completed in fiscal year 2019 (FY19). The Committee's assessment of the FY19 data was limited by inadequacies in data collection within the Department of Defense—a finding consistent with every review of racial and ethnic disparities in the military justice system over the past 50 years.

The current work of the DAC-IPAD is focused on restoring the broken trust that the 2021 Independent Review Commission on Sexual Assault in the Military (IRC) found existed between servicemembers and their chains of command. The DAC-IPAD is comprised of current and former United States district court judges, a state circuit court judge, a former clerk of court for a federal bankruptcy court, current and former federal and state prosecutors, a defense appellate counsel, the federal public defender for Washington, D.C., a nationally recognized criminologist, the nation's top forensic nurse examiner, a former Department of Defense (DoD) general counsel, a former DoD associate deputy general counsel, a deputy assistant secretary at the Department of Education, and the executive director of the National Crime Victim Law Institute. Drawing on its collective expertise² and proven results, the DAC-IPAD is uniquely situated to carry out the mission of advising the Congress, the Secretary of Defense, and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, sexual assault, and other sexual misconduct involving members of the Armed Forces.

While we know there has been much change in the military justice system over the last decade, the DAC-IPAD is looking forward to providing advice on a path that will ensure the success of the new Offices of the Special Trial Counsel. The DAC-IPAD's current and future projects include a new case review project analyzing judicial rulings in sexual assault courts-martial and a study of interlocutory appeals under Article 6(b). The Committee will continue to support the work of the Defense Advisory Committee for the Prevention of Sexual Misconduct, as required by Section 550B of the National Defense Authorization Act for Fiscal Year 2020. Based on the unique mission of the DAC-IPAD, the public nature of its charter, and highly specialized membership, the DAC-IPAD is in position to undertake this critical work.

The members of the DAC-IPAD would like to express our sincere gratitude and appreciation for the opportunity to make use of our collective experience and expertise in this field

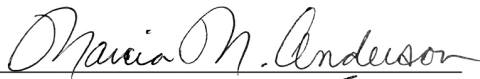
² Full biographies of DAC-IPAD committee members can be found at as Appendix C of the enclosed report.

to develop recommendations for improving the military's response to sexual misconduct within its ranks. Our nation's servicemembers deserve nothing less.

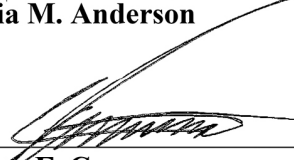
Respectfully submitted,



Karla N. Smith, Chair



Marcia M. Anderson



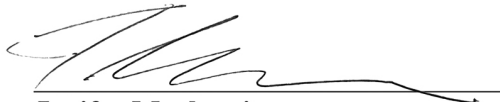
William E. Cassara



Suzanne B. Goldberg



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Jenifer Markowitz



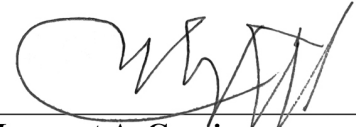
James R. Schwenk



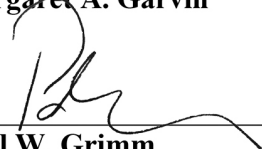
Meghan A. Tokash



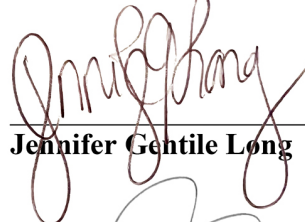
Martha S. Bashford



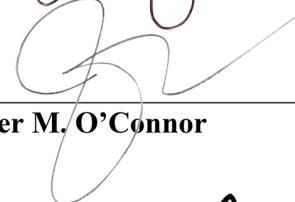
Margaret A. Garvin



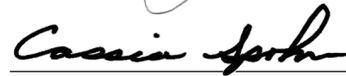
Paul W. Grimm



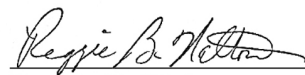
Jennifer Gentile Long



Jennifer M. O'Connor



Cassia C. Spohn



Reggie B. Walton

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EXECUTIVE SUMMARY

Section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY15 NDAA), enacted on December 23, 2014, directed the Secretary of Defense to establish the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD or Committee). The authorizing legislation, amended in 2019 to extend DAC-IPAD's term for an additional five years beyond 2021, charged the Committee to execute three tasks:

1. To advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces;
2. To review, on an ongoing basis, cases involving allegations of sexual misconduct for purposes of providing advice to the Secretary of Defense; and
3. To submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives describing the results of its activities, no later than March 30 of each year.

This is the sixth annual report of the DAC-IPAD. It describes the Committee's activities since April 1, 2023. Between April 2023 and March 2024, the Committee held six public meetings and numerous subcommittee and other preparatory meetings. At these meetings, the Committee heard directly from military justice stakeholders and experts, including the Services' Lead Special Trial Counsel, former general court-martial convening authorities, military criminal investigators, senior military prosecutors, senior enlisted leaders, and civilian experts on conviction integrity unit issues.

During this past year, the Committee deliberated on and approved five stand-alone reports: *Victim Impact Statements at Courts-Martial Presentencing Proceedings*, *Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards*, *Assessment on Collateral Misconduct*, *Randomizing Court-Martial Panel Member Selection*, and *Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel*.

The DAC-IPAD has provided 16 findings and 18 recommendations in its stand-alone reports published this year. As a highlight, in October of 2023, based on a critical DAC-IPAD recommendation regarding court-martial referral procedures, the Secretary of Defense revised Appendix 2.1 of the Manual for Courts-Martial to create first-of-its-kind uniform prosecution standards aligned with the Department of Justice's Principles of Federal Prosecution. The implementation chart included in this report at Appendix F provides a summary of the status and impact of these and all the prior recommendations made by the DAC-IPAD since its inception.

Other Committee activities during the past year included discussions of ongoing courts-martial observations by Committee members, as well as Committee member attendance at Office of Special Trial Counsel (OSTC) and victims' legal counsel (VLC) training.

SUMMARY OF FINDINGS, OBSERVATIONS, AND RECOMMENDATIONS

Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards, June 2023

Recommendation 48a: Amend Article 32 to provide that a preliminary hearing officer's determination of no probable cause precludes referral of the affected specification(s) to a general court-martial—subject to reconsideration as described in Recommendation 48b—without prejudice to the government to prefer new charges.

Recommendation 48b: Amend Article 32 and Rule for Courts-Martial 405 to permit reconsideration of a preliminary hearing officer's no-probable-cause determination upon the presentation of newly discovered evidence, or evidence that, in the exercise of due diligence, could not reasonably have been obtained before the original hearing, subject to the following:

1. Trial counsel, within 10 days of receiving the preliminary hearing officer's report, petitions the preliminary hearing officer to reopen the Article 32 preliminary hearing stating the nature of the newly discovered evidence and the reason it was not previously presented. After 10 days, a petition may be made only for good cause shown.
2. The preliminary hearing officer shall reconsider their previous no-probable-cause determination one time upon reopening the Article 32 preliminary hearing to receive the evidence as described above. After reconsideration, the preliminary hearing officer's determination as to whether probable cause exists is final but is without prejudice to the government to prefer new charges.

Recommendation 49: The Secretary of Defense revise Appendix 2.1, Manual for Courts-Martial, to align with the prosecution principles contained in official guidance of the United States Attorney General with respect to disposition of federal criminal cases. These revisions should provide that special trial counsel refer charges to a court-martial, and judge advocates recommend that a convening authority refer charges to a court-martial, only if they believe that the Service member's conduct constitutes an offense under the Uniform Code of Military Justice (UCMJ), and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

Recommendation 50: The Secretary of Defense require all special trial counsel and judge advocates who advise convening authorities to receive training on the newly established prosecution standards in Appendix 2.1 of the Manual for Courts-Martial. The training shall emphasize the principle that referral is appropriate only if these special trial counsel and advisors believe that the Service member's conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

DAC-IPAD Biennial Victim Collateral Misconduct Assessment, September 2023

Recommendation 51: The DAC-IPAD recommends that Congress amend section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, to require the Military Services to report the number of incidents of collateral misconduct by type of offense and adverse action taken, if any, in future victim collateral misconduct reports.

Recommendation 52: The DAC-IPAD recommends that Congress require the Department of Defense (DoD) to provide the Service-specific data collected pursuant to its Safe-to-Report policy in accordance with section 539A of the FY21 NDAA, to the DAC-IPAD at the same time and covering the same time periods that it currently collects and submits victim collateral misconduct data to the DAC-IPAD pursuant to FY19 NDAA section 547 biennial collateral misconduct reports.

Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System, December 2023

Recommendation 53: Congress should amend Article 25(e) to remove the requirement for the convening authority to detail members who “in his opinion, are best qualified” based on “age, education, training, experience, length of service, and judicial temperament.”

Finding 1: At the time that the Article 25(e) “best qualified” criteria were established in the UCMJ in 1950, military judges did not preside over courts-martial and panel members also served as the sentencing authority. Changes in the law have resulted in the establishment of a trial judiciary with military judges presiding at every court-martial. In addition, military judges will soon serve as sentencing authority in all but capital cases, reducing the panel’s role to determining the guilt or innocence of the accused, as is the case in federal and most state courts. This tailoring of the panel’s role to fact-finding eliminates the rationale for the “best qualified” criteria in Article 25(e).

Finding 2: The Article 25(e) criteria and “best qualified” mandate result in courts-martial panels composed primarily of officers and senior enlisted Service members. There is no longer a military justification to support this composition. Seniority relative to the accused sufficiently accounts for the military’s hierarchical rank structure.

Recommendation 54: Congress should retain the Article 25(e)(4) requirement for the convening authority to detail members randomly selected under regulations prescribed by the President. The qualifying words “to the maximum extent practicable” should be removed.

Finding 3: Removal of the subjective “best qualified” criteria, along with implementation of a process to randomize member selection, will help eliminate the perception that the convening authority is selecting those members most likely to reach a certain result and thus will increase trust and confidence in the military justice system.

Finding 4: Randomizing the court-martial member selection process is not compatible with the Article 25(d) requirement for the convening authority to select members who are “best qualified” according to existing criteria.

Finding 5: Officers and enlisted members of all grades are qualified to serve on courts-martial panels.

Recommendation 55: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial, pursuant to the requirement in Article 25(e)(4), to provide for a randomized court-martial panel member selection process utilizing the Military Services' personnel and pay systems to select the members. This process should preclude the convening authority or other members of command or the judge advocate office from hand selecting members. In addition to the statutory qualification requirements, the randomized selection process should provide for diversity of members based on grade.

Finding 6: The Military Services have the capability to use their personnel and pay systems to generate a randomized pool of Service members for court-martial duty based on objective criteria. This technology will enable increased efficiency, fairness, and objectivity in the panel selection process.

Finding 7: A purely random selection of Service members would result in a panel primarily consisting of junior members. Selecting panel members of different grades will lead to a more diverse panel with regard to age and experience.

Recommendation 56: The Secretary of Defense should direct that a pilot project be initiated to create a court administrator position to be responsible for the panel member selection process—rather than the staff judge advocate or command staff.

Finding 8: A randomized method of panel selection that removes from the convening authority or others in the chain of command or judge advocate office the responsibility to administer the selection process will provide more transparency and thereby increase Service members' and the public's trust in the court-martial process.

Recommendation 57: Congress should amend Article 25 to explicitly give convening authorities the authority to determine whether randomly selected Service members are available prior to being detailed to a court-martial panel and retain the authority in Article 25 to exempt or excuse individuals for operational requirements or personal reasons after they have been detailed.

Finding 9: In the interest of military readiness, convening authorities must retain availability and excusal determination authority.

Recommendation 58: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a transparent method for convening authorities to document availability and excusal determinations.

Finding 10: Documentation of the bases for excusal and availability determinations increases transparency and the perception of fairness, and minimizes the risk of abuse of the process.

Recommendation 59: Congress should retain the requirement in Article 25(e)(1) that when it can be avoided, no accused Service member may be tried by a court-martial in which any member is junior to the accused in rank or grade.

Finding 11: The Article 25 requirement that court-martial members be senior in rank and grade to the accused serves a specific military purpose to maintain the hierarchical rank structure of the military.

Recommendation 60: Congress should amend Article 25 to add a two-year time-in-service requirement for court-martial panel member eligibility. For Service Academy cadets and midshipman, the calculation of time in service would commence upon commissioning.

Finding 12: A minimum length of service requirement is supported by specific military purposes: to ensure that initial military training is completed and to give Service members a greater understanding of military culture.

Finding 13: A minimum length of service requirement of two years eliminates the need to require a minimum age for serving as a panel member.

Recommendation 61: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniform criteria for automatic exemption from serving as a court-martial member. For example, federal courts require jury members to be proficient in English, have no disqualifying mental or physical condition, and not be subject to felony charges or be convicted of a felony. The amendment should delegate authority to each Military Department Secretary to promulgate regulations that establish additional bases for automatic exemption. To ensure maximum transparency, any additional exempting criteria established by the Military Departments should be made public through the Federal Register and by other appropriate means.

Finding 14: Federal courts require jury members to be proficient in English, have no disqualifying mental or physical condition, and not be subject to felony charges or be convicted of a felony. Department of Defense accession regulations ensure that all Service members are proficient in English and have no disqualifying mental or physical condition.

Recommendation 62: Congress should amend Article 25(e)(2) and (3) to remove the requirement that the convening authority detail panel members at the time the court-martial is convened. Instead, it should provide that the convening authority must detail panel members within a reasonable time prior to the swearing in of the detailed members and the assembly of the court-martial.

Finding 15: The requirement to detail members at the time a case is referred to court-martial often results in excusal and replacement of a significant number of the originally and subsequently detailed members, creates an administrative burden, and does not serve a military purpose, given the length of time from referral to empanelment and the low percentage of courts-martial in which the accused elects to be tried by members.

Finding 16: Providing the flexibility to detail members later in the process will enable the convening authority to determine more accurately the appropriate number of qualified members to detail to a specific court-martial.

Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel, December 2023

Recommendation 63: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniformity with respect to the sharing of the following information with a victim and their counsel, if represented:

1. All recorded and written statements of the victim to investigators or government counsel.
2. The record of any forensic examination of the person or property of the victim, including the record of any sexual assault medical forensic exam of the victim that is in the possession of investigators or the government.
3. Any medical record of the victim that is in the possession of investigators or the government.

The rules should specify the government's obligation to inform individuals that these three categories of information, including copies of statements, recordings, or documents, shall be made available promptly upon request by a victim or their counsel, subject to the following conditions:

1. The prosecutor shall disclose the information requested promptly, in consultation with the military criminal investigation organization (MCIO), unless otherwise prohibited by law; or
2. Unless a military judge or military magistrate finds, upon a written submission by the prosecutor demonstrating good cause, that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation. The prosecutor shall state in writing any reasons for nondisclosure and may do so in camera to a military judge or magistrate.
3. The rules should ensure that, in any case, the policy must not be construed to interfere with the provision of health care to a victim or with a victim's access to veterans' benefits.

Recommendation 64: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a process for issuance of a protective order by a military judge or military magistrate, upon a showing of good cause, that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation, to accompany disclosures to victims and counsel before referral of charges, in accordance with Article 30a, UCMJ.

Recommendation 65: The Secretary of Defense should modify DoD instructions to align with the new rules for sharing these three categories of information.

INTRODUCTION

I. COMMITTEE ESTABLISHMENT AND MISSION

The Secretary of Defense established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD or Committee) in February 2016 pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY15 NDAA), as amended.¹ The statutory mission of the DAC-IPAD is to “advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.”² To provide that advice, the Committee is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.³

The DAC-IPAD is required by its authorizing legislation to submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, no later than March 30 of each year, describing the results of its activities.⁴ This sixth annual report of the DAC-IPAD summarizes the Committee’s accomplishments from April 2023 until March 2024 and describes the Committee’s plans for future activities.⁵

II. COMPOSITION OF THE COMMITTEE

In 2022, 15 members accepted appointment to the DAC-IPAD, including 10 members originally appointed in 2016 and 5 new members. The newly appointed Committee members represent a broad range of perspectives and experience related to sexual assault both within and outside the military. The Secretary of Defense selected Judge Karla Smith, a circuit court judge in Montgomery County, Maryland, to serve as the Chair of the DAC-IPAD.

In September 2022, the General Counsel of the Department of Defense (DoD GC) established three subcommittees: the Case Review Subcommittee, the Policy Subcommittee, and the Special Projects Subcommittee. Each subcommittee supports the mission of the DAC-IPAD by developing projects and conducting fact-gathering and other research as approved by a majority vote of the DAC-IPAD members.

- The Case Review Subcommittee (CRSC) is chaired by Ms. Martha S. Bashford and consists of the following members: Ms. Margaret Garvin, Ms. Jennifer Long, and Brigadier General (Ret.) James Schwenk.
- The Policy Subcommittee (PSC) is chaired by Brigadier General (Ret.) James Schwenk and consists of the following members: Major General (Ret.) Marcia Anderson, the Honorable Suzanne Goldberg, the Honorable Jennifer O’Connor, and the Honorable Karla Smith.
- The Special Projects Subcommittee (SPSC) is chaired by Ms. Meghan Tokash and consists of the following members: the Honorable Paul Grimm, Mr. A.J. Kramer, Dr. Jenifer Markowitz, Dr. Cassia Spohn, and the Honorable Reggie Walton.

1 Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [FY15 NDAA], § 546, 128 Stat. 3292 (2014). Pursuant to the authorizing statute and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense filed the charter for the DAC-IPAD with the General Services Administration on February 18, 2016. The National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 535, 133 Stat. 1198 (2019), amended FY15 NDAA § 546 to extend the term of the Committee from 5 to 10 years.

2 FY15 NDAA, *supra* note 1, at § 546(c)(1). Since 2019, the offense of forcible sodomy has been addressed in Article 120, UCMJ, rape.

3 *Id.* at § 546(c)(2).

4 *Id.* at § 546(d).

5 The DAC-IPAD’s term expires in February 2026.

This sixth annual report describes the Committee's activities since April 2023 as well as the Committee's plan for the year ahead. This report also serves to highlight all the findings and recommendations of the DAC-IPAD since its inception and the status of their implementation.⁶

⁶ See Appendix E, Committee Recommendations by Topic with Implementation Status.

CHAPTER 1. STAND-ALONE REPORTS PUBLISHED LAST YEAR

Over the past year, the DAC-IPAD issued five stand-alone reports about victim impact statements, reforming pretrial procedures, collateral misconduct, randomizing court-martial panel member selection, and victim access to information. The details of these reports, including their major findings and recommendations, are outlined in this chapter.

I. DAC-IPAD REPORT: VICTIM IMPACT STATEMENTS AT COURTS-MARTIAL PRESENTENCING PROCEEDINGS

The DAC-IPAD issued its *Report on Victim Impact Statements at Courts-Martial Presentencing Proceedings* in March 2023, making five recommendations to amend Rule for Courts-Martial (R.C.M.) 1001(c) to provide victims wider latitude in what they say in their victim impact statements during presentencing proceedings. In December 2022, the Committee provided these recommendations in a public comment to the Joint Service Committee on Military Justice (JSC or “Joint Service Committee”).

The recommendations provided in this DAC-IPAD report were summarized in last year’s annual report. As an update to that summary, this report provides the implementation status of those recommendations. On July 28, 2023, four of the five DAC-IPAD recommendations were included in the amendments to R.C.M. 1001(c) enacted, in whole or in part, by executive order.⁷ The DAC-IPAD’s recommendations, and corresponding amendments to R.C.M. 1001(c), Manual for Courts-Martial, concerning victim impact statements at presentencing proceedings follow:

1. DAC-IPAD Recommendation 43 recommended amending R.C.M. 1001(c)(2)(B), changing the phrase from “directly” to “directly or indirectly relating to or arising from” in the definition of victim impact. The amendment instead removed the word “directly or indirectly” before the words “relating to or arising from” from the definition of victim impact. R.C.M. 1001(c)(2)(B) now reads as follows:
“For purposes of R.C.M. 1001(c), victim impact includes any financial, social, psychological, or medical impact on the crime victim relating to or arising from the offense of which the accused has been found guilty.”
2. DAC-IPAD Recommendation 44 recommended amending R.C.M. 1001(c)(3) to allow victims to recommend a specific sentence during their impact statements in noncapital cases.
3. DAC-IPAD Recommendation 46 recommended amending R.C.M. 1001(c)(5) to remove the requirement to show “good cause” in order for the victim’s counsel to read the victim impact statement.
4. DAC-IPAD Recommendation 47 recommended amending R.C.M. 1001(c)(5) to remove the requirement that a victim provide a written proffer of the matters addressed in their victim impact statement to the trial counsel and defense counsel after the announcement of findings.

⁷ Exec. Order No. 14103 [E.O. 14103], 88 FED. REG. 147, 50535, 50705 (July 28, 2023), available at <https://jsc.defense.gov/Military-Law/Executive-Orders>.

II. DAC-IPAD REPORT: REPORT ON REFORMING PRETRIAL PROCEDURES AND ESTABLISHING UNIFORM PROSECUTION STANDARDS

A. Background

From 2018 to 2023, the DAC-IPAD, led by the Policy and Special Projects Subcommittees, studied the pretrial processing of military sexual assault cases. This study culminated in the DAC-IPAD's release in June 2023 of its *Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, Manual for Courts-Martial*.⁸

The Committee's analysis was informed by its own extensive case reviews as well as the studies of other advisory committees, including the Independent Review Commission on Sexual Assault in the Military (IRC), which noted concerns regarding the pretrial processing of military sexual assault cases.⁹ The DAC-IPAD also engaged with stakeholders both inside and outside the Department of Defense (DoD) to discuss the potential impacts of reforming pretrial procedures and establishing uniform prosecution standards that align with the Department of Justice's Federal Principles of Prosecution.¹⁰ In addition, the DAC-IPAD conducted extensive data analyses by reviewing the results of thousands of adult-victim penetrative sexual offense prosecutions and more than 3,000 pretrial documents for cases completed in fiscal years 2014 to 2021.

B. Findings and Recommendations

In its report, the DAC-IPAD finds that Article 32 preliminary hearings today are not functioning as a meaningful screening mechanism for preferred charges and are failing to effectively inform the referral decision. Specifically, the advisory nature of Article 32 undermines its own purposes and creates systemic problems with the pretrial processing of criminal misconduct. In addition, the DAC-IPAD's data analysis and case reviews confirm the IRC's perception that more often than not, courts-martial involving the most serious sexual offense charges end in dismissal or acquittal, a pattern that erodes trust in the military justice system.

On the basis of its review, the DAC-IPAD concluded that the pretrial process needs to be enhanced with more rigorous procedures. The DAC-IPAD made the following three recommendations:

1. Congress amend Article 32 to provide that a preliminary hearing officer's determination that a specification lacks probable cause precludes referral of that specification to a general court-martial, subject to the government's limited opportunity for reconsideration, and without prejudice to the government to prefer new charges.
2. The Secretary of Defense revise Appendix 2.1, Manual for Courts-Martial, to establish uniform prosecution standards aligned with the prosecution principles contained in the United States Justice Manual. The prosecution standards should provide that special trial counsel refer charges to a court-martial, and judge

8 This report is available on the DAC-IPAD website at https://dacipad.whs.mil/images/Public/08-Reports/14-DAC%20IPAD_Reforming-Pretrial-Procedure_20230609_Final.pdf.

9 See HARD TRUTHS AND THE DUTY TO CHANGE: RECOMMENDATIONS FROM THE INDEPENDENT REVIEW COMMISSION ON SEXUAL ASSAULT IN THE MILITARY (JULY 2021) [IRC Report], available at <https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF>. The IRC emphasized the need for more robust procedures for selecting cases, and recommended that independent and specialized prosecutors be solely responsible for the disposition of sexual offenses and other serious felony cases, such as domestic violence and stalking.

10 U.S. DEPT. OF JUSTICE, JUSTICE MANUAL § 9-2.7.000 (Principles of Federal Prosecution), available at <https://www.justice.gov/jm/justice-manual>.

advocates recommend that a convening authority refer charges to a court-martial, only if they believe that the Service member’s conduct constitutes an offense under the Uniform Code of Military Justice (UCMJ), and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

3. The Secretary of Defense require all special trial counsel and judge advocates who advise convening authorities to receive training on the newly established prosecution standards in Appendix 2.1 of the Manual for Courts-Martial. The training shall emphasize the principle that referral is appropriate only if these advisors believe that the Service member’s conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

The Secretary of Defense adopted the DAC-IPAD’s second recommendation by publishing revised prosecution guidance endorsed by the DAC-IPAD.¹¹ This enactment effectively elevates the prosecution standard—from probable cause to sufficient admissible evidence to convict—for all UCMJ offenses prosecuted across the Military Services.

The new referral language provides, in relevant part:

“2.3. Referral.

b. A special trial counsel should not refer, and a staff judge advocate or other judge advocate involved in the disposition process should not recommend that a convening authority refer, a charge to a court-martial unless the special trial counsel, staff judge advocate, or other judge advocate believes that . . . the admissible evidence will probably be sufficient to obtain and sustain a finding of guilty when viewed objectively by an unbiased factfinder.”¹²

In addition, the President subsequently amended—by executive order—the Rules for Courts-Martial to add a requirement that “[r]eferral authorities shall consider whether the admissible evidence will probably be sufficient to obtain and sustain a conviction.”¹³

The Military Justice Review Panel recommended to the Department of Defense General Counsel a package of reforms to Article 32 that included a binding no-probable-cause determination.¹⁴

11 MANUAL FOR COURTS-MARTIAL, UNITED STATES (2024 ed.) [2024 MCM], Appendix 2.1, Disposition Guidance. The Military Justice Review Panel (MJRP) joined the DAC-IPAD’s recommendation for revised prosecution standards. See Memorandum from the Chair, Military Justice Review Panel, to the General Counsel of the Department of Defense (June 21, 2023), *Interim Assessment of Preliminary Hearings and Prosecution Standards*, available on the MJRP website at <https://mjrp.osd.mil>.

12 2024 MCM, *supra* note 11, at App. 2.1.

13 E.O. 14103, *supra* note 7.

14 Memorandum from the Chair, Military Justice Review Group, to the General Counsel of the Department of Defense (Dec. 8, 2023), *Assessment of Article 32, UCMJ, Preliminary Hearings*, available on the MJRP website at <https://mjrp.osd.mil/>. The MJRP also recommended a certification and training program for preliminary hearing officers, and amending Article 32 to include the following as purposes of the preliminary hearing: to inform referral authorities in fulfilling their disposition responsibilities, to protect against referral of unfounded criminal charges to trial by general courts-martial, and to afford an opportunity for meaningful discovery.

III. DAC-IPAD LETTER: ASSESSMENT ON COLLATERAL MISCONDUCT

A. Background

Since September 2019, and every two years afterward, the Secretary of Defense, acting through the DAC-IPAD and with its assessment, has been required to submit a report to Congress on collateral misconduct. Collateral misconduct occurs when a “covered individual”—defined as a person identified as a victim of sexual assault in case files of a military criminal investigation organization (MCIO)—is accused of misconduct committed close in time to or during the sexual assault; the misconduct must be directly related to the incident that formed the basis of the sex assault allegation, or must be discovered as a direct result of the report of sexual assault or the ensuing investigation.¹⁵

Congress directed inclusion of the following data in the biennial reports:

1. The number of instances in which a covered individual was accused of collateral misconduct;
2. The number of instances in which adverse action was taken against a covered individual accused of collateral misconduct; and
3. The percentage of investigations of sexual assault that involved an accusation or adverse action against a covered individual.¹⁶

In 2019 the DAC-IPAD conducted its initial assessment of the separate Service reports on collateral misconduct data.¹⁷ Subsequently, DoD promulgated guidance, in accordance with the Committee’s recommendation, to establish standardized definitions and methodologies in order to facilitate consistent reporting. This standardization has enhanced the DAC-IPAD’s ability to compare and analyze Service data reports.

To aid its analysis for its 2023 biennial collateral misconduct report, the Committee consolidated the data reported by each Military Service into a chart, included in this Sixth Annual Report at Appendix G. The combined data from the Services show there were 8,376 total Service member victims in DoD sexual offense cases in which command action on that offense was contemplated. Of these victims, 463 (6%) were suspected of engaging in collateral misconduct, and 275 (59%) of those suspected of engaging in collateral misconduct received adverse actions for the misconduct.

In 2023, during the period covered by this reporting, statutory authority for a new safe-to-report policy went into effect.¹⁸ Pursuant to this legislation, the Department of Defense required the Military Services to promulgate policy guidance by which commanders can assess collateral misconduct and determine whether the misconduct is “minor.” These policies must ensure that victims are not subject to disciplinary action for minor collateral misconduct. The statute further requires the Services to report data on minor vs. non-minor collateral misconduct to DoD Sexual

15 See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 [FY19 NDAA], § 547, 132 Stat. 1636 (2018), as amended by sec. 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283 [FY21 NDAA], 134 Stat. 3388 (2021); see also FY21 NDAA, at § 539A. See also DoD standardized guidance from May 2021 and June 2023.

16 FY19 NDAA, *supra* note 15, at § 547(a).

17 The DAC-IPAD did not issue a report in 2021 because of the zero-based review of all DoD commissions. The zero-based review was a temporary suspension directed by the Secretary of Defense to allow for a review and realignment of all DoD advisory committee missions with the National Defense Strategy. The scope and purpose of the zero-based review may be found at <https://media.defense.gov/2021/Feb/02/2002574747/-1/-1/0/DOD-ADVISORY-COMMITTEES-ZERO-BASED-REVIEW.PDF>

18 The Services’ safe-to-report policies can be found the DoD SAPRO website at <https://www.sapr.mil/policy>.

Assault Prevention and Response Office (SAPRO).¹⁹ Owing to the pending implementation of that policy during the last reporting period, the data provided by the Military Services are not categorized according to whether the collateral misconduct was minor or non-minor. The Military Services updated their respective safe-to-report policies in mid-2022.²⁰

While the data and observations reported by the DAC-IPAD in September 2023 reflect the best information available regarding the disposition of collateral misconduct, it is important to note that other significant policy updates are not reflected in these data. Since December 27, 2023, special trial counsel have had exclusive authority to dispose of sex-related offense cases and misconduct related to those cases. The Department of Defense has called for an examination of whether updates to safe-to-report policies are needed when special trial counsel authority in Article 24a, UCMJ, takes effect.²¹ The DAC-IPAD will continue to monitor any further changes in statute or policy regarding the disposition of victim collateral misconduct.

B. Observations and Recommendations

The DAC-IPAD made three observations and two recommendations as part of its [September 2023 collateral misconduct letter](#).²² The observations were that (1) the data reported predate the implementation of the safe-to-report policy; (2) the data reported indicate that on average across the Services, only about 6% of Service member victims were suspected of engaging in collateral misconduct; and (3) the percentage of victims in the Army who received adverse action for their collateral misconduct appeared much higher than that of the other Services. This disparity apparently arose because the Army included only those victims formally investigated rather than all victims suspected of collateral misconduct, as the other Services did.

The DAC-IPAD made two recommendations: (1) that Congress amend section 547 of the FY19 NDAA to require the Services to report the number of incidents of collateral misconduct by type of offense and adverse action taken, if any, in future victim collateral misconduct reports, and (2) that Congress require DoD to provide the Service-specific data collected pursuant to the safe-to-report policy, in accordance with section 539A of the FY21 NDAA, to the DAC-IPAD at the same time and covering the same time periods as those victim collateral misconduct data currently collected and submitted.

IV. DAC-IPAD REPORT: RANDOMIZING COURT-MARTIAL PANEL MEMBER SELECTION

A. Background

At the direction of the DAC-IPAD, in 2023 the Policy Subcommittee reviewed Article 25, UCMJ, court-martial panel selection criteria and the panel selection process. Since Congress established Article 25 in the UCMJ in 1950, there have been repeated calls—driven in large part by concerns about fairness and the perception of fairness—to change the court-martial panel member selection system to a more objective, transparent process. Under the current selection process, the convening authority decides whether the accused will be tried by court-martial and

19 FY21 NDAA, *supra* note 15, at § 539A; *see also* Memorandum from the Undersecretary of Defense for Personnel and Readiness to the Secretaries of the Military Departments and Chief of the National Guard Bureau, *Safe-to-Report Policy for Service Member Victims of Sexual Assault* (Oct. 25, 2021) [*Safe-to-Report Policy*].

20 Memorandum from the Undersecretary of Defense for Personnel and Readiness to the Secretaries of the Military Departments and Chief of the National Guard Bureau, *Safe-to-Report Policy*, *supra* note 19.

21 *Id.*

22 This letter is available on the DAC-IPAD website at https://dacipad.whs.mil/images/Public/08-Reports/15-DACIPAD_Collateral-Misconduct-Report_20230921_Final.pdf.

the offenses for which they will be tried, and also selects, through a subjective evaluation of selection criteria, the panel members who will sit in judgment of the accused. This consolidation of authority in the convening authority, along with their extensive discretion in panel member selection, presents the opportunity for intentional abuse or unintentional insertion of bias, and gives rise to the perception of unfairness in the court-martial process. Similar concerns remain under the process that began in December 2023, in which the Offices of Special Trial Counsel (OSTCs) determine whether select offenses will be tried but convening authorities—whether or not they support the referral decision—retain the power to select the panel members.

The Committee's review culminated in the release in December 2023 of *Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System*. In this report, the Committee makes 10 recommendations for changing the panel member selection process.²³

B. Findings and Recommendations

The DAC-IPAD's 10 recommendations, when taken together, provide a road map for a panel selection process that reduces subjectivity and the potential for bias. Importantly, it replaces the existing method with objective criteria for determining the eligibility of panel members and with a transparent, objective process for randomly selecting panel members. The DAC-IPAD was guided by the goals of increasing trust in the military justice system, promoting fairness and the perception of fairness in selecting panel members, and ensuring transparency in the process.

In the National Defense Authorization Act for Fiscal Year 2023, Congress amended Article 25 to require random selection of panel members, to the maximum extent practicable, by December 2025, under regulations prescribed by the President.²⁴ However, Congress did not remove the requirement that convening authorities select those members they subjectively consider “best qualified” to perform the duty, using the selection criteria of age, education, training, experience, length of service, and judicial temperament.²⁵ The Committee agreed that a truly randomized selection process is incompatible with allowing the convening authority to select members on the basis of this subjective determination. To make random selection meaningful, the Committee recommended that Congress take the additional step of eliminating from Article 25 the requirement that the convening authority select and detail those members they consider best qualified and, instead, require them to detail only those members identified through a randomized selection process.

While the DAC-IPAD has determined that a randomized selection process involving limited objective selection criteria is the best practice, the Committee also recommended that convening authorities remain an integral part of this process. Convening authorities should retain the authority to detail the appropriate number of randomly selected court-martial members, make availability determinations, and excuse members for operational and personal reasons.

²³ This report is available at https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report-Randomizing-Member-Selection_Final_20231219.pdf.

²⁴ James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263 [FY23 NDAA], §543, 136 Stat. 2395 (2022).

²⁵ 10 U.S.C. § 825 (2021) (Art. 25).

V. DAC-IPAD REPORT: *RECOMMENDATIONS FOR A UNIFORM POLICY FOR SHARING INFORMATION WITH VICTIMS AND THEIR COUNSEL*

A. Background

In 2022 Congress tasked the DAC-IPAD, led by the SPSC, with a report on “the feasibility and advisability of establishing a uniform policy for the sharing of the information . . . with a Special Victims’ Counsel, Victims’ Legal Counsel, or other counsel representing a victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”²⁶ The congressional tasking, included as part of the FY23 NDAA, required the Committee to assess the sharing of information in the following three categories:

1. Any recorded statements of the victim to investigators.
2. The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the government.
3. Any medical record of the victim that is in the possession of investigators or the Government.²⁷

In December 2023, the DAC-IPAD issued a report titled *Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel*.²⁸ This stand-alone report responds to the questions posed in the FY23 NDAA.

As part of its study of how the Military Services handle this sensitive information, the DAC-IPAD reviewed existing DoD and Service-specific policies and heard from key stakeholders, including civilian and military victim’s counsel, victim advocates, prosecutors, defense counsel, military criminal investigators, and military justice policy experts. The Committee found that existing policies address the disclosure of a victim’s statements, medical forensic examinations, and other medical records; however, current policies do not speak uniformly or clearly to circumstances involving the sharing of this information with victims and, if represented, with their counsel. Importantly, the Committee learned that in practice, unrepresented victims do not always receive the same information as is provided to counsel representing a victim. Policies are not always applied uniformly within a particular Service and may depend on the responsiveness of individual trial counsel.

B. Findings and Recommendations

The DAC-IPAD concluded that the establishment of a uniform and comprehensive policy with respect to sharing information with victims would enhance trust in the military justice system and bring much-needed transparency to an increasingly complex criminal justice process. The report recommends development of a uniform policy to protect the rights of all victims, not merely those who retain lawyers.

In the report, the DAC-IPAD recommends that the Rules for Courts-Martial should be amended to specify the government’s obligation to inform victims of their rights to this information and to clarify the process for requesting and producing the specified information. In particular, the Rules for Courts-Martial should state that the government shall, on request, make available to victims or their counsel the victim’s statements to investigators, the results of forensic examinations of the person or property of the victim, and any medical records in the investigators’

²⁶ FY23 NDAA, *supra* note 24, at § 549B(a).

²⁷ *Id.* at § 549B(c).

²⁸ This report is available at <https://dacipad.whs.mil/reports>.

possession, unless otherwise prohibited by law or unless a military judge or military magistrate finds that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation.

The Committee considered the need to protect the privacy of individuals, the integrity of the criminal investigative process, and the military justice system generally.²⁹ The report also addresses when in the military justice process these three categories of information should be shared with victims, as well as circumstances under which information sharing may be restricted. Finally, the Committee observed that the establishment of a uniform policy is particularly relevant now, with the creation of the new Offices of Special Trial Counsel.

²⁹ As tasked by FY23 NDAA, *supra* note 24, at § 549B(b).

CHAPTER 2. CASE REVIEW SUBCOMMITTEE

I. INTRODUCTION

Over the past year, the CRSC has dedicated substantial time to two new projects. The first is a study of the demographics of jurors for courts-martial—known in the military as panel members. The second is an assessment of the advisability and feasibility of establishing a conviction integrity unit in the Department of Defense. This chapter describes the CRSC’s work to date on those two projects, as well as the Subcommittee’s future research efforts.

II. SUBCOMMITTEE ACTIVITIES

A. Panel Selection Study

In 2023, in response to strong interest by the DAC-IPAD in studying the court-martial member selection process, the CRSC began the panel selection study. This study will analyze the race, ethnicity, and gender of military personnel who are chosen by a convening authority to be part of a jury pool—a process known as detailing—as well as the demographics of those who are ultimately selected from the overall pool to serve on a military panel.³⁰ In addition to providing this comparison, this study will provide the following analyses:

- A comparison of panel member demographics and overall service demographics;
- An analysis of the race, ethnicity, and gender of panel members who are excused from serving as jurors because of challenges for cause, peremptory strikes, or randomization;
- An assessment of whether minority service members are excluded at higher rates than white service members from military courts-martial panels; and
- A comparison of an accused’s demographics and the demographics of those selected to serve on their courts-martial.³¹

On March 1, 2023, the DAC-IPAD requested from the Services records of trial for cases that were adjudicated in fiscal years 2021 and 2022. The CRSC staff determined which information was necessary to collect from those trial records to answer the Committee’s research questions.³² After receiving the requested case records from the Services, the staff began reviewing 292 records of trial to extract the necessary information to inform the study,³³ including

- The results of trial on any sexual offense;
- Whether the case was tried in front of an officer or enlisted panel;
- The members detailed to the courts-martial;

³⁰ The selection of detailed members is based on the statutory authority set forth in Article 25(e)(2) of the UCMJ.

³¹ The study will also report on the demographic information of the accused, the military judge, and trial and defense counsel. The cases reviewed were adjudicated in fiscal years 2021 and 2022.

³² DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES FIFTH ANNUAL REPORT 17 (Mar. 2023) [DAC-IPAD FIFTH ANNUAL REPORT], *available at* https://dacipad.whs.mil/images/Public/08-Reports/00-DACIPAD_5th-Annual-Report_Final.pdf.

³³ In cases involving acquittals, and thus in most cases, the staff also listened to the audio recording of trial to determine the bases for panel member excusal. Under R.C.M. 1114(a)(1), verbatim transcripts of the record of trial are not required if the case resulted in an acquittal.

- The members excused and the bases for exclusion, which include a challenge for cause, peremptory strike, or randomization; and
- The members impaneled for courts-martial.

After extracting the data, the staff began requesting from each Military Service the demographic information for panel members and court-martial participants. Once personal identifying information is removed from the data files, Dr. William Wells, staff criminologist, conducts further statistical analysis of the demographic data. As of the date of this report, the DAC-IPAD staff have collected more than 54,000 data points from these cases. The CRSC anticipates receiving additional trial records in the coming months and completing its data analysis in the spring of 2024.³⁴

B. Conviction Integrity Unit Study

In 2023, the CRSC began exploring the feasibility and advisability of establishing Conviction Integrity Units (CIUs) or Conviction Review Units (CRUs) within the Department of Defense, either at the departmental level or the Service level. Interest in this research project was driven by several considerations, including recent changes to the military justice system that have called into question its fairness to an accused, as well as public comments from convicted Service members claiming their innocence whose avenues for seeking relief were limited.

Over the past two decades, dozens of jurisdictions across the United States have established CIUs or CRUs. These units review convictions whose veracity has been questioned. Since their establishment, many of these CIUs have examined new evidence or claims of prosecutorial malfeasance that have exonerated people who had been convicted. On the case level, CIUs work to correct miscarriages of justice and free wrongly incarcerated individuals or correct consequences of a conviction. On the structural level, CIUs can help reinforce trust in a criminal justice system. CIUs may have an especially important role in the military justice system, given its many unique characteristics.

On September 26, 2023, the CRSC heard from four practitioners experienced in post-conviction avenues for relief and CIUs: Ms. Julie Caruso Haines, an expert in post-conviction relief for Service members; Ms. Lindsey Guice Smith, Director of the North Carolina Innocence Inquiry Commission; Ms. Bonnie Sard, former Chief of the Conviction Integrity Program at the New York County District Attorney's Office; and Mr. David Shanies, a New York civil rights attorney whose law firm specializes in wrongful convictions. These panelists provided insight into how CIUs are established and resourced, best practices for their implementation and operation, and the limitations associated with their scope of review and overall utility. The information provided will inform the continuing study into whether CIUs are feasible and advisable within the Department of Defense and, if so, how they should be established, resourced, and operated.

III. THE WAY AHEAD

The DAC-IPAD anticipates issuing a stand-alone report on the demographics of military jury pools and impaneled members in the spring of 2024. This report will serve as an important baseline for future studies and will be useful in analyzing the impacts on diversity of two major recent changes to panel selection. First, in 2023 the Court of Appeals for the Armed Forces issued its decision in *United States v. Jeter*, which held that the use of race by

³⁴ *Transcript of DAC-IPAD Public Meeting 8–92* (Dec. 6, 2023) (DAC-IPAD professional staff presentation of data concerning the demographics of Army court-martial panel members in which staff noted that the same analyses will be performed using data from courts-martial in each of the Military Services). Transcripts of all DAC-IPAD public meetings can be found on the DAC-IPAD website at <https://dacipad.whs.mil/>.

convening authorities in detailing panel members, even for inclusionary purposes, was not consistent with Supreme Court jurisprudence.³⁵ Second, the FY23 NDAA required the President to prescribe regulations to randomize the selection of personnel for service as panel members on courts-martial.³⁶

Moreover, the CRSC will continue to seek input from the various stakeholders and practitioners of military justice as it conducts additional research into whether CIUs are feasible and advisable within the military justice system. Specific efforts will include

- Seeking written responses to questions directed to each Service's Judge Advocate Headquarters, Offices of Special Trial Counsel, defense services organizations, victim counsel organizations, Service Courts of Criminal Appeals, and investigative agencies regarding the advisability and feasibility of CIUs;
- Inviting additional civilian experts to speak on the potential benefits, challenges, and effectiveness of CIUs in the military justice system, with a particular focus on the unique considerations when CIUs review convictions for those accused of sexual offenses;
- Researching the historical frequency of, and reasons for, convictions being overturned on appeal to determine whether CIUs could resolve or mitigate those issues; and
- Researching the Service Courts of Criminal Appeals' interpretations of the new factual sufficiency standard and assessing the effect of the change on accused Service members.

35 *United States v. Jeter*, 2023 CAAF LEXIS 676 (C.A.A.F. 2023).

36 FY23 NDAA, *supra* note 24, at § 543.

CHAPTER 3. POLICY SUBCOMMITTEE

I. INTRODUCTION

At its February 21, 2023, public meeting, the DAC-IPAD authorized the Policy Subcommittee to pursue a review of Article 25, UCMJ, court-martial panel selection criteria and the panel selection process. The Policy Subcommittee reviewed these issues throughout 2023, culminating in the DAC-IPAD's December 2023 report titled *Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System*. This report, summarized in Chapter 1, provided 10 recommendations for moving to a randomized court-martial member selection process using objective selection criteria.

II. SUBCOMMITTEE ACTIVITIES

The Policy Subcommittee reviewed Article 25 panel selection criteria and processes over the course of six subcommittee meetings and four DAC-IPAD public meetings. The Subcommittee sent a request for information (RFI) to each of the Military Services' criminal law/military justice organizations, Offices of Special Trial Counsel, trial defense organizations, and victims' counsel organizations, requesting their responses to a series of questions on Article 25 criteria and panel selection.³⁷ Representatives of each of these organizations also spoke at DAC-IPAD public meetings or Policy Subcommittee meetings, answering members' questions on these topics. The DAC-IPAD also heard the perspectives of senior enlisted leaders,³⁸ former general court-martial convening authorities (GCMCAs),³⁹ and several prosecutors with both military and civilian experience.⁴⁰

The Policy Subcommittee invited responses to questions on these issues from several victim advocacy organizations and members of academia who have written on the military justice system. The Subcommittee received written responses from Survivors United and Service Women's Action Network (SWAN), and representatives of Survivors United and Protect Our Defenders (POD) appeared at the DAC-IPAD's June 2023 public meeting to provide their perspectives on Article 25 criteria and the panel selection process.⁴¹ In addition, the Subcommittee received written responses from the following members of academia: Professor Eugene Fidell, Dean Lisa Schenk, Professor David Schlueter, and Professor Richard Rosen.⁴²

37 See Request for Information (RFI) Set 2.9, dated April 24, 2023, and responses from Service criminal law organizations, Offices of Special Trial Counsel, trial defense organizations, and victims' counsel organizations, *available at* https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Article25_UCMJ_20230424.pdf.

38 See *Transcript of DAC-IPAD Public Meeting* 162–215 (June 13, 2023) (testimony of Command Sergeant Major Michael J. Bostic, U.S. Army, Regimental Command Sergeant Major; Chief Master Sergeant Laura Puza, U.S. Air Force, Senior Enlisted Advisor; Master Chief Tiffany George, U.S. Navy, Command Senior Enlisted Leader; Master Gunnery Sergeant Christopher Pere, U.S. Marine Corps, Legal Services Chief).

39 See *Transcript of DAC-IPAD Public Meeting* 113–220 (Sept. 19, 2023) (testimony of Major General David Hodne, U.S. Army; Rear Admiral (ret.) Charles Rock, U.S. Navy; Major General Kenneth Bibb, U.S. Air Force; Major General Len Anderson IV, U.S. Marine Corps; and Rear Admiral Brian Penoyer, U.S. Coast Guard).

40 See *Transcript of DAC-IPAD Public Meeting* 101–62 (June 13, 2023) (testimony of Brigadier General Bobby Christine, Lieutenant Colonel (P) Joshua Bearden, Ms. Magdalena Acevedo, and Ms. Kathleen Muldoon).

41 See *Transcript of DAC-IPAD Public Meeting* 97–59 (June 14, 2023) (testimony of Mr. Ryan Guilds, representing Survivors United, and Ms. Jennifer Elmore, representing Protect Our Defenders).

42 Professor Eugene Fidell, Adjunct Professor of Law, NYU School of Law; Senior Research Scholar in Law, Yale Law School; of counsel, Feldesman Tucker Leifer Fidell LLP, Washington, DC; Dean Lisa Schenk, Associate Dean for National Security, Cybersecurity, and Foreign Relations Law, and Distinguished Professorial Lecturer in Law, the George Washington University Law School; Professor David Schlueter, Professor of Law Emeritus, St.

While perspectives differed on whether and how a randomized member selection process would work, on the convening authority's role in selecting members, and on the criteria that should be used for selection, each group and individual provided valuable insight to the Committee.

The Subcommittee also reviewed historical documents detailing the history of panel selection in the military and surveyed numerous reviews and studies concerning the panel selection process.⁴³

III. THE WAY AHEAD

At its December 2023 public meeting, the DAC-IPAD approved the Policy Subcommittee's request to review issues related to Military Rule of Evidence (M.R.E.) 513, Psychotherapist-Patient Privilege, and Article 6b, UCMJ, Rights of Crime Victims. The Subcommittee will also hear from stakeholders on the issue of criminal investigator access to digital evidence related to sexual offense cases and will review the status of DoD's work on restorative engagement programs.

A. The Psychotherapist-Patient Privilege in M.R.E. 513

The Policy Subcommittee will review issues regarding the scope of psychotherapist-patient privilege in M.R.E. 513 following a July 2022 opinion from the Court of Appeals for the Armed Forces (CAAF), *United States v. Mellette*.⁴⁴ In that case, the Court held that a plain reading of M.R.E. 513(a) protects communications between patient and therapist, including communications facilitating diagnoses and treatments, but does not extend to medical records revealing diagnoses and treatments that do not memorialize actual communications between the patient and the psychotherapist.⁴⁵

The Subcommittee will also review other issues that have been raised regarding M.R.E. 513, such as the in camera review process and judicial handling of the "constitutionally required" exception to the privilege.

B. Article 6b, UCMJ

The DAC-IPAD has heard concerns from victim advocacy organizations regarding a number of issues involving the rights of crime victims under Article 6b, UCMJ. The Subcommittee will review issues involving victims' rights in the appellate process.

Mary's University School of Law; and Professor Richard Rosen, Glenn D. West Endowed Research Professor of Law, Texas Tech University School of Law, and Colonel (Ret.), U.S. Army. Responses to the DAC-IPAD's request for information to these interest groups and members of academia can be found at Appendixes B and C of the report *Randomizing Court-Martial Panel Member Selection*, available at <https://dacipad.whs.mil/>.

43 See REPORT OF THE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES, Vol. II (Nov. 30, 1972); U.S. General Accounting Office, *Military Jury System Needs Safeguards Found in Civilian Federal Courts* (June 6, 1977); DoD JOINT SERVICE COMMITTEE ON MILITARY JUSTICE, REPORT ON THE METHOD OF SELECTION OF MEMBERS OF THE ARMED FORCES TO SERVICE ON COURTS-MARTIAL (1999); Honorable Walter T. Cox III et al., REPORT OF THE COMMISSION ON THE 50TH ANNIVERSARY OF THE UNIFORM CODE OF MILITARY JUSTICE (May 2001); and IRC Report, *supra* note 9.

44 See *United States v. Mellette*, 82 M.J. 374 (C.A.A.F. 2022).

45 *Id.* at 380.

C. Other Issues

The Policy Subcommittee will also review methods that military investigators use to collect digital evidence from victims of sexual offenses, such as text messages or social media posts. Finally, the Subcommittee has taken note that the Independent Review Commission on Sexual Assault in the Military made numerous recommendations for improvements to the systems used to treat and respond to reports of sexual assault, among them that the DAC-IPAD “[s]tudy the methods our allies have used to make amends to survivors, including restorative engagement to acknowledge harm and potential victim compensation.”⁴⁶ This recommendation was subsequently assigned internally to DoD for action. In the spring or summer of 2024, the Policy Subcommittee plans to review the status of this recommendation.

⁴⁶ IRC REPORT, *supra* note 9, Recommendation 4.3 e.

CHAPTER 4. SPECIAL PROJECTS SUBCOMMITTEE

I. INTRODUCTION

Pursuant to a tasking memorandum from the DoD General Counsel, the Special Projects Subcommittee has led the DAC-IPAD's work advising DoD on policy development, workforce structure, and the implementation of best practices for the Military Departments' Offices of Special Trial Counsel.⁴⁷ These offices were established in 2023 after Congress transferred prosecutorial functions for certain offenses, including sex offenses, from military commanders to independent judge advocates, placing these military lawyers under the supervision of the civilian Secretaries of the Military Departments.

In addition to its work assessing the OSTCs, the DAC-IPAD assigned two studies to the SPSC, culminating in the Committee's release of two of its reports in 2023. The first report, *Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards*, analyzed the military's pretrial procedures and prosecution standards and identified areas for reform. The second report, *Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel*, studied the feasibility and advisability of a uniform policy for sharing certain information with a special victim's counsel.⁴⁸ The Committee's analysis, findings, and recommendations on these two subjects are discussed in Chapter 1.

II. SUBCOMMITTEE ACTIVITIES

In furtherance of the two studies on pretrial procedures and victim access to information, the SPSC organized the following panel discussions:

- Senior leaders in the military trial defense organizations testified about (1) resourcing and training in response to the establishment of the OSTCs and (2) their views on the feasibility and advisability of a uniform policy on sharing victim's information with counsel.⁴⁹
- Senior leaders in the MCIOs testified about their Service practices with respect to releasing a victim's information to counsel and their views on the advisability of a uniform policy.⁵⁰
- Prosecutors who work with special victims' counsel (SVCs) and civilian prosecutors with military experience testified about concerns regarding the privacy interests of victims, witnesses, and others affected by disclosure of information during an investigation.⁵¹
- SVC organizations testified about the feasibility and advisability of a uniform policy on sharing victim's information with counsel.⁵²

47 See Memorandum from Ms. Caroline Krass, General Counsel of the Department of Defense, to Judge Karla Smith, DAC-IPAD Chair, *DAC-IPAD Advice on Policy Development, Workforce Structure, and Implementation of Best Practices for the Military Departments' Offices of Special Trial Counsel* (May 10, 2022). On file with DAC-IPAD professional staff.

48 FY23 NDAA, *supra* note 24, at § 549B.

49 See *Transcript of DAC-IPAD Public Meeting* 32–129 (Feb. 21, 2023).

50 See *Transcript of DAC-IPAD Public Meeting* 9–51 (June 13, 2023).

51 *Id.* at 51–100.

52 See *Transcript of DAC-IPAD Public Meeting* 5–96 (June 14, 2023).

- Civilian advocacy organizations, including Protect Our Defenders and Survivors United, testified about their experiences as civilian counsel seeking to access a victim’s information in preparation for trial.⁵³
- Joint Service Committee (JSC) representatives briefed the DAC-IPAD on Executive Order (EO) 14103 and the new rules addressing OSTC authorities.⁵⁴
- The Lead Special Trial Counsel for each Service testified about the development of these new organizations, staffing plans, and other topics relating to OSTCs.⁵⁵

In addition, the DAC-IPAD sent each Military Service a request for information to address questions regarding the feasibility and advisability of a uniform policy for sharing the three categories of information with a victim’s legal counsel.⁵⁶ The request received responses from the victims’ legal counsel programs, the defense services, and the Services’ military justice policy divisions.

III. THE WAY AHEAD

Having completed these two projects in 2023, the Special Projects Subcommittee aims to build on previous studies and assessments undertaken by the DAC-IPAD as it considers recent developments in military law and practice.

A. Assessing the Performance of the Offices of Special Trial Counsel in Disposing of Covered Offenses Under the UCMJ

Section 547 of the National Defense Authorization Act for Fiscal Year 2022, as amended, directed the Department of Defense to develop a plan for assessing the effects of the changes in law that transferred authority for disposing of “covered” offenses from commanders to independent prosecutors within the Offices of Special Trial Counsel.⁵⁷ In December 2023, the DoD GC published standardized performance measures for evaluating OSTCs and the disposition of covered offenses.⁵⁸ At the same time, the DAC-IPAD began developing a plan for a holistic review of these changes.⁵⁹ This next project would assess both the establishment of independent prosecution offices and the systemic effects of transferring legal authority for prosecution away from commanders to military lawyers. The Committee members also discussed the value of performance measures that not only facilitate oversight but also guide internal OSTC policy and practice.⁶⁰

B. Public Access to Court-Martial Filings Under Article 140a, UCMJ

When Congress enacted Article 140a, UCMJ, it directed the Department of Defense to facilitate “public access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings

53 *Id.* at 97–156.

54 *See Transcript of DAC-IPAD Public Meeting* 9–37 (Sept. 19, 2023).

55 *Id.* at 38–112.

56 *See* Appendix H of this report for the DAC-IPAD’s request and the Services’ narrative responses.

57 National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 547, 135 Stat. 1541 (2021), as amended.

58 Memorandum from Ms. Caroline Krass, General Counsel of the Department of Defense, to the Secretaries of the Military Departments, *Plan Required by Section 547 of the National Defense Authorization Act for Fiscal Year 2022* (Dec. 15, 2023), on file with DAC-IPAD professional staff.

59 *See Transcript of DAC-IPAD Public Meeting* 93–111 (Dec. 6, 2023).

60 *See id.* at 117–18.

and military records.”⁶¹ Public access is required at the pretrial, trial, post-trial, and appellate stages of the military justice system, following, insofar as practicable, the best practices of federal and state courts.⁶² Traditionally, courts-martial records were released under the Freedom of Information Act (FOIA).⁶³ DoD has since issued policy guidance that requires the release of properly redacted court-martial filings and records no later than 45 days after the record of trial is complete.⁶⁴ Under this new policy, the Military Services have discretion to release information on courts-martial that result in full acquittals in any case they choose, although release is not required.⁶⁵ The Subcommittee will examine whether DoD policy limiting public access until after trial, and only requiring the release of records when there is a conviction, reflects best practices in state and federal courts, where properly redacted court records are available once they have been filed with the clerk of court. In addition, the Subcommittee is interested in how improved access to filings and records could facilitate participation by victims and both military and civilian victim’s counsel in court-martial proceedings.

C. Other Issues

The Special Projects Subcommittee will also review recent policy developments and study issues identified during Committee members’ observation of courts-martial involving sex-related offenses. In particular, the Subcommittee will focus on changes in the 2024 Manual for Courts-Martial that align the prosecution standard for courts-martial with federal civilian policy guidance in the U.S. Justice Manual.⁶⁶ This new DoD guidance is consistent with DAC-IPAD Recommendation 49, in that it calls for an objective assessment of the admissible evidence needed to obtain and sustain a conviction.⁶⁷ Given that the Offices of Special Trial Counsel in each of the Military Services have promulgated additional guidance for prosecutors of sex-related offenses, the Subcommittee has determined that the historical standard for referral in Article 34—probable cause—should be revised in alignment with current policies. The Subcommittee’s assessment will be presented in a draft letter to Congress for the Committee’s consideration at a future public meeting. Finally, the Subcommittee will begin examining motions practice and judicial rulings in sexual assault courts-martial, with a view toward understanding how judicial decisions may influence sexual assault case outcomes.

61 10 U.S.C. § 940a.

62 *Id.*

63 Article 140a requires the Department of Defense to redact personally identifying information in accordance with the Privacy Act, 5 U.S.C. §§ 552, 552a; *see also* REPORT OF THE MILITARY JUSTICE REVIEW GROUP, PART I, at 1011 (2015).

64 Memorandum from Ms. Caroline Krass, General Counsel of the Department of Defense, to the Secretaries of the Military Departments (Jan. 17, 2023), *Revised Uniform Standards and Criteria Required by Art. 140a, Uniform Code of Military Justice*. While the Privacy Act still applies to these courts-martial records, the new policy would most likely make them available sooner than if they were released under the Freedom of Information Act.

65 *Id.*

66 2024 MCM, *supra* note 11, Appendix 2.1, Disposition Guidance.

67 *See* Appendixes E and F of this report for a list of all DAC-IPAD recommendations and their implementation. DAC-IPAD Recommendation 49 provides that “[t]he Secretary of Defense revise Appendix 2.1, Manual for Courts-Martial, to align with the prosecution principles contained in official guidance of the United States Attorney General with respect to disposition of federal criminal cases. These revisions should provide that special trial counsel refer charges to a court-martial, and judge advocates recommend that a convening authority refer charges to a court-martial, only if they believe that the Service member’s conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.”

CHAPTER 5. MEMBER OBSERVATIONS AND OUTREACH

I. BACKGROUND

At its 31st Public Meeting on September 20, 2023, the DAC-IPAD reviewed practices flagged for discussion by members who had observed sexual assault courts-martial over the past four years,⁶⁸ determining that many of these practices warrant further review and assessment. Members have continued to observe courts-martial and attend Service military justice practitioner training to better understand how sexual offense training and policy are being executed by military justice practitioners. In addition, the DAC-IPAD plans to conduct numerous site visits between March and June of 2024 to gather information and perspectives from stakeholders on how the military justice system is addressing criminal sexual misconduct.

II. ACTIVITIES

A. Courts-Martial Observations

Several DAC-IPAD members who had attended courts-martial between 2019 and 2023 led a discussion session at the September 20, 2023, DAC-IPAD meeting on how military practices compare to civilian sexual assault trial practices. Discussion topics included procedures common to military and civilian justice systems, such as voir dire, victim and witness preparation, digital and forensic evidence collection, search authorizations, counsel experience and advocacy, and resourcing, as well as procedures unique to the military, such as non-unanimous verdicts and the ability of panel members to ask questions of witnesses.⁶⁹ The members compared military and civilian investigation and trial practices and considered whether the military practices they observed in a small number of courts-martial were likely to be widespread. The DAC-IPAD plans to obtain more information about some of these military practices through subcommittee studies and site visits.

B. OSTC Training Observation

As part of the DAC-IPAD's assessment of the new OSTCs, four Committee members attended the Army OSTC Training Course in Charlottesville, Virginia, from June 5 to 9, 2023.⁷⁰ The weeklong course was designed for experienced prosecutors who have been assigned to the new OSTCs. Military defense counsel also attended. Instructors covered the following litigation subjects: advanced topics in discovery; privileges; search and seizure, with a focus on digital evidence; domestic violence, with separate sessions addressing adult and child victims; sex crime prosecutions; homicide prosecutions; the Military Rules of Evidence; mental responsibility and competency

68 See *Transcript of DAC-IPAD Public Meeting* 11–81 (Sept. 20, 2023). See also DAC-IPAD FIFTH ANNUAL REPORT, *supra* note 32, at 24 (describing the courts-martial observation program and member attendance). Owing to COVID-related travel restrictions and the Secretary of Defense's federal advisory committee review, no DAC-IPAD members observed courts-martial from February 2020 through May 2022.

69 See *Transcript of DAC-IPAD Public Meeting* 8–81 (Sept. 20, 2023). Ms. Marth Bashford, Mr. Bill Cassara, Mr. A.J. Kramer, MG (R) Marcia Anderson, Dr. Cassia Spohn, and Dr. Jenifer Markowitz led the discussion in which the remaining DAC-IPAD members participated. Each contributed insights based on their vast and varied experiences with processing sexual offenses through federal, state, and military criminal justice systems. The DAC-IPAD member biographies are located at Appendix C.

70 The four DAC-IPAD members who attended some or all of the training were Ms. Bashford, Ms. Suzanne Goldberg, BG (Ret.) James Schwenk, and Ms. Meghan Tokash.

hearings; and defenses. In addition, attendees participated in training to understand the impacts of implicit bias in the military justice system.

The course provided separate breakout sessions for defense counsel and prosecutors to discuss these issues. The DAC-IPAD members had the opportunity to speak with course attendees throughout the week and asked them to relay concerns or topics for future DAC-IPAD study.

C. Victims' Legal Counsel Certification Training Observation

In order to assess certification training provided to victims' legal counsel from the Navy and Marine Corps, a Committee member attended part of the VLC certification course held at the Naval Justice School in Newport, Rhode Island, from April 17 to 26, 2023.⁷¹

This 60-hour course was created to train Navy and Marine Corps judge advocates with prior military justice experience on all baseline topics necessary for them to be certified as competent to provide legal advice and representation to eligible victims of sexual assault and other criminal offenses.⁷² Course instruction included the following subjects: digital evidence, cultural considerations, representation of clients, collateral misconduct, retaliation and ostracism, child-victim representation, working with the OSTC, the psychotherapist-patient privilege, VLC standing and motion practice, and appellate litigation. Course participants heard from guest speakers who included neurobiologists with expertise in trauma, a retired military judge, the former program manager for victim counsel in the Army, practicing VLCs, and Major General David Bligh, the Marine Corps Staff Judge Advocate to the Commandant.

The DAC-IPAD member attended classroom lectures on disposition decisions and motions practice, and observed small group practical exercises on issue spotting and motions. She also had the opportunity to speak with course attendees throughout the day and during the practical exercises. The DAC-IPAD attendee took part in a working lunch with the Navy and Marine Corps VLC Program leaders, who answered questions and shared their thoughts on how to improve their programs and on victim representation, victim rights, and certification training.

III. THE WAY AHEAD

The 34th DAC-IPAD public meeting on March 12–13, 2024, was held at the United States Air Force Academy near Colorado Springs, Colorado. This location gave members a unique opportunity to visit one of the Service academies and gain insight into the experiences both of cadets and of those who train them to become military leaders.

Beginning in March 2024, the DAC-IPAD also plans to conduct site visits at military installations throughout the world.⁷³ The site visits have several purposes, including (1) obtaining ground-level information on the processes and challenges associated with the investigation, prosecution, and defense of sexual offenses from military justice practitioners, Service members, and commanders; (2) obtaining information on how the Offices of Special Trial

71 Ms. Goldberg attended a portion of this Navy Victim Legal Counsel Training.

72 Qualifications for judge advocates to serve as special victims' counsel, victims' counsel, or victims' legal counsel include receiving baseline training specific to victims' counsel duties, as well as certification of competence to perform these duties by their Judge Advocate General or, in the case of the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps; *see* 10 U.S.C. § 1044e (2013).

73 *Transcript of DAC-IPAD Public Meeting* 11–30 (Feb. 21, 2024) (professional staff briefing on site visit plans).

Counsel are processing covered sexual offense cases;⁷⁴ and (3) identifying other issues that may be affecting the investigation, prosecution, and defense of sexual offenses for further review and assessment. The specific installations for the site visits were chosen on the basis of their concentrated representation of multiple services, their relatively high number of sexual offense prosecutions, and logistical feasibility and efficiencies.⁷⁵

At each location, DAC-IPAD members will hold multiple roundtable discussions with local military justice practitioners and Service members in a non-attribution setting. Information learned through the site visit discussions will be reviewed as part of ongoing and future DAC-IPAD studies, findings, and recommendations.

74 Roundtable discussion topics will focus on how cases are being screened for prosecution or deferral to commanders for alternate disposition, and on the standards are being used for these assessments.

75 The DAC-IPAD plans to conduct site visits with personnel from the following locations: Fort Carson, U.S. Air Force Academy, Peterson Space Force Base, Joint Base Pearl Harbor-Hickam, Schofield Barracks, Marine Corps Base Hawaii, Kadena Air Force Base, Camp Foster, Camp Humphreys, Naval Base San Diego, Marine Corps Base Camp Pendleton, Marine Corps Base Camp Lejeune, Naval Base Norfolk, Joint Base Andrews, and Marine Corps Base Quantico.

APPENDIX A. DAC-IPAD AUTHORIZING STATUTE AND OTHER LEGISLATIVE REQUIREMENTS AND GUIDANCE TO THE COMMITTEE

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES. (PUBLIC LAW 113–291; 128 STAT. 3374; 10 U.S.C. 1561 NOTE)

(a) ESTABLISHMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).

(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

(1) IN GENERAL.— Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SEC. 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) AUTHORITIES.—

“(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

“(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out

this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.”.

SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.

- (a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:
- (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
 - (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
 - (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).
- (b) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020

SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(f)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended by striking “five” and inserting “ten”.

Joint Explanatory Statement:

The conferees request the DAC-IPAD review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases in which the evidence in the victim’s case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.

Further, the conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. The conferees are concerned by reports that some military judges have interpreted Rule for Courts-Martial (RCM) 1001(c) too narrowly, limiting what survivors are permitted to say during sentencing hearings in ways that do not fully inform the court of the impact of the crime on the survivor.

Therefore, the conferees request that, on a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, the DAC-IPAD assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under RCM 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

- (a) IN GENERAL.—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.
- (b) SECRETARY OF DEFENSE AND RELATED ACTIVITIES.—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:
- (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—
 - (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;
 - (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.
 - (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—
 - (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and
 - (B) describes how such a review should be conducted.
 - (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—
 - (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;
 - (B) take steps to address the causes of such disparities, as appropriate.
- (c) DAC-IPAD ACTIVITIES.—
- (1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:
 - (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year addressed.
 - (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigative files, charge sheets, records of trial, and personnel records.

(B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

(4) DEFINITIONS.—In this subsection:

(A) The term “independent committee DAC-IPAD” means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374), commonly known as the “DAC-IPAD”.

(B) The term “case” means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.

(C) The term “completed”, with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

(D) The term “contact sexual assault offense” means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(E) The term “penetrative sexual assault offense” means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

H. Rept. 116-120 on H.R. 2500

Title V—Military Personnel Policy Items of Special Interest

Appointment of Guardian ad Litem for Minor Victims

The committee is concerned for the welfare of minor, military dependents who are victims of an alleged sex-related offense. The committee acknowledges the Department of Defense's continued efforts to implement services in support of service members who are victims of sexual assault and further, to expand some of these services to dependents who are victims. However, the committee remains concerned that there is not an adequate mechanism within the military court-martial process to represent the best interests of minor victims following an alleged sex-related offense.

Therefore, not later than 180 days after the date of the enactment of this Act, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the Committees on the Armed Services of the Senate and the House of Representatives a report that evaluates the need for, and the feasibility of, establishing a process under which a guardian ad litem may be appointed to represent the interests of a victim of an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) who has not attained the age of 18 years.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2023

SEC. 549B. REPORT ON SHARING INFORMATION WITH COUNSEL FOR VICTIMS OF OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

- (a) **REPORT REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (referred to in this section as the “Advisory Committee”) shall submit to the Committees on Armed Services of the Senate and the House of Representatives and each Secretary concerned a report on the feasibility and advisability of establishing a uniform policy for the sharing of the information described in subsection (c) with a Special Victims’ Counsel, Victims’ Legal Counsel, or other counsel representing a victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).
- (b) **ELEMENTS.**—The report under subsection (a) shall include the following:
- (1) An assessment of the feasibility and advisability of establishing the uniform policy described in subsection (a), including an assessment of the potential effects of such a policy on—
 - (A) the privacy of individuals;
 - (B) the criminal investigative process; and
 - (C) the military justice system generally.
 - (2) If the Advisory Committee determines that the establishment of such a policy is feasible and advisable, a description of—
 - (A) the stages of the military justice process at which the information described in subsection (c) should be made available to counsel representing a victim; and

- (B) any circumstances under which some or all of such information should not be shared.
- (3) Such recommendations for legislative or administrative action as the Advisory Committee considers appropriate.
- (c) INFORMATION DESCRIBED.—The information described in this subsection is the following:
 - (1) Any recorded statements of the victim to investigators.
 - (2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government.
 - (3) Any medical record of the victim that is in the possession of investigators or the Government.
- (d) SECRETARY CONCERNED DEFINED.—In this section, the term “Secretary concerned” has the meaning in section 101(a)(9) of title 10, United States Code.

APPENDIX B. DAC-IPAD CHARTER AND MEMBERSHIP BALANCE PLAN

Charter Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

1. Committee's Official Designation: The committee shall be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Federal advisory committee.
3. Objectives and Scope of Activities: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, based on its ongoing review of cases.
4. Description of Duties: Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and the House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA. The DAC-IPAD will also focus on matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD, as the DAC-IPAD's sponsor. Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019, and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:
 - (1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual.
 - (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
 - (3) The percentage of investigations of sexual offenses that involved suspicion of or adverse action against a covered individual as described in paragraphs (1) and (2).

The term "covered individual" means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term "suspected of," when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

Charter
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

Pursuant to the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92) Joint Explanatory Statement, the conferees request the DAC-IPAD:

- (1) Review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases when the evidence in the victim’s case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.
- (2) On a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under Rule for Courts-Martial (RCM) 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

The Joint Explanatory Statement summarized the conferees’ concern as follows: [T]he conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. The conferees are concerned by reports that some military judges have interpreted RCM 1001(c) too narrowly, limiting what survivors are permitted to say during sentencing hearings in ways that do not fully inform the court of the impact of the crime on the survivor.

5. Agency or Official to Whom the Committee Reports: The DAC-IPAD reports to the Secretary of Defense and the Deputy Secretary of Defense, through the GC DoD, who may act upon the DAC-IPAD’s advice and recommendations in accordance with DoD policy and procedures.
6. Support: The DoD, through the Office of the GC DoD, provides support for the Committee’s functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act (“the Sunshine Act”) (5 U.S.C. § 552b), governing Federal statutes and regulations, and DoD policy and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs for the DAC-IPAD, to include travel, meetings, and contract support, are approximately \$2,600,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The DAC-IPAD’s Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD civilian officer or employee, or active duty member of the Armed Forces, designated in accordance with established DoD policy and procedures.

The DAC-IPAD’s DFO is required to attend all DAC-IPAD and subcommittee meetings for the entire duration of each meeting. However, in the absence of the DAC-IPAD’s DFO, a properly approved Alternate DFO, duly designated to the DAC-IPAD in accordance with DoD policy and procedures, shall attend the entire duration of all DAC-IPAD and subcommittee meetings.

The DFO, or Alternate DFO, calls all DAC-IPAD and subcommittee meetings; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or Alternate DFO, determines adjournment to be in the public’s interest or required by governing regulations or DoD policy and procedures.

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9. Estimated Number and Frequency of Meetings: The DAC-IPAD shall meet at the call of the DFO, in consultation with the DAC-IPAD's Chair and the GC DoD. The estimated number of meetings is at least one per year.
10. Duration: The need for this advisory committee is on a continuing basis through February 28, 2026; however, the DAC-IPAD is subject to renewal every two years.
11. Termination: In accordance with sections 546(e)(1) and (2) of the FY 2015 NDAA, as modified by section 535 of the FY 2020 NDAA, the DAC-IPAD will terminate on February 28, 2026, ten years after the DAC-IPAD was established, unless the DoD renews the DAC-IPAD in accordance with DoD policy and procedures.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD will be composed of no more than 20 members who must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as DAC-IPAD members.

Authority to invite or appoint individuals to serve on the DAC-IPAD rests solely with the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time. DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. DAC-IPAD members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD Appointing Authority shall appoint the DAC-IPAD's leadership from among the membership previously appointed to serve on the DAC-IPAD in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, which shall not exceed the member's approved appointment.

All members of the DAC-IPAD are expected to exercise their best judgment on behalf of the DoD, without representing any particular point of view and to discuss and deliberate in a manner that is free from conflicts of interest. Except for reimbursement of official DAC-IPAD related travel and per diem, DAC-IPAD members serve without compensation.

13. Subcommittees: The DoD, when necessary and consistent with the DAC-IPAD's mission and DoD policy and procedures, may establish subcommittees, task forces, or working groups ("subcommittees") to support the DAC-IPAD. Establishment of subcommittees shall be based upon a written determination, including terms of reference (ToR), by the DoD Appointing Authority or the GC DoD.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and DoD policy and procedures. If a subcommittee's duration exceeds that of the DAC-IPAD, and the DoD does not renew the DAC-IPAD, then the subcommittee terminates when the DAC-IPAD does.

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Subcommittees shall not work independently of the DAC-IPAD and shall report all of their recommendations and advice solely to the DAC-IPAD for its thorough deliberation and discussion at a properly noticed and open meeting, subject to the Sunshine Act. Subcommittees have no authority to make decisions and recommendations, orally or in writing, on behalf of the DAC-IPAD. Neither the subcommittee nor any of its members may provide updates or report directly to the DoD or to any Federal officer or employee, whether orally or in writing, on behalf of the DAC-IPAD. If a majority of DAC-IPAD members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same FACA notice and openness requirements governing the DAC-IPAD's operations.

Individual appointments to serve on DAC-IPAD subcommittees, which may be no more than 15 members, shall be approved by the DoD Appointing Authority for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on a subcommittee without prior approval from the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members. The DoD Appointing Authority shall appoint subcommittee leadership from among the membership previously appointed to serve on a subcommittee in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, not to exceed the member's approved appointment.

All members of a subcommittee are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner free from conflicts of interest. Except for reimbursement for official travel and per diem related to the DAC-IPAD or its subcommittees, subcommittee members shall serve without compensation.

14. Recordkeeping: The records of the DAC-IPAD and its subcommittees shall be managed in accordance with General Records Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policy and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. § 552).
15. Filing Date: February 16, 2022

Membership Balance Plan
 Defense Advisory Committee on Investigation,
 Prosecution, and Defense of Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“the FY 2015 NDAA”) (Public Law 113-291), as modified by Section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix.) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), as a non-discretionary advisory committee.
2. Mission/Function: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, based on its ongoing review of cases.

Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, shall submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA.

Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- 1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
- 2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- 3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

The term “covered individual” means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term ‘suspected of,’ when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

3. Membership Criteria and Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD shall be composed of no more than 20 members. DAC-IPAD members must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual

Membership Balance Plan
Defense Advisory Committee on Investigation,
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offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve on the DAC-IPAD or any of its subcommittees.

The DoD, in evaluating potential candidates for the DAC-IPAD, considers the candidate's educational, experiential, and professional credentials with respect to the subject matters anticipated to be tasked to the DAC-IPAD. The DoD has found that viewing the complex issues facing the DoD through a multidisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which subsequent policy decisions are based.

Membership shall be fairly balanced to provide variety of background, experience, and thought in support of the DAC-IPAD's mission. The DAC-IPAD's membership balance is not static and the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") may change the membership based upon work assigned to the DAC-IPAD by the DoD Appointing Authority or the GC DoD, as the DAC-IPAD's Sponsor.

DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD, unless otherwise provided for by statute or Presidential directive, does not use representative members on DoD Federal advisory committees. Each member, based upon their own individual experiences, exercises their own best judgment concerning matters before the DAC-IPAD, does not represent any particular point of view, and discusses and deliberates in a manner free from conflicts of interest.

4. Other Balance Factors: N/A
5. Candidate Identification Process: In accordance with DoD policy, the DoD GC shall nominate to the DoD Appointing Authority a slate of highly qualified individuals who represent a diverse and inclusive range of viewpoints, backgrounds, and experiences to serve as Committee members. To identify potential candidates, the DoD GC will request recommendations from senior career and political officials within the DoD. The DoD, in selecting potential candidates for the DAC-IPAD, reviews the expertise and professional credentials of individuals with extensive professional experience in the areas described in section 3 above.

Once potential candidates are identified, the DAC-IPAD Designated Federal Officer (DFO), in consultation with other senior DoD officers and employees, reviews the credentials of each individual and narrows the list of candidates for consideration by the GC DoD. In reviewing the list of potential candidates for nomination to the DoD Appointing Authority, the GC DoD strives to provide a membership that delivers diversity of background, experience, and thought in support of the DAC-IPAD mission.

Before formal nomination to the DoD Appointing Authority, the list of candidates is reviewed by the DoD Office of General Counsel and the DoD Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the DAC-IPAD's statute, charter, and membership balance plan. Following this review, the DoD ACMO prepares the appropriate DoD Appointment Approval Instrument for the Director of Administration and Management, who submits it to the DoD Appointing Authority for approval.

Membership Balance Plan
Defense Advisory Committee on Investigation,
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Following approval by the by the DoD Appointing Authority, the candidates must complete appointment paperwork and training, to include any financial disclosure or other ethics requirements stipulated by the

Office of Government Ethics for advisory committee members. All DAC-IPAD members are appointed for a term of service of one-to-four years with annual renewals. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, including its subcommittees. Membership vacancies for the DAC-IPAD will be filled in the same manner as described above.

6. Subcommittee Balance: The DoD, as necessary and consistent with the DAC-IPAD's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the DAC-IPAD ("subcommittees").

Individuals considered for appointment to any DAC-IPAD subcommittee may come from members of the DAC-IPAD itself or from new nominees, as recommended by the GC DoD and based upon the subject matters under consideration. Pursuant to DoD policy and procedures, the GC DoD shall follow the same procedures described above in section 5 to nominate new members for appointment.

Subcommittee members shall be appointed for a term of service of one-to-four years, with annual renewals. However, no member will serve more than two consecutive terms of service on a subcommittee unless previously approved by the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the DAC-IPAD, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: February 16, 2022

APPENDIX C. COMMITTEE MEMBERS



Marcia Anderson was the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin starting in 1998 until her retirement in 2019. In this role she was responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson recently retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army’s Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman in the history of the U.S. Army to achieve the rank of major general. Her service culminated with an assignment at the Pentagon as the Deputy Chief, Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of \$8 billion that supported more than 225,000 Army Reserve soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.



Martha Bashford served in the New York County District Attorney’s Office starting in 1979 until her retirement in 2020. At the time of her retirement, she was the chief of the New York County District Attorney’s Office Sex Crimes Unit, which was the first of its kind in the country. She served in this role starting in 2011. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI’s Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (*summa cum laude*) and received her J.D. degree from Yale Law School in 1979. She is a Fellow in both the American College of Trial Lawyers and the American Academy of Forensic Sciences.



William E. Cassara is a former Army prosecutor, defense counsel, and appellate counsel, with more than 30 years of military law experience. Mr. Cassara holds a law degree from the University of Baltimore and an undergraduate degree in business administration from Florida State University. He is a former professor at the University of Baltimore School of Law and the University of South Carolina School of Law. Mr. Cassara has been in private military law practice since 1996 focusing on court-martial appeals, discharge upgrades, security clearances, and all other administrative military law matters.



Margaret “Meg” Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the U.S. Department of Defense. She has served as co-chair of the American Bar Association’s Criminal Justice Section Victims Committee, as co-chair of the Oregon Attorney General’s Crime Victims’ Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General’s Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.



Suzanne Goldberg has served in the U.S. Department of Education’s Office for Civil Rights since day one of the Biden-Harris administration as Acting Assistant Secretary (January–October 2021) and Deputy Assistant Secretary for Strategic Operations and Outreach. Goldberg brings extensive experience in civil rights leadership, with expertise in gender and sexuality law, and many years as a university administrator and faculty member. Before joining the U.S. Department of Education, Goldberg was the inaugural Executive Vice President for University Life at Columbia University and on the faculty of Columbia Law School, where she is on a public service leave from her role as the Herbert and Doris Wechsler Clinical Professor of Law at Columbia Law School. She founded the Law School’s Sexuality and Gender Law Clinic, the first of its kind in the nation, and was co-founder and co-director of the Law School’s Center for Gender and Sexuality Law. Goldberg earlier served as a senior staff attorney with Lambda Legal, a national legal organization committed to the full recognition of the civil rights of LGBT people and people living with HIV. Goldberg holds a law degree with honors from Harvard University and a bachelor’s degree with honors from Brown University and was a Fulbright Fellow at the National University of Singapore.



Judge Paul W. Grimm is a Professor of the Practice and Director of the Bolch Judicial Institute at Duke Law School. Prior to joining Duke Law School, Judge Grimm served as a federal judge for 25 years. In 2012 he was appointed as a District Judge for the United States District Court for the District of Maryland. Previously, he was appointed to the Court as a Magistrate Judge in February 1997 and served as Chief Magistrate Judge from 2006 through 2012. In September 2009, he was appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure. Additionally, Judge Grimm is an adjunct professor of law at the University of Maryland School of Law, where he teaches evidence, and also has taught trial evidence, pretrial civil procedure, and scientific evidence. He also has been an adjunct professor of law at the University of Baltimore School of Law, where he taught a course regarding the discovery of and pretrial practices associated with electronically stored evidence.

Before joining the Court, Judge Grimm was in private practice in Baltimore for 13 years, during which time he handled commercial litigation. He also served as an Assistant Attorney General for the State of Maryland,

an Assistant State's Attorney for Baltimore County, Maryland, and a Captain in the United States Army Judge Advocate General's Corps. While on active duty in the Army, Judge Grimm served as a defense attorney and prosecutor while assigned to the JAG Office at Aberdeen Proving Ground, Maryland, and thereafter as an action officer in the Office of the Judge Advocate General of the Army (Administrative Law Division), The Pentagon. In 2001, Judge Grimm retired as a Lieutenant Colonel from the United States Army Reserve.

Judge Grimm received his undergraduate degree from the University of California, Davis (summa cum laude), his J.D. from the University of New Mexico School of Law (magna cum laude, Order of the Coif), and his LLM from Duke Law School.



A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., U.S. Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers. He is a member of the Judicial Conference of the United States' Advisory Committee on Evidence Rules and the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.



Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory Committee member of the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member of the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and Fels School of Government.



Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert

consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical-forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.



Jennifer O'Connor is Vice President and General Counsel of Northrop Grumman Corporation. Prior to joining Northrop Grumman, Ms. O'Connor served as the General Counsel for the Department of Defense. In that role, she was the chief legal officer of the Department and the principal legal advisor to the Secretary of Defense. Earlier in her career, she served in numerous positions and agencies throughout the federal government. Her past positions include service in the Obama administration as Deputy Assistant to the President and Deputy White House Counsel responsible for the litigation, oversight, and investigations portfolios; as Senior Counsel at the Department of Health and Human Services; and as Counselor to the Commissioner of the Internal Revenue Service. Ms. O'Connor also worked in the Clinton administration as Deputy Assistant Secretary for Policy at the Department of Labor, Special Assistant to the President in the Office of the White House Deputy Chief of Staff; as Special Assistant to the President in the Office of Cabinet Affairs; and as Deputy Director of the White House Office of Management and Administration. Ms. O'Connor received a bachelor of arts degree from Harvard University, a masters in public administration from Columbia University's School of International Public Affairs, and a J.D. degree from Georgetown University.



BGen James (Jim) Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of "don't ask, don't tell," for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired in 2014 after 49 years of federal service.



Judge Karla N. Smith was appointed to the Circuit Court for Montgomery County, Maryland in December 2014 by Governor Martin O’Malley. Judge Smith served on the District Court of Maryland from August 2012 until her appointment to the Circuit Court. In addition, Judge Smith serves as the Judiciary’s representative on the State Council on Child Abuse and Neglect; the Operations Subcommittee of the Judiciary Committee on Equal Justice; and she represents the Circuit Court on the Montgomery County Domestic Violence Coordinating Council (DVCC).

Prior to her appointment, Judge Smith worked as a prosecutor for over 15 years. For five years, Judge Smith served as the Chief of the Family Violence Division of the Montgomery County State’s Attorney’s Office. Additionally, she sat on the Montgomery County Child Fatality Review Team; the Multidisciplinary Case Review Team for Child Abuse and Neglect; the Elder and Vulnerable Adult Abuse Task Force, which she chaired; the Interagency Sex Offender Management Team; Domestic Violence Case Review Team; and the Montgomery County Teen Dating Taskforce. It was during this time that Judge Smith was integral to the development of the Montgomery County Family Justice Center and the drafting and passage of a criminal child neglect statute that was signed into law in 2011.

Judge Smith received her Bachelor of Arts degree from the University of Maryland and her Juris Doctor from the University of Virginia. A life-long resident of Montgomery County and a product of Montgomery County Public Schools, Judge Smith currently lives in Bethesda with her husband and three sons.



Cassia Spohn is a Regents Professor in the School of Criminology and Criminal Justice at Arizona State University and an Affiliate Professor of Law at ASU’s Sandra Day O’Connor College of Law. She is a Fellow of the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Western Society of Criminology. She is the recipient of numerous academic awards, including the University of Nebraska Outstanding Research and Creative Activity Award, the W.E.B. DuBois Award for Contributions to Research on Crime and Race/Ethnicity, the Lifetime Achievement Award from the American Society of Criminology’s

Division on Corrections and Sentencing, and Arizona State University’s Faculty Achievement Award for Defining-Edge Research in the Social Sciences. Dr. Spohn’s research interests include the correlates of federal and state sentencing outcomes, prosecutorial decision making, the intersections of race, ethnicity, gender, crime and justice, and sexual assault case processing decisions. She is the author of eight books, including *How Do Judges Decide: The Search for Fairness and Justice in Punishment and Policing* and *Prosecuting Sexual Assault: Inside the Criminal Justice System*. She is the author of more than 140 peer-reviewed publications. She currently is working on a National Science Foundation–funded project evaluating the impact of Arizona’s recent ban on peremptory challenges and a series of papers on the imposition of life sentences in the U.S. district courts.



Meghan Tokash is a trial attorney with the Human Trafficking Prosecution Unit, Criminal Section, Civil Rights Division at Department of Justice. Prior to her current position, she served as an Assistant United States Attorney at the Department of Justice. Previously, she served as a special victim prosecutor in the U.S. Army Judge Advocate General's Corps for eight years, litigating cases related to homicide, rape, sexual assault, domestic violence and child abuse. She worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office. She deployed to Iraq as the senior trial counsel for U.S. Forces Iraq, and prosecuted special victim cases across U.S. Army Europe and U.S. Army Central Command. Ms. Tokash was an attorney advisor for the Judicial Proceedings Panel prior to her 2017 appointment by Secretary of Defense Ash Carter to serve on the Defense Advisory Committee on the Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces. In 2021, Ms. Tokash served on the 90-day Independent Review Commission on Sexual Assault in the Military that was established by Secretary of Defense Lloyd Austin at the direction of President Biden.



Judge Walton was born in Donora, Pennsylvania. In 1971, he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007, Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management.

Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.

APPENDIX D. COMMITTEE PROFESSIONAL STAFF

PROFESSIONAL STAFF

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APPENDIX E. DAC-IPAD RECOMMENDATIONS TO DATE

DAC-IPAD Recommendation 1 – (March 2018) The Secretary of Defense, the Secretary of Homeland Security, and the Services take action to dispel the misperception of widespread abuse of the expedited transfer policy, including addressing the issue in the training of all military personnel.

DAC-IPAD Recommendation 2 – (March 2018) The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it.

DAC-IPAD Recommendation 3 – (March 2018) The DoD-level and Coast Guard equivalent Family Advocacy Program (FAP) policy include provisions for expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD Sexual Assault Prevention and Response (SAPR) policy and consistent with 10 U.S.C. § 673.

DAC-IPAD Recommendation 4 – (March 2018) The DoD-level military personnel assignments policy (DoD Instruction 1315.18) and Coast Guard equivalent include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.

DAC-IPAD Recommendation 5 – (March 2019) In developing a uniform command action form in accordance with section 535 of the FY19 National Defense Authorization Act (NDAA), the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.

DAC-IPAD Recommendation 6 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.

DAC-IPAD Recommendation 7 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.

DAC-IPAD Recommendation 8 – (March 2019) The uniform standards and criteria developed to implement Article 140a, Uniform Code of Military Justice (UCMJ), should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial.
- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD.
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD.
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible.
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

DAC-IPAD Recommendation 9 – (March 2019) The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

DAC-IPAD Recommendation 10 – (March 2019) The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

DAC-IPAD Recommendation 11 – (March 2019) Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization (MCIO) concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and sex;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;

- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

DAC-IPAD Recommendation 12 – (March 2019) The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that:

- a. The Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The Services develop a plan to transition toward operating one uniform case management system across all of the Services, similar to the federal judiciary's Case Management/Electronic Court Filing (CM/ECF) system.

DAC-IPAD Recommendation 13 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:

- a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim's commander.
- b. The victim's commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject's identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care.
- c. A sexual assault response coordinator, victim advocate, or special victims' counsel (SVC)/victims' legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report.

DAC-IPAD Recommendation 14 – (March 2019) The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group's goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim's wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:

- a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation.
- b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances.
- c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO's decision to honor the victim's request.
- d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy.
- e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.

DAC-IPAD Recommendation 15 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:

- a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests.
- b. The single, overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault).
- c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: "any evidence that the victim's report is not credible."

DAC-IPAD Recommendation 16 – (March 2019) Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.

DAC-IPAD Recommendation 17 – (March 2019) The Services track and report the following data in order to best evaluate the expedited transfer program:

- a. Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final.

- b. Data on the number of accused transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final.
- c. Data on victim participation in investigation/prosecution before and after an expedited transfer.
- d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program.
- e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers.
- f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- h. Data on victim satisfaction with the expedited transfer program.
- i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault.

DAC-IPAD Recommendation 18 – (March 2019) The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.

DAC-IPAD Recommendation 19 – (March 2020) The Department of Defense should publish a memorandum outlining sufficiently specific data collection requirements to ensure that the Military Services use uniform methods, definitions, and timelines when reporting data on collateral misconduct (or, where appropriate, the Department should submit a legislative proposal to Congress to amend section 547 [of the FY19 NDAA] by clarifying certain methods, definitions, and timelines). The methodology and definitions should incorporate the following principles:

a. Definition of “sexual offense”:

- The definition of “sexual offense” for purposes of reporting collateral misconduct should include
 - Both penetrative and non-penetrative violations of Article 120, UCMJ (either the current or a prior version, whichever is applicable at the time of the offense);
 - Violations of Article 125, UCMJ, for allegations of sodomy occurring prior to the 2019 version of the UCMJ; and
 - Attempts, conspiracies, and solicitations of all of the above.

- The definition of sexual offense should not include violations of Article 120b, UCMJ (Rape and sexual assault of a child); Article 120c, UCMJ (Other sexual misconduct); Article 130, UCMJ (Stalking); or previous versions of those statutory provisions.

b. Definition of “collateral misconduct”:

- Current DoD policy defines “collateral misconduct” as “[v]ictim misconduct that might be in time, place, or circumstance associated with the victim’s sexual offense incident.”¹
- However, a more specific definition of collateral misconduct is necessary for purposes of the section 547 reporting requirement. That recommended definition should read as follows: “Any misconduct by the victim that is potentially punishable under the UCMJ, committed close in time to or during the sexual offense, and directly related to the incident that formed the basis of the sexual offense allegation. The collateral misconduct must have been discovered as a direct result of the report of the sexual offense and/or the ensuing investigation into the sexual offense.”
- Collateral misconduct includes (but is not limited to) the following situations:
 - The victim was in an unprofessional or adulterous relationship with the accused at the time of the assault.²
 - The victim was drinking underage or using illicit substances at the time of the assault.
 - The victim was out past curfew, was at an off-limits establishment, or was violating barracks/dormitory/berthing policy at the time of the assault.
- To ensure consistency across the Military Services, collateral misconduct, for purposes of this report, should *not* include the following situations (the list is not exhaustive):
 - The victim is under investigation or receiving disciplinary action for misconduct and subsequently makes a report of a sexual offense.
 - The victim used illicit substances at some time after the assault, even if the use may be attributed to coping with trauma.
 - The victim engaged in misconduct after reporting the sexual offense.
 - The victim had previously engaged in an unprofessional or adulterous relationship with the subject, but had terminated the relationship prior to the assault.
 - The victim engaged in misconduct that is not close in time to the sexual offense, even if it was reasonably foreseeable that such misconduct would be discovered during the course of the investigation (such as the victim engaging in an adulterous relationship with an individual other than the subject).
 - The victim is suspected of making a false allegation of a sexual offense.

1 Dep’t of Def. Instr. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Glossary (Mar. 28, 2013, Incorporating Change 3, May 24, 2017), 117.

2 For purposes of this report, an “unprofessional relationship” is a relationship between the victim and accused that violated law, regulation, or policy in place at the time of the assault.

- The victim engaged in misconduct during the reporting or investigation of the sexual offense (such as making false official statements during the course of the investigation).

c. Methodology for identifying sexual offense cases and victims:

- To identify sexual offense cases and victims, all closed cases from the relevant time frame that list at least one of the above included sexual offenses as a crime that was investigated should be collected from the MCIOs.
- A case is labeled “closed” after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision, any action taken by the commander has been completed, and documentation of the outcome has been provided to the MCIO.³
- Each Military Service should identify all of its Service member victims from all closed cases from the relevant time frame, even if the case was investigated by another Military Service’s MCIO.

d. Time frame for collection of data:

- The Military Services should report collateral misconduct data for the two most recent fiscal years preceding the report due date for which data are available. The data should be provided separately for each fiscal year and should include only closed cases as defined above. For example, the Department’s report due September 30, 2021, should include data for closed cases from fiscal years 2019 and 2020.

e. Definition of “covered individual”:

- Section 547 of the FY19 NDAA defines “covered individual” as “an individual who is identified as a victim of a sexual offense in the case files of a military criminal investigative organization.” This definition should be clarified as follows: “an individual identified in the case files of an MCIO as a victim of a sexual offense while in title 10 status.”
- For the purposes of this study, victims are those identified in cases closed during the applicable time frame.

f. Replacement of the term “accused”:

- Section 547 of the FY19 NDAA uses the phrase “accused of collateral misconduct.” To more accurately capture the frequency with which collateral misconduct is occurring, the term “accused of” should be replaced with the term “suspected of,” defined as follows: instances in which the MCIO’s investigation reveals facts and circumstances that would lead a reasonable person to believe that the victim committed an offense under the UCMJ.⁴
- Examples of a victim suspected of collateral misconduct include (but are not limited to) the following situations:
 - The victim disclosed engaging in conduct that could be a violation of the UCMJ (and was collateral to the offense).

³ This definition of “closed case” mirrors the definition used by the DAC-IPAD’s Case Review Working Group.

⁴ *Cf. United States v. Cohen*, 63 M.J. 45, 50 (C.A.A.F. 2006) (stating that determining whether a person is a “suspect” entitled to warnings under Article 31(b) prior to interrogation “is an objective question that is answered by considering all the facts and circumstances at the time of the interview to determine whether the military questioner believed or reasonably should have believed that the servicemember committed an offense”) (internal citations omitted).

- Another witness in the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- The subject of the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- In the course of the sexual offense investigation, an analysis of the victim's phone, urine, or blood reveals evidence that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- This definition of "suspected of" does not require preferral of charges, a formal investigation, or disciplinary action against the victim for the collateral misconduct. However, if any of those actions has occurred regarding collateral misconduct, or if there is evidence of collateral misconduct from other sources available, such victims should also be categorized as suspected of collateral misconduct even if the MCIO case file does not contain the evidence of such misconduct.
 - For example, if in pretrial interviews the victim disclosed collateral misconduct, such a victim would be counted as suspected of collateral misconduct.

g. Definition of "adverse action":

- The term "adverse action" applies to an officially documented command action that has been initiated against the victim in response to the collateral misconduct.
- Adverse actions required to be documented in collateral misconduct reports are limited to the following:
 - Letter of reprimand (or Military Service equivalent) or written record of individual counseling in official personnel file;
 - Imposition of nonjudicial punishment;
 - Preferral of charges; or
 - Initiation of an involuntary administrative separation proceeding.
- The Committee recommends limiting the definition of adverse action to the above list for purposes of this reporting requirement to ensure consistency and accuracy across the Military Services in reporting and to avoid excessive infringement on victim privacy. The Committee recognizes the existence of other adverse administrative proceedings or actions that could lead to loss of special or incentive pay, administrative reduction of grade, loss of security clearance, bar to reenlistment, adverse performance evaluation (or Military Service equivalent), or reclassification.

h. Methodology for counting "number of instances":

- Cases in which a victim is suspected of more than one type of collateral misconduct should be counted only once; where collateral misconduct is reported by type, it should be counted under the most serious type of potential misconduct (determined by UCMJ maximum punishment) or, if the victim received adverse action, under the most serious collateral misconduct identified in the adverse action.
- For cases in which a victim received more than one type of adverse action identified above, such as nonjudicial punishment and administrative separation, reporting should include both types of adverse action.

DAC-IPAD Recommendation 20 – (March 2020) Victims suspected of making false allegations of a sexual offense should not be counted as suspected of collateral misconduct.

DAC-IPAD Recommendation 21 – (March 2020) For purposes of the third statistical data element required by section 547, the Department of Defense should report not only the percentage of all Service member victims who are suspected of collateral misconduct but also the percentage of the Service member victims who are suspected of collateral misconduct and then receive an adverse action for the misconduct. These two sets of statistics would better inform policymakers about the frequency with which collateral misconduct is occurring and the likelihood of a victim's receiving an adverse action for collateral misconduct once they are suspected of such misconduct.

DAC-IPAD Recommendation 22 – (March 2020) The Department of Defense should include in its report data on the number of collateral offenses that victims were suspected of by type of offense (using the methodology specified in section h of Recommendation 19) and the number and type of adverse actions taken for each of the offenses, if any. This additional information would aid policymakers in fully understanding and analyzing the issue of collateral misconduct and in preparing training and prevention programs.

DAC-IPAD Recommendation 23 – (March 2020) To facilitate production of the future collateral misconduct reports required by section 547, the Military Services should employ standardized internal documentation of sexual offense cases involving Service member victims suspected of engaging in collateral misconduct as defined for purposes of this reporting requirement.

DAC-IPAD Recommendation 24 – (June 2020) Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) enhance funding and training for SVCs/VLCs appointed to represent child victims, including authorization to hire civilian highly qualified experts (HQEs) with experience and expertise in representing child victims, including expertise in child development, within the SVC/VLC Programs.

DAC-IPAD Recommendation 25 – (June 2020) In conjunction with Recommendation 24, the Judge Advocates General of the Military Services including the Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps develop a cadre of identifiable SVCs/VLCs who have specialized training, experience, and expertise in representing child victims of sex-related offenses by utilizing military personnel mechanisms such as Additional Skill Identifiers.

DAC-IPAD Recommendation 26 – (June 2020) The Department of Defense Office of the Inspector General and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) assess whether the MCIOs and FAPs currently are providing accurate and timely notification to child victims of their right to request SVC/VLC representation as soon as an allegation of a sexual offense is reported, and if necessary take corrective action.

DAC-IPAD Recommendation 27 – (June 2020) Congress amend 10 U.S.C. § 1044e to expand SVC/VLC eligibility to any child victim of a sex-related offense committed by an individual subject to the UCMJ.

DAC-IPAD Recommendation 28 – (June 2020) Congress amend the UCMJ to authorize the military judge to direct the appointment of an SVC/VLC for a child victim of a sex-related offense and/or of an independent best interest advocate to advise the military judge when they find that the child's interests are not otherwise adequately protected.

DAC-IPAD Recommendation 29 – (June 2020) The Secretary of Defense and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) develop a child victim advocate capability within each of the Services to support certain child victims of sexual offenses. The child victim advocate should reside within the SVC/VLC Programs and work as part of the SVC/VLC team in order to ensure that the child’s legal interests are fully represented and protected. The child victim advocate should have expertise in social work, child development, and family dynamics.

DAC-IPAD Recommendation 30 – (June 2020) Congress amend Article 6b, UCMJ, to require that any representative who assumes the rights of the victim shall act to protect the victim’s interests; any such representative should be appointed as early as possible in the military justice process.

DAC-IPAD Recommendation 31 – (June 2020) Provided that the Department of Defense adopts and implements DAC-IPAD Recommendations 24–30, it is not advisable or necessary to establish a military guardian ad litem program within the Department of Defense for child victims of alleged sex-related offenses in courts-martial.

DAC-IPAD Recommendation 32 – (October 2020) Congress amend Article 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on the charged offenses before a convening authority may refer a charge and specification to trial by general court-martial.

DAC-IPAD Recommendation 33 – (December 2020) The Secretary of Defense designate the military personnel system as the primary data system in the DoD for the collection of demographic information such as race and ethnicity. All other DoD systems that collect demographic data regarding military personnel, such as the military criminal investigative system and the military justice system, should obtain demographic information on military personnel from the military personnel system.

DAC-IPAD Recommendation 34 – (December 2020) The Secretary of Defense direct each Military Department to record race and ethnicity in military criminal investigative organization databases, military justice databases, and military personnel databases using the same racial and ethnic categories. The Secretary of Defense should direct each Military Department to report race using the following six categories: *American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, More Than One Race/Other*, and *White*, and to report ethnicity using the following two categories: *Hispanic or Latino* and *Not Hispanic or Latino*.

DAC-IPAD Recommendation 35 – (December 2020) Congress authorize and appropriate funds for the Secretary of Defense to establish a pilot program operating one uniform, document-based data system for collecting and reporting contact and penetrative sexual offenses across all of the Military Services. The pilot program, which should cover every sexual offense allegation made against a Service member under the military’s jurisdiction that is investigated by a military criminal investigative organization (MCIO), will record case data from standardized source documents provided to the pilot program by the Military Services and will include demographic data pertaining to each victim and accused—including race and ethnicity.

DAC-IPAD Recommendation 36 – (December 2020) The Secretary of Defense direct the Military Departments to record and track the race, ethnicity, sex, gender, age, and grade of the victim(s) and the accused for every investigation initiated by military law enforcement in which a Service member is identified as a subject through the final disposition within the military justice system.

DAC-IPAD Recommendation 37 – (December 2020) The Secretary of Defense direct the Military Departments to record, beginning in fiscal year 2022, the race and ethnicity of military police and criminal investigators, trial counsel, defense counsel, victims’ counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges involved in every case investigated by military law enforcement in which a Service member is the subject of an allegation of a contact or penetrative sexual offense. The source information for these data should be collected from the military personnel databases and maintained for future studies by the DAC-IPAD on racial and ethnic disparities in cases involving contact and penetrative sexual offenses.

DAC-IPAD Recommendation 38 – (December 2020) The Secretary of Defense direct the newly established Military Justice Review Panel to determine whether to review and assess, by functional roles and/or on an individual case basis, the race and ethnicity demographics of the various participants in the military justice process, including military police and criminal investigators, trial counsel, defense counsel, victims’ counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges.

DAC-IPAD Recommendation 39 – (December 2020) Once the Department of Defense has implemented new data collection processes as recommended in this report and as required pursuant to Article 140a, UCMJ, the Secretary of Defense direct the newly established Military Justice Review Panel to determine whether to review and assess racial and ethnic disparities in every aspect of the military justice system as part of its charter for periodic and comprehensive reviews. This review and assessment of racial and ethnic disparities should include, but not be limited to, cases involving sexual offenses.

DAC-IPAD Recommendation 40 – (December 2020) The Secretary of Defense direct the Military Justice Review Panel to assess whether a uniform training system on explicit and implicit bias should be developed for all military personnel who perform duties in the military justice system, including military police and criminal investigators, trial counsel, defense counsel, victims’ counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate judges.

DAC-IPAD Recommendation 41 – (August 2022) All of the Services should adopt an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons.

DAC-IPAD Recommendation 42 – (August 2022) The Army should establish an independent supervisory rating structure for SVCs outside of the OSJA [Office of the Staff Judge Advocate] and local command.

DAC-IPAD Recommendation 43 – (March 2023) The Joint Service Committee on Military Justice (JSC) draft an amendment to R.C.M. [Rule for Courts-Martial] 1001(c)(2)(B) adding the words “or indirectly” to the definition of victim impact, amending the section as follows:

“For purposes of this subsection, victim impact includes any financial, social, psychological, or medical impact on the crime victim directly *or indirectly* relating to or arising from the offense of which the accused has been found guilty.”

DAC-IPAD Recommendation 44 – (March 2023) The JSC draft an amendment to R.C.M. 1001(c)(3) by adding a sentence stating that a victim impact statement may include a recommendation of a specific sentence except in capital cases.

DAC-IPAD Recommendation 45 – (March 2023) The JSC draft an amendment to R.C.M. 1001(c)(5)(A) allowing submission of the unsworn victim impact statement by audiotape, videotape, or other digital media, in addition to allowing the statement orally, in writing, or both.

DAC-IPAD Recommendation 46 – (March 2023) The JSC draft an amendment to R.C.M. 1001(c)(5)(B) to remove the “upon good cause shown” clause to be consistent with the JSC’s proposed change to R.C.M. 1001(c)(5)(A).

DAC-IPAD Recommendation 47 – (March 2023) The JSC draft an amendment to R.C.M. 1001(c)(5)(B) to remove the requirement that the victim provide a written proffer of the matters addressed in their unsworn statement to trial and defense counsel after the announcement of findings.

DAC-IPAD Recommendation 48a – (June 2023) Amend Article 32 to provide that a preliminary hearing officer’s determination of no probable cause precludes referral of the affected specification(s) to a general court-martial—subject to reconsideration as described in Recommendation 48b—without prejudice to the government to prefer new charges.

DAC-IPAD Recommendation 48b – (June 2023) Amend Article 32 and Rule for Courts-Martial 405 to permit reconsideration of a preliminary hearing officer’s no-probable-cause determination upon the presentation of newly discovered evidence, or evidence that, in the exercise of due diligence, could not reasonably have been obtained before the original hearing, subject to the following:

1. Trial counsel, within 10 days of receiving the preliminary hearing officer’s report, petitions the preliminary hearing officer to reopen the Article 32 preliminary hearing stating the nature of the newly discovered evidence and the reason it was not previously presented. After 10 days, a petition may be made only for good cause shown.
2. The preliminary hearing officer shall reconsider their previous no-probable-cause determination one time upon reopening the Article 32 preliminary hearing to receive the evidence as described above. After reconsideration, the preliminary hearing officer’s determination as to whether probable cause exists is final, but is without prejudice to the government to prefer new charges.

DAC-IPAD Recommendation 49 – (June 2023) The Secretary of Defense revise Appendix 2.1, Manual for Courts-Martial, to align with the prosecution principles contained in official guidance of the United States Attorney General with respect to disposition of federal criminal cases. These revisions should provide that special trial counsel refer charges to a court-martial, and judge advocates recommend that a convening authority refer charges to a court-martial, only if they believe that the Service member’s conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

DAC-IPAD Recommendation 50 – (June 2023) The Secretary of Defense require all special trial counsel and judge advocates who advise convening authorities to receive training on the newly established prosecution standards in Appendix 2.1 of the Manual for Courts-Martial. The training shall emphasize the principle that referral is

appropriate only if these special trial counsel advisors believe that the Service member's conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.

DAC-IPAD Recommendation 51 – (September 2023) The DAC-IPAD recommends that Congress amend section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, to require the Military Services to report the number of incidents of collateral misconduct by type of offense and adverse action taken, if any, in future victim collateral misconduct reports.

DAC-IPAD Recommendation 52 – (September 2023) The DAC-IPAD recommends that Congress require DoD to provide the Service-specific data collected pursuant to its Safe-to-Report policy in accordance with section 539A of the FY21 NDAA, to the DAC-IPAD at the same time and covering the same time periods that it currently collects and submits victim collateral misconduct data to the DAC-IPAD pursuant to FY19 NDAA section 547 biennial collateral misconduct reports.

DAC-IPAD Recommendation 53 – (December 2023) Congress should amend Article 25(e) to remove the requirement for the convening authority to detail members who “in his opinion, are best qualified” based on “age, education, training, experience, length of service, and judicial temperament.”

DAC-IPAD Recommendation 54 – (December 2023) Congress should retain the Article 25(e)(4) requirement for the convening authority to detail members randomly selected under regulations prescribed by the President. The qualifying words “to the maximum extent practicable” should be removed.

DAC-IPAD Recommendation 55 – (December 2023) The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial, pursuant to the requirement in Article 25(e)(4), to provide for a randomized court-martial panel member selection process utilizing the Military Services' personnel and pay systems to select the members. This process should preclude the convening authority or other members of command or the judge advocate office from hand selecting members. In addition to the statutory qualification requirements, the randomized selection process should provide for diversity of members based on grade.

DAC-IPAD Recommendation 56 – (December 2023) The Secretary of Defense should direct that a pilot project be initiated to create a court administrator position to be responsible for the panel member selection process—rather than the staff judge advocate or command staff.

DAC-IPAD Recommendation 57 – (December 2023) Congress should amend Article 25 to explicitly give convening authorities the authority to determine whether randomly selected Service members are available prior to being detailed to a court-martial panel and retain the authority in Article 25 to exempt or excuse individuals for operational requirements or personal reasons after they have been detailed.

DAC-IPAD Recommendation 58 – (December 2023) The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a transparent method for convening authorities to document availability and excusal determinations.

DAC-IPAD Recommendation 59 – (December 2023) Congress should retain the requirement in Article 25(e)(1) that when it can be avoided, no accused Service member may be tried by a court-martial in which any member is junior to the accused in rank or grade.

DAC-IPAD Recommendation 60 – (December 2023) Congress should amend Article 25 to add a two-year time-in-service requirement for court-martial panel member eligibility. For Service Academy cadets and midshipman, the calculation of time in service would commence upon commissioning.

DAC-IPAD Recommendation 61 – (December 2023) The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniform criteria for automatic exemption from serving as a court-martial member. For example, federal courts require jury members to be proficient in English, have no disqualifying mental or physical condition, and not be subject to felony charges or be convicted of a felony. The amendment should delegate authority to each Military Department Secretary to promulgate regulations that establish additional bases for automatic exemption. To ensure maximum transparency, any additional exempting criteria established by the Military Departments should be made public through the Federal Register and by other appropriate means.

DAC-IPAD Recommendation 62 – (December 2023) Congress should amend Article 25(e)(2) and (3) to remove the requirement that the convening authority detail panel members at the time the court-martial is convened. Instead, it should provide that the convening authority must detail panel members within a reasonable time prior to the swearing in of the detailed members and the assembly of the court-martial.

DAC-IPAD Recommendation 63 – (December 2023) The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniformity with respect to the sharing of the following information with a victim and their counsel, if represented:

1. All recorded and written statements of the victim to investigators or government counsel.
2. The record of any forensic examination of the person or property of the victim, including the record of any sexual assault medical forensic exam of the victim that is in the possession of investigators or the government.
3. Any medical record of the victim that is in the possession of investigators or the government.

The rules should specify the government's obligation to inform individuals that these three categories of information, including copies of statements, recordings, or documents, shall be made available promptly upon request by a victim or their counsel, subject to the following conditions:

1. The prosecutor shall disclose the information requested promptly, in consultation with the military criminal investigation organization (MCIO), unless otherwise prohibited by law; or
2. Unless a military judge or military magistrate finds, upon a written submission by the prosecutor demonstrating good cause, that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation. The prosecutor shall state in writing any reasons for nondisclosure and may do so in camera to a military judge or magistrate.
3. The rules should ensure that, in any case, the policy must not be construed to interfere with the provision of health care to a victim or with a victim's access to veterans' benefits.

DAC-IPAD Recommendation 64 – (December 2023) The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a process for issuance of a protective order by a military judge or military magistrate, upon a showing of good cause, that disclosure of the record of a forensic

examination would impede or compromise an ongoing investigation, to accompany disclosures to victims and counsel before referral of charges, in accordance with Article 30a, UCMJ.

DAC-IPAD Recommendation 65 – (December 2023) The Secretary of Defense should modify DoD instructions to align with the new rules for sharing these three categories of information.

APPENDIX F. COMMITTEE RECOMMENDATIONS BY TOPIC WITH IMPLEMENTATION STATUS

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Expedited Transfer			
DAC-IPAD Second Annual Report R-1 Mar. 2018	(DoD) Dispel the misperception of widespread abuse of the expedited transfer policy	Recommendation 1: The Secretary of Defense take action to dispel the misperception of widespread abuse of the expedited transfer policy, including addressing the issue in the training of all military personnel. IMPLEMENTATION: No response from DoD or Congress as of Nov. 2023.	No action
DAC-IPAD Second Annual Report R-2 Mar. 2018	(DoD) Identify and track appropriate metrics to monitor expedited transfer policy	Recommendation 2: The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it. IMPLEMENTATION: No response from DoD or Congress as of Nov. 2023.	No action

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Second Annual Report R-3 (and interim assessment 5) Mar. 2018</p>	<p>(DoD) Extend the expedited transfer policy to FAP sexual assault victims</p> <p>(DoD) Extend the expedited transfer policy to include family members</p>	<p>Recommendation 3: The DoD-level and Coast Guard equivalent Family Advocacy Program (FAP) policy include provisions for expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD Sexual Assault Prevention and Response (SAPR) policy and consistent with 10 U.S.C. § 673.</p> <p>DAC-IPAD Interim Assessment 5: The DAC-IPAD believes that the expedited transfer policy should be a complete program without gaps in eligibility within the military community, and thus should include family members. The PWG will continue to explore this issue.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2019 NDAA § 536. Directs the Secretary of Defense to implement a standardized expedited transfer process for a Service member who is the alleged victim of sexual assault, regardless of whether the case is handled by the SAPR or the FAP Programs, as well as for those Service members who are victims of physical domestic violence committed by a spouse or intimate partner. Section 536 also requires the Secretary to extend the policy to include Service members whose dependent is the victim of a sexual assault perpetrated by a member of the Armed Forces who is not related to the victim.</p> <p>(DoD) USD P&R Memo to the Secretaries of the Military Departments, Revisions to the Sexual Assault Prevention and Response Program’s Expedited Transfer Policy (Feb. 10, 2020). Provides guidance on implementation of FY 2019 NDAA § 536 – for SAPR personnel only (not FAP) (Feb. 10, 2020).</p> <p>DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures (Incorporating Change 4, Sept. 11, 2020) Incorporated the policy revision contained in the Feb. 10, 2020 USD P&R memorandum – for SAPR only.</p> <p>Army: ALARACT 095/2020 Replaced by ALARACT 013/2021 Dated 22 February 2021 // Additional Sexual Harassment/ Assault Response and Prevention Program Guidance. Expands expedited transfer policy to the Army FAP.</p> <p>USMC: MARADMIN 561/20, Family Advocacy Program Expedited Transfers (Sept. 2020). Expands the expedited transfer policy to the USMC FAP.</p> <p>Air Force: AFI 40-301, Family Advocacy Program (Nov. 13, 2020). Expands the expedited transfer policy to AF FAP.</p> <p>Navy: OPNAVINST 1752.2C, Family Advocacy Policy (May 2020). Expands the expedited transfer policy.</p>	<p>FY19 NDAA § 536</p> <p>USD P&R Memo (Feb. 10, 2020)</p> <p>DoDI 6495.02 (Incorporating Change 4, Sept. 11, 2020)</p> <p>Service Regulations</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Second Annual Report R-4 Mar. 2018</p>	<p>(DoD) Require commander coordination with SAPR and FAP for expedited transfers throughout the transfer process</p>	<p>Recommendation 4: The DoD-level military personnel assignments policy (DoD Instruction 1315.18) and Coast Guard equivalent include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.</p> <p>IMPLEMENTATION: (DoD) USD P&R Memo to the Secretaries of the Military Departments, Revisions to the Sexual Assault Prevention and Response Program’s Expedited Transfer Policy (Feb. 10, 2020). Provides guidance for implementing the requirements of FY 2019 NDAA § 536 guidance on including commanding officers’ interactions with SAPR personnel (but not FAP) and victims at both receiving and losing installations.</p> <p>DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures (Incorporating Change 4, Sept. 11, 2020) Incorporated the policy revision contained in the Feb. 10, 2020, USD P&R memorandum but for SAPR personnel only.</p>	<p>FY19 NDAA § 536</p> <p>USD P&R Memo (Feb. 10, 2020)</p> <p>DoDI 6495.02 (Incorporating Change 4, Sept. 11, 2020)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-13 Mar. 2019</p>	<p>(DoD) Expand expedited transfer option to victims making restricted reports</p>	<p>Recommendation 13: The Secretary of Defense expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim’s report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:</p> <ul style="list-style-type: none"> a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim’s commander. b. The victim’s commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject’s identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care. c. A sexual assault response coordinator, victim advocate, or special victims’ counsel (SVC) / victims’ legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report. <p>IMPLEMENTATION: Although DoD policy allows Services to request an exception to policy for victims filing a restricted report, at the time of DAC-IPAD Third Annual Report, there had been no exceptions to policy requested by any Service.</p> <p>No response regarding R-13 from DoD or Congress as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-15 Mar. 2019</p>	<p>(DoD) Revise the goal and purpose of the expedited transfer policy and credible report criteria</p>	<p>Recommendation 15: The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:</p> <ul style="list-style-type: none"> a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests. b. The single, overriding purpose of the expedited transfer policy is to assist in the victim’s mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim’s recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim’s desire for a fresh start following the assault). c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: “any evidence that the victim’s report is not credible.” <p>IMPLEMENTATION: No response from DoD or Congress as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Third Annual Report R-16 Mar. 2019</p>	<p>(Congress) Increase expedited transfer request response time frame</p>	<p>Recommendation 16: Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.</p> <p>IMPLEMENTATION: (CONGRESS) FY21 NDAA § 531. Extended the statutory time frame for approval of expedited transfers to five calendar days.</p>	<p>FY21 NDAA § 531</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-17 Mar. 2019</p>	<p>(Military Services) Track and report specific metrics for expedited transfer requests</p>	<p>Recommendation 17: The Services track and report the following data in order to best evaluate the expedited transfer program:</p> <ul style="list-style-type: none"> a. Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final. b. Data on the number of accused transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final. c. Data on victim participation in investigation/prosecution before and after an expedited transfer. d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program. e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers. f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service. g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service. h. Data on victim satisfaction with the expedited transfer program. i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault. <p>IMPLEMENTATION: No response from DoD or Congress as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-18 Mar. 2019</p>	<p>(DoD) Include policy for transitional care similar to Wounded Warrior Program for victims</p>	<p><i>Recommendation 18:</i> The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.</p> <p>IMPLEMENTATION: FY21 NDAA § 538(c)(1) REPORT ON RESIDENTIAL TREATMENT. – Not later than 180 days after date of the enactment of this Act, the Secretaries of Defense and Veterans Affairs shall provide a report to the appropriate committees of Congress regarding the availability of residential treatment programs for survivors of sexual trauma, including (A) barriers to access for such programs; and (B) resources required to reduce such barriers.</p>	<p>FY21 NDAA § 538</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Option for Sexual Offense Victims to Limit Further Investigation in Certain Circumstances			
<p>DAC-IPAD Third Annual Report R-14 Mar. 2019</p>	<p>(DoD) Establish a working group to review an option that would allow the victim to request that the investigation be terminated</p>	<p>Recommendation 14: The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group’s goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim’s wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:</p> <ol style="list-style-type: none"> a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation. b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances. c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO’s decision to honor the victim’s request. d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy. <p style="text-align: right;"><i>(continues)</i></p>	<p>FY20 NDAA § 540K Acting SecDef Memo approved (May 1, 2019)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
		<p>e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.</p> <p>IMPLEMENTATION: (CONGRESS) FY20 NDAA § 540K. Directed the SecDef to consult with the DAC-IPAD and submit a report to Congress on the feasibility and advisability of a policy for DoD that would permit a Service member or an adult military dependent victim of a sexual assault that is or may be investigated as a result of a communication to exercise the option of a restricted report, regardless of who has initiated or received such communication.</p> <p>(DoD) Sexual Assault Accountability and Investigation Task Force (SAITF) Report – included recommendation supporting DAC-IPAD R-14 (Apr. 30, 2019).</p> <p>(DoD) Acting SecDef Memo, Actions to Address and Prevent Sexual Assault in the Military (May 1, 2019). Approved all recommendations contained in the SAITF report.</p> <p>(DoD) “CATCH A Serial Offender Program” launched Aug. 2019 to provide people making a restricted sexual assault report the opportunity to anonymously submit suspect information to help the DoD identify serial offenders, using DD Form 2910-4.</p>	

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD May 29, 2020 Letter to Secretary of Defense</p>	<p>(DoD) Allow Victims to request that the investigation be terminated when report made by third parties</p>	<p>The Secretary of Defense establish a policy that would provide adult sexual assault victims the option to request termination of the criminal investigation when a third party has reported the sexual assault or when the victim has inadvertently disclosed the assault to a member of the chain of command. The proposed policy should take into account specific circumstances, such as the interests of justice and safety, under which a case may merit further investigation regardless of the victim’s wishes; it should also take into account whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This policy should contain the following requirements:</p> <ol style="list-style-type: none"> a. The victim be offered a referral to and encouraged to meet with a special victims’ counsel (SVC) or victims’ legal counsel (VLC) before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation. b. The investigative agent be required to obtain supervisory or military criminal investigative organization (MCIO) headquarters-level approval to close a case in these circumstances. c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO’s decision to honor the victim’s request. d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy. e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness’s allegation of sexual assault. <p style="text-align: right;"><i>(continues)</i></p>	<p>DoD SAPRO Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims (Apr. 7, 2020)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
		<p>IMPLEMENTATION: (DoD) SAPRO Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims (Apr. 7, 2020) (as required by FY20 NDAA § 540K).</p> <p>DoDD 6495.01 policy update to expand eligibility for Restricted Reporting (implementing FY20 NDAA § 540K).</p> <p>Deputy Secretary of Defense Memorandum, Updates to DoD Policy and Procedures for the Sexual Assault Prevention and Response Program and Adult Sexual Assault Investigation (Nov. 10, 2021).</p>	
Uniform Command Action Form			
<p>DAC-IPAD Third Annual Report R-5 Mar. 2019</p>	<p>(DoD) Develop a standard set of disposition options for the uniform command action form required by FY19 NDAA</p>	<p>Recommendation 5: In developing a uniform command action form in accordance with section 535 of the FY19 National Defense Authorization Act (NDAA), the Secretary of Defense should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.</p> <p>The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.</p> <p>IMPLEMENTATION: DD 3114 Uniform Command Disposition Form (Jan. 2022).</p>	<p>DD Form 3114 (Jan. 2022)</p>
<p>DAC-IPAD Third Annual Report R-6 Mar. 2019</p>	<p>(DoD) Require judge advocates to provide advice to commanders for completing disposition/action reports</p>	<p>Recommendation 6: The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.</p> <p>IMPLEMENTATION: DD 3114 Uniform Command Disposition Form (Jan. 2022).</p>	<p>DD Form 3114 (Jan. 2022)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Information Provided to Federal Crime Databases			
<p>DAC-IPAD Third Annual Report R-7 Mar. 2019</p>	<p>(DoD) Provide uniform guidance regarding submission of information to federal databases</p>	<p><i>Recommendation 7:</i> The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.</p> <p>IMPLEMENTATION: (CONGRESS) FY19 NDAA § 546. Directed SecDef and the Secretaries of the Military Departments to establish a consolidated tracking process to ensure increased oversight of the timely submission of crime reporting data to the Federal Bureau of Investigation.</p> <p>(CONGRESS) FY21 NDAA § 545. Requires the Secretary of Defense to establish and maintain a policy and process that enables a qualifying subject to request that their name and personally identifying information “be corrected in, or expunged or otherwise removed from . . . systems of record maintained by or on behalf of the Department.</p> <p>(DoD) DoDI 5505.11, Fingerprint Reporting Requirements (Updated Oct. 31, 2019).</p>	<p>FY19 NDAA § 546 FY21 NDAA § 545 DoDI 5505.11 (Oct. 2019)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Article 140a, UCMJ, Data Management			
<p>DAC-IPAD Third Annual Report R-8 Mar. 2019</p>	<p>(DoD) Adopt best practices for Article 140a standards and criteria</p>	<p>Recommendation 8: The uniform standards and criteria developed to implement Article 140a, Uniform Code of Military Justice (UCMJ), should reflect the following best practices for case data collection:</p> <ol style="list-style-type: none"> a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander’s report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial. b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD. c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD. d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible. e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals. <p>IMPLEMENTATION: (DoD) OGC Response Letter to DAC-IPAD Chair (Jan, 23, 2019) – DoD disapproved this recommendation but suggested that a pilot program may be possible in the future to assess feasibility of a single data collection system.</p> <p>(CONGRESS) FY20 NDAA § 540G – Directed DoD to provide a plan for the standardization among Military Departments for collecting and maintaining Article 140a of the UCMJ case information, and an assessment of establishing a single department-wide management system.</p> <p>(CONGRESS) FY22 NDAA § 547 Directed SecDef to publish a plan to establish a single document management system for use by each Armed Force to collect and present information on matters within the military justice system, including information collected and maintained for purposes of Article 140a, UCMJ.</p>	<p>DoD disapproved (Jan. 23, 2019)</p> <p>FY20 NDAA § 540G</p> <p>FY22 NDAA § 547</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-9 Mar. 2019</p>	<p>(DoD) Source documents should contain uniform content</p>	<p>Recommendation 9: The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.</p> <p>IMPLEMENTATION: (DoD) OGC Response Letter to DAC-IPAD Chair (Jan. 23, 2019) – DoD disapproved this recommendation.</p>	<p>DoD disapproved (Jan. 23, 2019)</p>
<p>DAC-IPAD Third Annual Report R-10 Mar. 2019</p>	<p>(DoD) Article 140a data should be the primary source for the MJRP</p>	<p>Recommendation 10: The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel’s periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.</p> <p>IMPLEMENTATION: (DoD) OGC Response Letter to DAC-IPAD Chair (Jan. 23, 2019) – DoD disapproved this recommendation.</p>	<p>DoD disapproved (Jan. 23, 2019)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-11 Mar. 2019</p>	<p>(DoD) Article 140a data collection requirements for adult and child victims of sexual assault</p>	<p>Recommendation 11: Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):</p> <ul style="list-style-type: none"> a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization (MCIO) concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement; b. Whether an unrestricted report of sexual assault originated as a restricted report; c. Demographic data pertaining to each victim and accused, including race and sex; d. The nature of any relationship between the accused and the victim(s); e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review; f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request; g. Whether a victim declined to participate at any point in the military justice process; h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused. <p>IMPLEMENTATION: (DoD) OGC Response Letter to DAC-IPAD Chair (Jan. 23, 2019) – DoD disapproved this recommendation.</p>	<p>DoD disapproved (Jan. 23, 2019)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Third Annual Report R-12 Mar. 2019</p>	<p>(Services) Continue separate case management systems with plan to transition to one uniform case management system</p>	<p>Recommendation 12: The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that</p> <ol style="list-style-type: none"> a. The Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and b. The Services develop a plan to transition toward operating one uniform case management system across all of the Services, similar to the federal judiciary’s Case Management/ Electronic Court Filing (CM/ECF) system. <p>IMPLEMENTATION: (DoD) OGC Response Letter to DAC-IPAD Chair (Jan. 23, 2019) – DoD disapproved this recommendation.</p> <p>(CONGRESS) FY22 NDAA § 547 Directed SecDef to publish a plan to establish a single document management system for use by each Armed Force to collect and present information on matters within the military justice system, including information collected and maintained for purposes of Article 140a, UCMJ.</p>	<p>DoD disapproved (Jan. 23, 2019)</p> <p>FY22 NDAA § 547</p>
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military R-35 Dec. 2020</p>	<p>(Congress) Authorize and fund a pilot program for developing a single document-based data system for all sexual offenses</p>	<p>Recommendation 35: Congress authorize and appropriate funds for the Secretary of Defense to establish a pilot program operating one uniform, document-based data system for collecting and reporting contact and penetrative sexual offenses across all of the Military Services. The pilot program, which should cover every sexual offense allegation made against a Service member under the military’s jurisdiction that is investigated by a military criminal investigative organization (MCIO), will record case data from standardized source documents provided to the pilot program by the Military Services and will include demographic data pertaining to each victim and accused—including race and ethnicity.</p> <p>IMPLEMENTATION: (DoD) OGC Memo, Plans Required by Section 547 of the National Defense Authorization Act for Fiscal Year 2022 (Dec. 23, 2022). The Defense Legal Services Agency (DLSA) would host and operate a single centralized document management system (DMS) to pull data and information from each Armed Force’s respective military justice case management system and other databases, as appropriate. Once established, the DMS’s primary purpose is to serve as the central repository for military justice data to assess and analyze both changes in law and policy and the overall health of the military justice system.</p>	<p>FY22 NDAA § 547</p> <p>(DoD) OGC Memo, <i>Plans Required by Section 547 of the National Defense Authorization Act for Fiscal Year 2022</i> (Dec. 23, 2022)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Victim Collateral Misconduct			
<p>DAC-IPAD Fourth Annual Report R-19 Mar. 2020</p>	<p>(DoD) Recommended collateral misconduct data reporting requirements and definitions of terms</p>	<p>Recommendation 19: The Department of Defense should publish a memorandum outlining sufficiently specific data collection requirements to ensure that the Military Services use uniform methods, definitions, and timelines when reporting data on collateral misconduct (or, where appropriate, the Department should submit a legislative proposal to Congress to amend section 547 [of the FY19 NDAA] by clarifying certain methods, definitions, and timelines). The methodology and definitions should incorporate the following principles . . . [Note: The list is not included here. Please see DACIPAD Fourth Annual Report, R-19, for comprehensive list.]</p> <p>IMPLEMENTATION: (DoD) OGC Memo, Guidance for Preparation of Collateral Misconduct Reports (Mar. 25, 2020) – Provides implementation guidance on definitions and standards to produce data in the collateral misconduct reports.</p> <p>(CONGRESS) FY21 NDAA § 536 – Amends “accused of collateral misconduct” to “suspected of collateral misconduct,” and defines the term; clarifies that data must be reported on each victim of a sexual offense that occurred while that individual was a Service member; directs the SecDef to issue guidance to standardize definitions of the terms “sexual offense,” “collateral misconduct,” and “adverse action” and to standardize methods for collecting collateral misconduct data.</p> <p>(CONGRESS) FY21 NDAA § 539A – Directs the SecDef to establish a safe-to-report policy that prescribes the handling of victim minor collateral misconduct. Requires the SecDef to develop and implement a process to track incidents of minor collateral misconduct that are subject to the safe-to-report policy.</p>	<p>DoD OGC Memo partially approved (Mar 25, 2020)</p> <p>FY21 NDAA §§ 536, 539A</p>
<p>DAC-IPAD Fourth Annual Report R-20 Mar. 2020</p>	<p>(DoD) Should not classify false allegations of a sexual offense as collateral misconduct</p>	<p>Recommendation 20: Victims suspected of making false allegations of a sexual offense should not be counted as suspected of collateral misconduct.</p> <p>IMPLEMENTATION: (DoD) OGC Memo, Guidance for Preparation of Collateral Misconduct Reports (Mar. 25, 2020) – Excludes false allegations from the definition of collateral misconduct as recommended.</p>	<p>DoD OGC Memo approved (Mar. 25, 2020)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Fourth Annual Report R-21 Mar. 2020</p>	<p>(DoD) Should report percentage of victims suspected of collateral misconduct who received adverse action for collateral misconduct</p>	<p>Recommendation 21: For purposes of the third statistical data element required by section 547 [of the FY19 NDAA], the Department of Defense should report not only the percentage of all Service member victims who are suspected of collateral misconduct but also the percentage of the Service member victims who are suspected of collateral misconduct and then receive an adverse action for the misconduct. These two sets of statistics would better inform policymakers about the frequency with which collateral misconduct is occurring and the likelihood of a victim's receiving an adverse action for collateral misconduct once they are suspected of such misconduct.</p> <p>IMPLEMENTATION: (DoD) OGC Memo, Guidance for Preparation of Collateral Misconduct Reports (Mar. 25, 2020) – Disapproved.</p>	<p>DoD OGC Memo disapproved (Mar. 25, 2020)</p>
<p>DAC-IPAD Fourth Annual Report R-22 Mar. 2020</p>	<p>(DoD) Should report type of collateral offense and type of adverse action taken for each instance</p>	<p>Recommendation 22: The Department of Defense should include in its report data on the number of collateral offenses that victims were suspected of by type of offense (using the methodology specified in section h of Recommendation 19) and the number and type of adverse actions taken for each of the offenses, if any. This additional information would aid policymakers in fully understanding and analyzing the issue of collateral misconduct and in preparing training and prevention programs.</p> <p>IMPLEMENTATION: (DoD) OGC Memorandum to Secretaries of Military Departments (Mar. 25, 2020) – Disapproved.</p> <p>(CONGRESS) FY21 NDAA § 536 – Directs SecDef to standardize methods for collecting collateral misconduct data.</p> <p>(CONGRESS) FY21 NDAA § 539A – (Related provision) Requires SecDef to develop and implement a process to track incidents of minor collateral misconduct that are subject to the safe-to-report policy.</p>	<p>DoD OGC Memo disapproved (Mar 25, 2020)</p> <p>FY 21 NDAA §§ 536, 539A</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Fourth Annual Report R-23 Mar. 2020</p>	<p>(Services) Should standardize documentation of collateral misconduct reporting</p>	<p>Recommendation 23: To facilitate production of the future collateral misconduct reports required by section 547 [of the FY19 NDAA], the Military Services should employ standardized internal documentation of sexual offense cases involving Service member victims suspected of engaging in collateral misconduct as defined for purposes of this reporting requirement.</p> <p>IMPLEMENTATION: OGC Memo, Guidance for Preparation of Collateral Misconduct Reports (Mar. 25, 2020) – Disapproved.</p> <p>(CONGRESS) FY21 NDAA § 536 – Directs SecDef to standardize methods for collecting collateral misconduct data (does not require “standardized documentation,” however).</p> <p>(CONGRESS) FY21 NDAA § 539A – Directs SecDef to establish a safe-to-report policy that prescribes the handling of victim minor collateral misconduct. Requires SecDef to develop and implement a process to track incidents of minor collateral misconduct that are subject to the safe-to-report policy. (This provision allows but does not require “standardized documentation” of collateral misconduct by offense.)</p>	<p>DoD OGC Memo disapproved (Mar. 25, 2020)</p> <p>FY 21 NDAA §§ 536, 539A</p>
<p>DAC-IPAD Collateral Misconduct Report R-51 Sept. 2023</p>	<p>(Congress) Amend Section 547 of the FY2019 NDAA</p>	<p>Recommendation 51: The DAC-IPAD recommends that Congress amend section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, to require the Military Services to report the number of incidents of collateral misconduct by type of offense and adverse action taken, if any, in future victim collateral misconduct reports.</p>	<p>No action</p>
<p>DAC-IPAD Collateral Misconduct Report R-52 Sept. 2023</p>	<p>(Congress) Require DoD to provide service-specific data</p>	<p>Recommendation 52: The DAC-IPAD recommends that Congress require DoD to provide the Service-specific data collected pursuant to its Safe-to-Report policy in accordance with section 539A of the FY21 NDAA, to the DAC-IPAD at the same time and covering the same time periods that it currently collects and submits victim collateral misconduct data to the DAC-IPAD pursuant to FY19 NDAA section 547 biennial collateral misconduct reports.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Advisability of Guardian ad Litem Program in the Military			
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-24</p> <p>June 2020</p>	<p>(Services) Enhance funding and training for SVCs/VLCs and hire HQEs with child victim expertise</p>	<p>Recommendation 24: Secretaries of the Military Departments enhance funding and training for SVCs/VLCs appointed to represent child victims, including authorization to hire civilian highly qualified experts (HQEs) with experience and expertise in representing child victims, including expertise in child development, within the SVC/VLC Programs.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-25</p> <p>June 2020</p>	<p>(Services) Develop cadre of SVCs/VLCs with specialized expertise to represent child victims</p>	<p>Recommendation 25: In conjunction with Recommendation 24, the Judge Advocates General of the Military Services including the Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps develop a cadre of identifiable SVCs/VLCs who have specialized training, experience, and expertise in representing child victims of sex-related offenses by utilizing military personnel mechanisms such as Additional Skill Identifiers.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-26</p> <p>June 2020</p>	<p>(DoD IG and Services) Assess whether MCIOs and FAP are notifying child victims of right to SVC/VLC</p>	<p>Recommendation 26: The Department of Defense Office of the Inspector General and the Secretaries of the Military Departments assess whether the MCIOs and FAP currently are providing accurate and timely notification to child victims of their right to request SVC/VLC representation as soon as an allegation of a sexual offense is reported, and if necessary, take corrective action.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-27</p> <p>June 2020</p>	<p>(Congress) Expand SVC/VLC eligibility to all child victims of sex offenses</p>	<p>Recommendation 27: Congress amend 10 U.S.C. § 1044e to expand SVC/VLC eligibility to any child victim of a sex-related offense committed by an individual subject to the UCMJ.</p> <p>IMPLEMENTATION: No response from Congress as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-28</p> <p>Jun 2020</p>	<p>(Congress) Authorize judges to direct appointment of SVC/VLC for a child victim</p>	<p>Recommendation 28: Congress amend the UCMJ to authorize the military judge to direct the appointment of an SVC/VLC for a child victim of a sex-related offense and/or of an independent best interest advocate to advise the military judge when they find that the child's interests are not otherwise adequately protected.</p> <p>IMPLEMENTATION: No response from Congress as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-29</p> <p>June 2020</p>	<p>(DoD) Develop a child victim advocate capability within the Services for sexual offenses</p>	<p>Recommendation 29: The Secretary of Defense and the Secretaries of the Military Departments develop a child victim advocate capability within each of the Services to support certain child victims of sexual offenses. The child victim advocate should reside within the SVC/VLC Programs and work as part of the SVC/VLC team in order to ensure that the child's legal interests are fully represented and protected. The child victim advocate should have expertise in social work, child development, and family dynamics.</p> <p>IMPLEMENTATION: (CONGRESS) FY21 NDAA § 549B – Directs the military to ensure that the services of trained civilian child victim advocates are made available to ensure that a child's interests are protected in the courtroom when the child victim lacks a supportive family member or cannot direct their own legal representation. Requires the Secretary of each Military Department to enter into a memorandum of understanding with the National Children's Alliance, or similar organization. [Note: This provision does not require internal military capability as recommended, but does require access to child victim advocates.]</p>	<p>FY 21 NDAA § 549B</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-30</p> <p>June 2020</p>	<p>(Congress) Require Art. 6b, UCMJ, representatives to protect victim's interests</p>	<p>Recommendation 30: Congress amend Article 6b, UCMJ, to require that any representative who assumes the rights of the victim shall act to protect the victim's interests; any such representative should be appointed as early as possible in the military justice process.</p> <p>IMPLEMENTATION: No response from Congress as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims</p> <p>R-31</p> <p>June 2020</p>	<p>(DoD) Not advisable to establish a GAL program</p>	<p>Recommendation 31: Provided that the Department of Defense adopts and implements DAC-IPAD Recommendations 24–30, it is not advisable or necessary to establish a military guardian ad litem program within the Department of Defense for child victims of alleged sex-related offenses in courts-martial.</p> <p>IMPLEMENTATION: No action required.</p>	<p>No action required</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Article 34, UCMJ – SJA Advice to Convening Authority			
<p>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in FY2017</p> <p>R-32</p> <p>Oct 2020</p>	<p>(Congress) Amend Article 34, UCMJ to require SJA to advise on sufficiency of admissible evidence to obtain and sustain a conviction</p>	<p>Recommendation 32: Congress amend Article 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on the charged offenses before a convening authority may refer a charge and specification to trial by general court-martial.</p> <p>IMPLEMENTATION: No response from Congress as of Nov 2023.</p>	<p>No action</p>
Race and Ethnicity Data Collection			
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-33</p> <p>Dec. 2020</p>	<p>(DoD) Designate the military personnel system as primary data system for collecting military personnel demographics</p>	<p>Recommendation 33: The Secretary of Defense designate the military personnel system as the primary data system in the Department of Defense for the collection of demographic information such as race and ethnicity. All other Department of Defense systems that collect demographic data regarding military personnel, such as the military criminal investigative system and the military justice system, should obtain demographic information on military personnel from the military personnel system.</p> <p>IMPLEMENTATION: (DoD), Acting SecDef Memo. Actions to Improve Racial and Ethnic Diversity and Inclusion in the U.S. Military (Dec. 17, 2020) – Requires a plan to standardize a DoD Human Resources Data System for Diversity and Inclusion Analysis.</p>	<p>Acting SecDef Memo (Dec. 17, 2020)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-34</p> <p>Dec. 2020</p>	<p>(DoD) Direct the military to uniformly record race and ethnicity in MCIO databases</p>	<p>Recommendation 34: The Secretary of Defense direct each Military Department to record race and ethnicity in military criminal investigative organization databases, military justice databases, and military personnel databases using the same racial and ethnic categories. The Secretary of Defense should direct each Military Department to report race using the following six categories: American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, More Than One Race/Other, and White, and to report ethnicity using the following two categories: Hispanic or Latino and Not Hispanic or Latino.</p> <p>IMPLEMENTATION: (Congress) FY 22 NDAA § 549G directs the Services to submit annually to SecDef a report on racial, ethnic and gender demographics in the military justice system from the prior year with statistics on UCMJ offenses and disciplinary actions. SecDef must provide these reports to Congress by April 30 of each year.</p> <p>(DoD) OGC Memo, Recording Court-Martial Demographic Information (June 8, 2020)</p> <p>(DoD) Internal Review Team on Racial Disparities in the Investigative and MJ Systems Report (Aug. 31, 2022).</p>	<p>FY 22 NDAA § 549G</p> <p>DoD OGC Memo (June 8, 2020)</p> <p>DoD Internal Review Team on Racial Disparities in the Investigative and MJ Systems Report (Aug. 31, 2022)</p>
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-36</p> <p>Dec. 2020</p>	<p>(DoD) Require Services to track demographic data for victims and subjects throughout the military justice process</p>	<p>Recommendation 36: The Secretary of Defense direct the Military Departments to record and track the race, ethnicity, sex, gender, age, and grade of the victim(s) and the accused for every investigation initiated by military law enforcement in which a Service member is identified as a subject through the final disposition within the military justice system.</p> <p>IMPLEMENTATION: (DoD) GC Memo, Recording Court-Martial Demographic Information (June 8, 2020) (directing collection of race, ethnicity, & gender of accused and victim for every court-martial)</p> <p>(DoD) GC Memo, Revised Uniform Standards and Criteria Required by Article 140a, UCMJ (Jan. 17, 2023) (mandatory data collection fields with race/ethnicity for accused but not victim)</p>	<p>Incomplete implementation in DoD GC Memos to the Military Depts</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities In the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-37</p> <p>Dec. 2020</p>	<p>(DoD) Require Services maintain race and ethnicity data of all participants involved in the processing of sexual offense cases</p>	<p>Recommendation 37: The Secretary of Defense direct the Military Departments to record, beginning in fiscal year 2022, the race and ethnicity of military police and criminal investigators, trial counsel, defense counsel, victims’ counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges involved in every case investigated by military law enforcement in which a Service member is the subject of an allegation of a contact or penetrative sexual offense. The source information for these data should be collected from the military personnel databases and maintained for future studies by the DAC-IPAD on racial and ethnic disparities in cases involving contact and penetrative sexual offenses.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-38</p> <p>Dec. 2020</p>	<p>(DoD) Require the MJRP to assess race and ethnicity demographics of all participants involved in the military justice system</p>	<p>Recommendation 38: The Secretary of Defense direct the newly established Military Justice Review Panel to determine whether to review and assess, by functional roles and/or on an individual case basis, the race and ethnicity demographics of the various participants in the military justice process, including military police and criminal investigators, trial counsel, defense counsel, victims’ counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</p> <p>R-39</p> <p>Dec. 2020</p>	<p>(DoD) Require the MJRP to conduct periodic reviews of race and ethnicity disparities in the military justice system</p>	<p>Recommendation 39: Once the Department of Defense has implemented new data collection processes as recommended in this report and as required pursuant to Article 140a, UCMJ, the Secretary of Defense direct the newly established Military Justice Review Panel to determine whether to review and assess racial and ethnic disparities in every aspect of the military justice system as part of its charter for periodic and comprehensive reviews. This review and assessment of racial and ethnic disparities should include, but not be limited to, cases involving sexual offenses.</p> <p>IMPLEMENTATION: No response from DoD as of Nov 2023.</p>	<p>No action</p>
<p>DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in Investigation, Prosecution, Conviction of Sexual Offenses in the Military</p> <p>R-40</p> <p>Dec. 2020</p>	<p>(DoD) Require the MJRP to assess uniform training on explicit and implicit bias for all military justice system personnel</p>	<p>Recommendation 40: The Secretary of Defense direct the Military Justice Review Panel to assess whether a uniform training system on explicit and implicit bias should be developed for all military personnel who perform duties in the military justice system, including military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate judges.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Programs			
<p>DAC-IPAD</p> <p>Special Victims' Counsel/Victims' Legal Counsel Program Report</p> <p>R-41</p> <p>Aug. 2022</p>	<p>(DoD) Services should adopt an 18-month minimum assignment length</p>	<p>Recommendation 41: All of the Services should adopt an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons.</p> <p>IMPLEMENTATION: (DOD) New DoD Instruction is pending and expected to address Service special victims' counsel programs.</p>	<p>Pending: DoDI on special victims' counsel program</p>
<p>DAC-IPAD</p> <p>Special Victims' Counsel/Victims' Legal Counsel Program Report</p> <p>R-42</p> <p>Aug. 2022</p>	<p>(DoD) Army should establish an independent rating structure</p>	<p>Recommendation 42: The Army should establish an independent supervisory rating structure for SVCs outside of the OSJA [Office of the Staff Judge Advocate] and local command.</p> <p>IMPLEMENTATION: (DOD) New DoD Instruction is pending and expected to address Service special victims' counsel programs.</p>	<p>Pending: DoDI on special victims' counsel programs</p>
Victim Impact Statements at Court-Martial Presentencing Proceedings			
<p>DAC-IPAD</p> <p>Victim Impact Statements Report</p> <p>R-43</p> <p>Mar. 2023</p>	<p>(DoD and President) JSC should draft amendment to R.C.M. 1001(c)(2)(B)</p>	<p>Recommendation 43: The Joint Service Committee on Military Justice (JSC) draft an amendment to R.C.M. 1001(c)(2)(B) adding the words "or indirectly" to the definition of victim impact, amending the section as follows:</p> <p>"For purposes of this subsection, victim impact includes any financial, social, psychological, or medical impact on the crime victim directly or indirectly relating to or arising from the offense of which the accused has been found guilty."</p> <p>IMPLEMENTATION: EO 14103, Annex 3, amends R.C.M. 1001(c) and victim impact statements at presentencing proceedings to remove the word "directly" before the words "relating to or arising from" from the definition of victim impact. These amendments took effect Dec. 27, 2023.</p>	<p>EO 14103 (July 28, 2023) and R.C.M. 1001(c)(2)(B)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD</p> <p>Victim Impact Statements Report</p> <p>R-44</p> <p>Mar. 2023</p>	<p>(DoD and President) JSC should draft amendment to R.C.M. 1001(c)(3)</p>	<p>Recommendation 44: The JSC draft an amendment to R.C.M. 1001(c)(3) by adding a sentence stating that a victim impact statement may include a recommendation of a specific sentence except in capital cases.</p> <p>IMPLEMENTATION: EO 14103 amends R.C.M. 1001(c)(3) to allow victims to recommend a specific sentence during their impact statements in noncapital cases.</p>	<p>EO 14103 (July 28, 2023) and R.C.M. 1001(c)</p>
<p>DAC-IPAD</p> <p>Victim Impact Statements Report</p> <p>R-45</p> <p>Mar. 2023</p>	<p>(DoD and President) JSC should draft amendment to R.C.M. 1001(c)(5)(A)</p>	<p>Recommendation 45: The JSC draft an amendment to R.C.M. 1001(c)(5)(A) allowing submission of the unsworn victim impact statement by audiotape, videotape, or other digital media, in addition to allowing the statement orally, in writing, or both.</p> <p>IMPLEMENTATION: No response from DoD as of Nov. 2023.</p>	<p>No action</p>
<p>DAC-IPAD</p> <p>Victim Impact Statements Report</p> <p>R-46</p> <p>Mar. 2023</p>	<p>(DoD and President) JSC should draft amendment to R.C.M. 1001(c)(5)(B)</p>	<p>Recommendation 46: The JSC draft an amendment to R.C.M. 1001(c)(5)(B) to remove the “upon good cause shown” clause to be consistent with the JSC’s proposed change to R.C.M. 1001(c)(5)(A).</p> <p>IMPLEMENTATION: EO 14103 amends R.C.M. 1001(c)(5) to remove the requirement to show “good cause” in order for the victim’s counsel to read the victim impact statement.</p>	<p>EO 14103 (July 28, 2023) and R.C.M. 1001(c)(5)</p>
<p>DAC-IPAD</p> <p>Victim Impact Statements Report</p> <p>R-47</p> <p>Mar. 2023</p>	<p>(DoD and President) JSC should draft amendment to R.C.M. 1001(c)(5)(B)</p>	<p>Recommendation 47: The JSC draft an amendment to R.C.M. 1001(c)(5)(B) to remove the requirement that the victim provide a written proffer of the matters addressed in their unsworn statement to trial and defense counsel after the announcement of findings.</p> <p>IMPLEMENTATION: EO 14103 amends R.C.M. 1001(c)(5) to remove the requirement that a victim provide a written proffer of the matters addressed in their victim impact statement to the trial counsel and defense counsel after the announcement of findings.</p>	<p>EO 14103 (July 28, 2023) and R.C.M. 1001(c)(5)</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards			
<p>DAC-IPAD</p> <p>Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards</p> <p>R-48a</p> <p>June 2023</p>	<p>(Congress) Amend Article 32</p>	<p>Recommendation 48a: Amend Article 32 to provide that a preliminary hearing officer’s determination of no probable cause precludes referral of the affected specification(s) to a general court-martial—subject to reconsideration as described in Recommendation 48b—without prejudice to the government to prefer new charges.</p> <p>IMPLEMENTATION: No legislative change as of Jan 2024.</p>	<p>No action</p>
<p>DAC-IPAD</p> <p>Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards</p> <p>R-48b</p> <p>June 2023</p>	<p>(Congress) Amend Article 32</p> <p>(DoD and President) JSC should draft amendment to R.C.M. 405</p>	<p>Recommendation 48b: Amend Article 32 and Rule for Courts-Martial 405 to permit reconsideration of a preliminary hearing officer’s no-probable-cause determination upon the presentation of newly discovered evidence, or evidence that, in the exercise of due diligence, could not reasonably have been obtained before the original hearing, subject to the following:</p> <p>1. Trial counsel, within 10 days of receiving the preliminary hearing officer’s report, petitions the preliminary hearing officer to reopen the Article 32 preliminary hearing stating the nature of the newly discovered evidence and the reason it was not previously presented. After 10 days, a petition may be made only for good cause shown.</p> <p>The preliminary hearing officer shall reconsider their previous no-probable-cause determination one time upon reopening the Article 32 preliminary hearing to receive the evidence as described above. After reconsideration, the preliminary hearing officer’s determination as to whether probable cause exists is final, but is without prejudice to the government to prefer new charges.</p> <p>IMPLEMENTATION: No response from Congress or DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>DAC-IPAD</p> <p>Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards</p> <p>R-49</p> <p>June 2023</p>	<p>(DoD) Revise Appendix 2.1, Manual for Courts-Martial</p>	<p>Recommendation 49: The Secretary of Defense revise Appendix 2.1, Manual for Courts-Martial, to align with the prosecution principles contained in official guidance of the United States Attorney General with respect to disposition of federal criminal cases. These revisions should provide that special trial counsel refer charges to a court-martial, and judge advocates recommend that a convening authority refer charges to a court-martial, only if they believe that the Service member’s conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.</p> <p>IMPLEMENTATION: On Oct. 24, 2023, SecDef signed revised Appendix 2.1 Disposition Guidance for the MCM implementing Recommendation 49. The new language reads:</p> <p>2.1. Interests of Justice and Good Order and Discipline. a. Whether admissible evidence will probably be sufficient to obtain and sustain a finding of guilty in a trial by court-martial when viewed objectively by an unbiased factfinder;</p> <p>2.3. Referral. b. A special trial counsel should not refer, and a staff judge advocate or other judge advocate involved in the disposition process should not recommend that a convening authority refer, a charge to a court-martial unless the special trial counsel, staff judge advocate, or other judge advocate believes that the Service member’s conduct constitutes an offense under the UCMJ and that the admissible evidence will probably be sufficient to obtain and sustain a finding of guilty when viewed objectively by an unbiased factfinder.</p>	<p>Appendix 2.1 Disposition Guidance for the MCM (Oct. 24, 2023)</p>
<p>DAC-IPAD</p> <p>Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards</p> <p>R-50</p> <p>June 2023</p>	<p>(DoD) Require training on prosecution standards</p>	<p>Recommendation 50: The Secretary of Defense require all special trial counsel and judge advocates who advise convening authorities to receive training on the newly established prosecution standards in Appendix 2.1 of the Manual for Courts-Martial. The training shall emphasize the principle that referral is appropriate only if these special trial counsel advisors believe that the Service member’s conduct constitutes an offense under the UCMJ, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction when viewed objectively by an unbiased factfinder.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
Randomizing Court-Martial Panel Member Selection			
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-53</p> <p>Dec. 2023</p>	<p>(Congress) Amend Article 25(e)</p>	<p>Recommendation 53: Congress should amend Article 25(e) to remove the requirement for the convening authority to detail members who “in his opinion, are best qualified” based on “age, education, training, experience, length of service, and judicial temperament.”</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-54</p> <p>Dec. 2023</p>	<p>(Congress) Amend Article 25(e)(4)</p>	<p>Recommendation 54: Congress should retain the Article 25(e) (4) requirement for the convening authority to detail members randomly selected under regulations prescribed by the President. The qualifying words “to the maximum extent practicable” should be removed.</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-55</p> <p>Dec. 2023</p>	<p>(DoD and President) JSC should draft an amendment to the R.C.M.</p>	<p>Recommendation 55: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial, pursuant to the requirement in Article 25(e)(4), to provide for a randomized court-martial panel member selection process utilizing the Military Services’ personnel and pay systems to select the members. This process should preclude the convening authority or other members of command or the judge advocate office from hand selecting members. In addition to the statutory qualification requirements, the randomized selection process should provide for diversity of members based on grade.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-56</p> <p>Dec. 2023</p>	<p>(DoD) SecDef should direct a pilot program to create a court administrator position</p>	<p>Recommendation 56: The Secretary of Defense should direct that a pilot project be initiated to create a court administrator position to be responsible for the panel member selection process—rather than the staff judge advocate or command staff.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-57</p> <p>Dec. 2023</p>	<p>(Congress) Amend Article 25</p>	<p>Recommendation 57: Congress should amend Article 25 to explicitly give convening authorities the authority to determine whether randomly selected Service members are available prior to being detailed to a court-martial panel and retain the authority in Article 25 to exempt or excuse individuals for operational requirements or personal reasons after they have been detailed.</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-58</p> <p>Dec. 2023</p>	<p>(DoD and President) JSC should draft an amendment to the R.C.M.</p>	<p>Recommendation 58: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a transparent method for convening authorities to document availability and excusal determinations.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-59</p> <p>Dec. 2023</p>	<p>(Congress) Retain Article 25(e)(1)</p>	<p>Recommendation 59: Congress should retain the requirement in Article 25(e)(1) that when it can be avoided, no accused Service member may be tried by a court-martial in which any member is junior to the accused in rank or grade.</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-60</p> <p>Dec. 2023</p>	<p>(Congress) Amend Article 25</p>	<p>Recommendation 60: Congress should amend Article 25 to add a two-year time-in-service requirement for court-martial panel member eligibility. For Service Academy cadets and midshipman, the calculation of time in service would commence upon commissioning.</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-61</p> <p>Dec. 2023</p>	<p>(DoD and President) JSC should draft an amendment to the R.C.M.</p>	<p>Recommendation 61: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniform criteria for automatic exemption from serving as a court-martial member. For example, federal courts require jury members to be proficient in English, have no disqualifying mental or physical condition, and not be subject to felony charges or be convicted of a felony. The amendment should delegate authority to each Military Department Secretary to promulgate regulations that establish additional bases for automatic exemption. To ensure maximum transparency, any additional exempting criteria established by the Military Departments should be made public through the Federal Register and by other appropriate means.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System</p> <p>R-62</p> <p>Dec. 2023</p>	<p>(Congress) Amend Article 25(e)(2) and (3)</p>	<p>Recommendation 62: Congress should amend Article 25(e)(2) and (3) to remove the requirement that the convening authority detail panel members at the time the court-martial is convened. Instead, it should provide that the convening authority must detail panel members within a reasonable time prior to the swearing in of the detailed members and the assembly of the court-martial.</p> <p>IMPLEMENTATION: No response from Congress as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel</p> <p>R-63</p> <p>Dec. 2023</p>	<p>(DoD and President) JSC should draft an amendment to the R.C.M.</p>	<p>Recommendation 63: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to establish uniformity with respect to the sharing of the following information with a victim and their counsel, if represented:</p> <ol style="list-style-type: none"> 1. All recorded and written statements of the victim to investigators or government counsel. 2. The record of any forensic examination of the person or property of the victim, including the record of any sexual assault medical forensic exam of the victim that is in the possession of investigators or the government. 3. Any medical record of the victim that is in the possession of investigators or the government. <p>The rules should specify the government’s obligation to inform individuals that these three categories of information, including copies of statements, recordings, or documents, shall be made available promptly upon request by a victim or their counsel, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The prosecutor shall disclose the information requested promptly, in consultation with the military criminal investigation organization (MCIO), unless otherwise prohibited by law; or 2. Unless a military judge or military magistrate finds, upon a written submission by the prosecutor demonstrating good cause, that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation. The prosecutor shall state in writing any reasons for nondisclosure and may do so in camera to a military judge or magistrate. 3. The rules should ensure that, in any case, the policy must not be construed to interfere with the provision of health care to a victim or with a victim’s access to veterans’ benefits. <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

Rec. Number	Brief Description	Recommendation and Implementation Status	Action
<p>Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel</p> <p>R-64</p> <p>Dec. 2023</p>	<p>(DoD and President) JSC should draft an amendment to the R.C.M.</p>	<p>Recommendation 64: The Joint Service Committee on Military Justice should draft an amendment to the Rules for Courts-Martial to provide a process for issuance of a protective order by a military judge or military magistrate, upon a showing of good cause, that disclosure of the record of a forensic examination would impede or compromise an ongoing investigation, to accompany disclosures to victims and counsel before referral of charges, in accordance with Article 30a, UCMJ.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>
<p>Recommendations for a Uniform Policy for Sharing Information with Victims and Their Counsel</p> <p>R-65</p> <p>Dec. 2023</p>	<p>(DoD) Modify DoD instructions</p>	<p>Recommendation 65: The Secretary of Defense should modify DoD instructions to align with the new rules for sharing these three categories of information.</p> <p>IMPLEMENTATION: No response from DoD as of Jan. 2024.</p>	<p>No action</p>

APPENDIX G. 2023 BIENNIAL COLLATERAL MISCONDUCT REPORT DATA

DAC-IPAD Analysis of Draft DoD Collateral Misconduct Report (September 2023)

Comparison of Service-Provided Collateral Misconduct Data

Service Member-Victim Collateral Misconduct	U.S. Army	U.S. Navy	U.S. Marine Corps	U.S. Air Force	U.S. Coast Guard	Total for All Services
Number of Service member victims in cases closed between October 1, 2020, and September 30, 2022	5,356	1,120	580	1,320	N/A	8,376
Number of Service member victims <u>suspected</u> of collateral misconduct in cases closed between October 1, 2020, and September 30, 2022	272	64	51	76	N/A	463
Number of instances adverse action was taken against a Service member victim <u>suspected</u> of collateral misconduct	231	21	8	14	N/A	274
Percentage of Service member victims <u>suspected</u> of collateral misconduct	5%	6%	9%	6%	N/A	6%
Percentage of <u>suspected</u> Service member victims who <u>receive adverse action</u> for collateral misconduct	85%	33%	16%	18%	N/A	59%
Percentage of (all) Service member victims who <u>receive adverse action</u> for collateral misconduct	4%	2%	1%	1%	N/A	3%

APPENDIX H. COMMITTEE REQUESTS FOR INFORMATION

DAC-IPAD Requests for Information Submitted to Organizations Within the Department of Defense and the Military Services

RFI Set 2.9: Request for Information from the Military Services' criminal law/military justice organization chiefs, trial defense organization chiefs, Office of Special Trial Counsel leads, and victims' counsel program managers for narrative responses regarding Article 25, UCMJ, criteria.

RFI Set 2.10: Request for Information from Judge Advocates General of the Military Services regarding sharing victim information with their counsel.

Digital versions of the DAC-IPAD RFIs are available online at <https://dacipad.whs.mil/>. In accordance with the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense is the release authority for agency documents provided to the DAC-IPAD in response to the Committee's information requests.

DEPARTMENT OF DEFENSE – DEFENSE LEGAL SERVICES AGENCY REQUESTS FOR INFORMATION SUBMITTED TO ORGANIZATIONS WITHIN THE DEPARTMENT OF DEFENSE AND THE MILITARY SERVICES

RFI 2023-2: Request for Information from the Military Services regarding case documents for all specified cases completed in FY23.

**Defense Advisory Committee on Investigation, Prosecution, and
Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

Request for Information

RFI Set 2.9, Narrative Questions

Topics: Article 25, UCMJ, Criteria and Panel Member Selection Processes

Date of Request: April 24, 2023

**Aggregated RFI Set 2.9 Responses are available at [https://dacipad.whs.mil/images/Public/07-RFIs/
DACIPAD_RFI_Article25_UCMJ_20230424.pdf](https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Article25_UCMJ_20230424.pdf)**

I. Purpose

At the February 21–22, 2023, DAC-IPAD public meeting, the DAC-IPAD assigned the Policy Subcommittee to review Article 25, UCMJ, panel member selection criteria and panel member selection processes.

The information provided will inform the following research questions:

1. Whether each Article 25 criterion provides a qualification necessary to perform court-martial panel member duties as specified in R.C.M. 502.
2. Whether there is a military purpose for requiring different qualifications than required for federal and state jurors. If so, what is the military purpose and how do the criteria assist in meeting the military purpose?
3. Whether other qualifications are militarily necessary to perform panel member duties. For example, race/ethnicity/gender/pending disciplinary action.
4. What are the best methods for random selection of qualified court-martial members?

II. Authority

1. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended.
2. The DAC-IPAD's mission is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
3. The DAC-IPAD requests the assistance of the Military Services to provide the requested information by the suspense date indicated below.

III. Summary of Requested Response Dates

Suspense	Question(s)	Proponent
24 May 23	Sect IV: Narrative Questions	Services – The identified groups provide narrative responses to the questions in Section IV of this RFI

IV. Narrative Questions

Background: Article 25 provides that a convening authority is required to detail members to a court-martial that are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. These criteria are not further defined and they have not changed since 1950, when military judges did not preside over courts-martial and panel members determined an appropriate sentence. Except in death penalty cases, in December 2023, panel members will no longer serve as the sentencing authority, and beginning in December 2024, randomized selection processes will be used, to the maximum extent possible, in the selection of panel members.

The qualifications to serve as potential juror in the federal and state systems include: (a) U.S. citizenship, (b) be at least 18 years old, (c) be a resident for 12 months, (d) have English proficiency, (e) have no disqualifying mental or physical condition, (f) have never been convicted of a felony (unless civil rights have been legally restored), and (g) must not be pending felony charges punishable by imprisonment for more than one year.

Questions. Responses to the following questions are requested from each of the Services' criminal law/military justice organization chiefs, trial defense organization chiefs, Office of Special Trial Counsel leads, and victims' counsel program managers.

1. Please evaluate each of the Article 25 criteria below.

a. Age (best qualified by reason of age):

1) Federal criminal juries require jurors to be 18 or older. Should there be a different minimum age for military panel members? If so, what is the military justification for the difference? Do you have a suggested minimum age or a suggested age range?

2) Under the current rules, panel members must be senior in rank and grade to the accused. Do you believe there is a military reason to support this requirement? If so, what is the military justification?

b. Length of Service (best qualified by reason of length of service):

Federal criminal jurors must reside primarily in the judicial district for one year before they are qualified to serve as a juror. States generally have a residency requirement and they range from simply being a resident to being a resident for more than 12 months. Should there be a minimum length of service requirement to be qualified to serve as a panel member? If so, what should that minimum length of service be? What is the military justification for a minimum length of service?

c. Education (best qualified by reason of education):

Federal and state criminal jurors must be proficient in English. There are no other education requirements to be qualified to serve as a juror. Should there be an education requirement to be qualified to serve as a panel member? If so, what should the education requirement be and what is the military justification supporting the requirement?

d. Experience (best qualified by reason of experience):

Federal and state criminal jury systems do not have an experience requirement. Should there be an experience requirement to be qualified to serve as a panel member? If so, what experience should be required? What is the military justification for this requirement?

e. Training (best qualified by reason of training):

Federal and state jury systems do not have a training requirement. Should there be a specific training requirement to be qualified to serve as a panel member? If so, what should the training requirement be? What is the military justification for this training requirement?

f. Judicial Temperament (best qualified by reason of judicial temperament):

Federal and state jury systems do not have a judicial temperament requirement. Should there be a judicial temperament requirement to be qualified to serve as a panel member? If so, please define what you mean by judicial temperament. What is the military justification for this requirement?

2. Are there other criteria that should be required to serve as a panel member?

a. Some examples from federal and state jury systems are: No qualifying mental or physical condition, never been convicted of a felony, and must not be pending felony charges punishable by more than a year in prison. Should any of these be requirements to serve as a panel member?

b. Should there be criteria addressing the qualification of Service members under investigation for a violation of the UCMJ, or other criminal code, or who have received or are pending disciplinary or administrative action for committing an offense under the UCMJ?

c. Please identify any other criteria that you believe should be required for a Service member to be qualified to serve as a panel member?

3. Should there be a requirement for panels to be diverse by race and/or gender?

Please explain your answer and whether there is a military justification for making this a requirement.

4. Should there be an option for an all enlisted panel? Why or why not?

5. Should the military move to a randomized panel member selection process, similar to how federal and state jurisdictions select potential jury members?

Federal and state jurisdictions typically use computer systems to randomly select members from state voter registration rolls to serve on juries. After the venire is chosen in this way, the voir dire process further narrows the number of members sitting on a jury.

Should the military use Alpha rosters, or other similar means, to randomly select the initial pool of panel members? Why or why not?

6. Please share with us any other suggestions you have to improve the panel selection process or considerations that we should be cognizant of in making recommendations to change the selection criteria or randomize the selection process.

7. We heard from several Service members who spoke to the Policy Subcommittee that their Service's administrative discharge policies allowed the respondent to request minority inclusion among the discharge board members. Please provide any applicable Service regulations or policies regarding administrative discharge boards that provide this option.

**Defense Advisory Committee on Investigation, Prosecution, and
Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

Request for Information

RFI Set 2.10

Topic: Victim Access to Information

1 March 2023

**Aggregated RFI Set 2.9 Responses are available at
https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_VictimInformation_20230531.pdf**

I. Purpose

In Section 549B of the National Defense Authorization Act for Fiscal Year 2023, Congress directed the DAC-IPAD to submit to the Committees on Armed Services of the Senate and the House of Representatives and each Secretary concerned a report on the feasibility and advisability of establishing a uniform policy for the sharing of information with a Special Victims' Counsel, Victims' Legal Counsel, or other counsel representing a victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

The information requested will inform the DAC-IPAD's review and assessment of this topic.

II. Authority

1. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended.
2. The DAC-IPAD's mission is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
3. The DAC-IPAD requests the assistance of the Military Services to provide the requested information by the suspense date indicated below.

III. Suspense

Suspense	RFI	Proponent – Military Services
31 May 2023	Narrative Responses	Service TJAGs and SJA to the Commandant of the Marine Corps provide narrative responses to the questions in Section IV, Paragraph A, of this RFI.
Suspense	RFI	Proponent – Military Services
31 May 2023	Narrative Responses	Services—The identified group provide narrative responses to the identified questions in Section IV, Paragraphs B and C of this RFI.

IV. Information Requested

A. Questions for the Offices of The Judge Advocates General and the SJA to the Commandant of the Marine Corps (Questions 1 – 5)

1. Please identify the release authority and the stages of the military justice process—pre-preferral; post-preferral; Article 32 preliminary hearing; or post-referral—at which the information described in (1) – (3) below should be provided to counsel representing the victim.
 - (1) Any recorded statements of the victim to investigators.
 - (2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government and any photographs taken by the examiner during the medical-forensic exam.
 - (3) Any medical record of the victim that is in the possession of investigators or the Government.
2. Please describe your Service's current practice for sharing the information described in (1) – (3) above with counsel representing a victim.
3. What are the potential effects—both positive and negative—of establishing a uniform policy for the sharing the information described in (1) – (3) above with counsel representing a victim on the privacy of individuals, the criminal investigative process, and the military justice system generally?
4. Please provide your Service's position on the feasibility and advisability of establishing a uniform policy across all the Military Services for the sharing of the following information with counsel representing a victim:
 - (1) Any recorded statements of the victim to investigators.
 - (2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government and any photographs taken by the examiner during the medical-forensic exam.
 - (3) Any medical record of the victim that is in the possession of investigators or the Government.
5. Please identify:
 - a. Any applicable professional responsibility regulations that address the obligation of counsel representing a victim to share information with their client.
 - b. Circumstances under which the information in (1) – (3) above should not be shared with the victim or counsel representing the victim, and explain why the information should, or should not, be shared.

B. Questions for the Services' Special Victim's Counsel Program Managers (Questions 1 – 4)

1. How, in practice, do counsel representing a victim as defined in Article 6b, UCMJ, obtain the information described in (1) – (3) below and at what stage of the military justice process—pre-preferral; post-preferral; Article 32 preliminary hearing; or post-referral?
 - (1) Any recorded statements of the victim to investigators.

- (2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government and any photographs taken by the examiner during the medical-forensic exam.
 - (3) Any medical record of the victim that is in the possession of investigators or the Government.
2. What are the potential effects—both positive and negative—of establishing a uniform policy for the sharing of information described in (1) – (3) above with a victim, or counsel representing a victim, on the privacy of individuals, the criminal investigative process, and the military justice system generally?
 3. Does your organization support or oppose the adoption of a uniform policy for the sharing of the information identified above with counsel representing a victim? With a victim? Why or why not?
 4. Please identify:
 - a. Any applicable professional responsibility regulations that address the obligation of counsel representing a victim to share information with their client.
 - b. Circumstances under which the information in (1) – (3) above should not be shared with the victim or counsel representing the victim, and explain why the information should, or should not, be shared.

C. Questions for the Service Chiefs of the Trial Defense Services Organizations (Questions 1 – 3)

1. What are the potential effects—both positive and negative—of establishing a uniform policy for the sharing of the information described in (1) – (3) below with counsel representing a victim as defined in Article 6b, on the representation of the accused in the investigative process and in military judicial proceedings?
 - (1) Any recorded statements of the victim to investigators.
 - (2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government and any photographs taken by the examiner during the medical-forensic exam.
 - (3) Any medical record of the victim that is in the possession of investigators or the Government.
2. Does your organization support or oppose the adoption of a uniform policy for the sharing of the information identified above with counsel representing a victim? Why or why not?
3. Please identify and explain any recurring issues in your discovery practice regarding the sharing of information not listed above with counsel representing a victim.

Department of Defense – Defense Legal Services Agency

**Request for Information
16 October 2023
FY23 Case Adjudication Documents**

I. Purpose

1. The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) requests the below information to facilitate its statutory requirement to review cases involving allegations of sexual misconduct on an ongoing basis for purposes of providing advice to the Secretary of Defense and to Congress.
2. The Military Justice Review Panel (MJRP) requests the below information to facilitate its statutory requirement to conduct independent periodic reviews and assessments of the operation of the Uniform Code of Military Justice.
3. The Defense Legal Services Agency (DLSA) requests the below information to facilitate data entry for a case adjudication database.

II. Authority

1. The DoD General Counsel (GC) is the Chief Legal Officer of the DoD (10 U.S.C. § 140), appointed by the President with the advice and consent of the United States Senate.
2. The DoD GC advises the Secretary of Defense regarding all legal matters and services performed within, or involving, the DoD; the GC also serves as the Director of DLSA and provides support to the DAC-IPAD and MJRP.
3. The DAC-IPAD was established pursuant to § 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended.
4. The MJRP (Article 146, UCMJ) was established pursuant to § 5521 of the National Defense Authorization Act for Fiscal Year 2017, as amended.
5. Mr. Pete Yob, DLSA, is the Director of the DAC-IPAD and the MJRP and requests the assistance of the Military Services to provide the requested information by the suspense date indicated below.

III. Suspense

Suspense	RFI	Proponent – Military Services
10 Nov 2023	Spreadsheet Data	Excel worksheets for all FY23 cases preferred and tried to findings, dismissed, or resolved by any alternate means in FY23.
8 Dec 2023	Documents	Case documents (PDF) for all cases preferred and tried to findings, dismissed, or resolved by any alternate means in FY23.

DLSA Request for Information
FY23 Case Adjudication Documents

IV. Information Requested

Military Services identify and provide case documents for all specified cases completed in FY23 in two phases as described below in subparagraphs 1 and 2.

1. Spreadsheet Data for Completed Cases – FY23

(S: 10 November 2023)

Military Services use their respective case management systems to identify ALL cases involving a preferred charge under the punitive articles of the UCMJ and tried to findings, dismissed, or resolved by any alternate means in FY23. Provide an Excel worksheet for each fiscal year with the following columns:

1	DoD_ID#
2	Name_Last
3	Name_First
4	Name_M.I.
5	Article 32 held (Y/N)
6	Court_Type (GCM, SPCM, SCM)
7	Composition (MJ alone, Members, Officer/Enlisted)
8	Full Acquittal (Y/N)
9	AltDisp (Y/N)
10	e-ROT (Y/N)

2. Documents for Completed Cases – FY23

(S: 8 December 2023)

For cases identified in subparagraph 1, provide the e-ROT for each case.

If an e-ROT does not exist, provide electronic copies (PDF) of the following documents, as applicable (including Service-equivalent documents if the specified form is not used):

1	DD Form 458, <i>Charge Sheet</i>
2a	DD Form 457, <i>Preliminary Hearing Officer's Report</i> (include continuation sheets, but not exhibits); or 2b
2b	Article 32 Waiver Request (if no Article 32 before a GCM referral)
3	Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4	Documents memorializing the Convening Authority's referral or non-referral decision (e.g., record of withdrawal and dismissal of charges, record of the approved dismissal, or discharge in lieu of trial)
5	Plea Agreement
6	Index of Exhibits from Record of Trial
7	DD Form 2707-1, <i>Report of Result of Trial</i>
8	<i>Statement of Trial Results</i>
9	<i>Convening Authority Action</i>
10	<i>Entry of Judgment</i>

APPENDIX I. MILITARY JUSTICE–RELATED PROVISIONS EXCERPTED FROM THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2024

- [Sec. 531](#) Technical and conforming amendments to the Uniform Code of Military Justice.
- [Sec. 532](#) Establishment of staggered terms for members of the Military Justice Review Panel.
- [Sec. 533](#) Supreme Court review of certain actions of the United States Court of Appeals for the Armed Forces.
- [Sec. 534](#) Additional requirements for initiative to enhance the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.
- [Sec. 535](#) Limitation on availability of funds for relocation of Army CID Special Agent training course.
- [Sec. 536](#) Study on requirement for unanimous votes for findings in general and special courts-martial and related milestones for implementation.
- [Sec. 537](#) Study on removal of sexual assault victim advocates from the chain of command of victims.

SEC. 531. TECHNICAL AND CONFORMING AMENDMENTS TO THE UNIFORM CODE OF MILITARY JUSTICE.

- (a) TECHNICAL AMENDMENT RELATING TO GUILTY PLEAS FOR MURDER.—Section 918 of title 10, United States Code (article 118 of the Uniform Code of Military Justice), is amended—
- (1) by striking “he” each place it appears and inserting “such person”; and
 - (2) in the matter following paragraph (4), by striking the period and inserting “, unless such person is otherwise sentenced in accordance with a plea agreement entered into between the parties under section 853a of this title (article 53a).”.
- (b) TECHNICAL AMENDMENTS RELATING TO THE MILITARY JUSTICE REFORMS IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022.—
- (1) ARTICLE 16.—Subsection (c)(2)(A) of section 816 of title 10, United States Code (article 16 of the Uniform Code of Military Justice), is amended by striking “by the convening authority”.
 - (2) ARTICLE 25.—Section 825 of title 10, United States Code (article 25 of the Uniform Code of Military Justice), is amended—
 - (A) in subsection (d)—
 - (i) in paragraph (1), by striking “may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members” and inserting “shall be sentenced by the military judge”; and
 - (ii) by amending paragraph (2) to read as follows:

“(2)In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the accused shall be sentenced in accordance with section 853(c) of this title (article 53(c)).”;
 - (B) in subsection (e)—
 - (i) in paragraph (1), by striking “him” and inserting “the member being tried”; and
 - (ii) in paragraph (2)—
 - (I) in the first sentence, by striking “his opinion” and inserting “the opinion of the convening authority”; and
 - (II) in the second sentence, by striking “he” and inserting “the member”; and
 - (C) in subsection (f), in the second sentence—
 - (i) by striking “his authority” and inserting “the authority of the convening authority”; and
 - (ii) by striking “his staff judge advocate or legal officer” and inserting “the staff judge advocate or legal officer of the convening authority”.

(c) AUTHORITY OF SPECIAL TRIAL COUNSEL WITH RESPECT TO CERTAIN OFFENSES OCCURRING BEFORE EFFECTIVE DATE OF MILITARY JUSTICE REFORMS ENACTED IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022.—

(1) AUTHORITY.—Section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice), as added by section 531 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1692), is amended by adding at the end the following new subsection:

“(d) ..SPECIAL TRIAL COUNSEL AUTHORITY OVER CERTAIN OTHER OFFENSES.—

“(1)OFFENSES OCCURRING BEFORE EFFECTIVE DATE.—A special trial counsel may, at the sole and exclusive discretion of the special trial counsel, exercise authority over the following offenses:

“(A)An offense under section 917a (article 117a), 918 (article 118), section 919 (article 119), section 920 (article 120), section 920b (article 120b), section 920c (article 120c), section 928b (article 128b), or the standalone offense of child pornography punishable under section 934 (article 134) of this title that occurred on or before December 27, 2023.

“(B)An offense under section 925 (article 125), section 930 (article 130), or section 932 (article 132) of this title that occurred on or after January 1, 2019, and before December 28, 2023.

“(C)An offense under section 920a (article 120a) of this title, an offense under section 925 (article 125) of this title alleging an act of nonconsensual sodomy, or the standalone offense of kidnapping punishable under section 934 (article 134) of this title that occurred before January 1, 2019.

“(D)A conspiracy to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 881 of this title (article 81).

“(E)A solicitation to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 882 of this title (article 82).

“(F)An attempt to commit an offense specified in subparagraph (A), (B), (C), (D), or (E) as punishable under section 880 of this title (article 80).

“(2)EFFECT OF EXERCISE OF AUTHORITY.—

“(A)TREATMENT AS COVERED OFFENSE.—If a special trial counsel exercises authority over an offense pursuant to paragraph (1), the offense over which the special trial counsel exercises authority shall be considered a covered offense for purposes of this chapter.

“(B)KNOWN OR RELATED OFFENSES.—If a special trial counsel exercises authority over an offense pursuant to paragraph (1), the special trial counsel may exercise the authority of the special trial counsel under subparagraph (B) of subsection (c)(2) with respect to other offenses described in that subparagraph without regard to the date on which the other offenses occur.”.

(2) CONFORMING AMENDMENT TO EFFECTIVE DATE.—Section 539C(a) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 10 U.S.C. 801 note) is amended by striking “and shall” and inserting “and, except as provided in section 824a(d) of title 10, United States Code (article 24a(d) of the Uniform Code of Military Justice), shall”.

(d) CLARIFICATION OF APPLICABILITY OF DOMESTIC VIOLENCE AND STALKING TO DATING PARTNERS.—

(1) ARTICLE 128B; DOMESTIC VIOLENCE.—Section 928b of title 10, United States Code (article 128b of the Uniform Code of Military Justice), is amended—

(A) in the matter preceding paragraph (1), by striking “Any person” and inserting “(a) IN GENERAL.— Any person”;

(B) in subsection (a), as designated by paragraph (1) of this section, by inserting “a dating partner,” after “an intimate partner,” each place it appears; and

(C) by adding at the end the following new subsection:

“(b)DEFINITIONS.—In this section, the terms ‘dating partner’, ‘immediate family’, and ‘intimate partner’ have the meanings given such terms in section 930 of this title (article 130).”.

(2) ARTICLE 130; STALKING.—Section 930 of such title (article 130 of the Uniform Code of Military Justice) is amended—

(A) in subsection (a), by striking “or to his or her intimate partner” each place it appears and inserting “to his or her intimate partner, or to his or her dating partner”; and

(B) in subsection (b)—

(i) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(ii) by inserting after paragraph (2) the following new paragraph:

“(3)The term ‘dating partner’, in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

“(A) the length of the relationship;

“(B) the type of relationship;

“(C) the frequency of interaction between the persons involved in the relationship; and

“(D) the extent of physical intimacy or sexual contact between the persons involved in the relationship.”.

(e) EFFECTIVE DATE.—The amendments made by subsection (b) and subsection (c)(1) shall take effect immediately after the coming into effect of the amendments made by part 1 of subtitle D of title V of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81) as provided in section 539C of that Act (10 U.S.C. 801 note).

SEC. 532. ESTABLISHMENT OF STAGGERED TERMS FOR MEMBERS OF THE MILITARY JUSTICE REVIEW PANEL.

(a) APPOINTMENT TO STAGGERED TERMS.—Subsection (b) of section 946 of title 10, United States Code (article 146 of the Uniform Code of Military Justice), is amended by adding at the end the following new paragraph:

“(4) ESTABLISHMENT OF STAGGERED TERMS.—Notwithstanding subsection (e), members of the Panel appointed to serve on the Panel to fill vacancies that exist due to terms of appointment expiring during the period beginning on August 1, 2030, and ending on November 30, 2030, shall be appointed to terms as follows:

“(A) Three members designated by the Secretary of Defense shall serve a term of two years.

“(B) Three members designated by the Secretary of Defense shall serve a term of four years.

“(C) Three members designated by the Secretary of Defense shall serve a term of six years.

“(D) Four members designated by the Secretary of Defense shall serve a term of eight years.”.

(b) TERM; VACANCIES.—Subsection (e) of such section is amended to read as follows:

“(e) TERM; VACANCIES.—

“(1) TERM.—Subject to subsection (b)(4) and paragraphs (2) and (3) of this subsection, each member shall be appointed for a term of eight years, and no member may serve more than one term.

“(2) VACANCY.—Any vacancy in the Panel shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy in the Panel that occurs before the expiration of the term of appointment of the predecessor of such member shall be appointed for the remainder of the term of such predecessor.

“(3) AVAILABILITY OF REAPPOINTMENT FOR CERTAIN MEMBERS.—Notwithstanding paragraph (1), a member of the Panel may be appointed to a single additional term if—

“(A) the appointment of the member is to fill a vacancy described in subsection (b)(4); or

“(B) the member was initially appointed—

“(i) to a term of four years or less in accordance with subsection (b)(4); or

“(ii) to fill a vacancy that occurs before the expiration of the term of the predecessor of such member and for which the remainder of the term of such predecessor is four years or less.”.

SEC. 533. SUPREME COURT REVIEW OF CERTAIN ACTIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.

(a) CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—

(1) IN GENERAL.—Section 1259 of title 28, United States Code, is amended—

(A) in paragraph (3), by inserting “or refused to grant” after “granted”; and

(B) in paragraph (4), by inserting “or refused to grant” after “granted”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TITLE 10.—Section 867a(a) of title 10, United States Code (article 67a of the Uniform Code of Military Justice), is amended by striking “The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.”.

(B) TIME FOR APPLICATION FOR WRIT OF CERTIORARI.—Subsection (g) of section 2101 of title 28, United States Code, is amended to read as follows:

“(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces, or the decision of a Court of Criminal Appeals that the United States Court of Appeals for the Armed Forces refuses to grant a petition to review, shall be as prescribed by rules of the Supreme Court.”.

(b) EFFECTIVE DATE AND APPLICABILITY.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on the date that is one year after the date of the enactment of this Act and shall apply with respect to any action of the United States Court of Appeals for the Armed Forces in granting or refusing to grant a petition for review submitted to such Court for the first time on or after such effective date.

(2) INAPPLICABILITY TO PENDING DECISIONS.—With respect to a petition submitted to the United States Court of Appeals for the Armed Forces before the effective date specified in paragraph (1) and on which the Court has not taken action as of such date, the provisions of the United States Code amended by subsection (a) shall apply as if such amendments had not been enacted. Any action of the United States Court of Appeals for the Armed Forces in granting or refusing to grant such a petition is final and conclusive.

(3) FINALITY OF DECISIONS BEFORE EFFECTIVE DATE.—Any action of the United States Court of Appeals for the Armed Forces in granting or refusing to grant a petition for review before the effective date specified in paragraph (1) is final and conclusive.

(4) RULES REQUIRED.—The Supreme Court shall prescribe rules to carry out section 2101(g) of title 28, United States Code, as amended by subsection (a)(2)(B) of this section, by not later than the effective date specified in paragraph (1).

SEC. 534.ADDITIONAL REQUIREMENTS FOR INITIATIVE TO ENHANCE THE CAPABILITY OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS TO PREVENT AND COMBAT CHILD SEXUAL EXPLOITATION.

Section 550D of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 1561 note prec.) is amended by adding at the end the following new subsection:

“(c) ADDITIONAL REQUIREMENTS.—As part of the initiative under subsection (a), the Secretary of Defense shall carry out the following activities:

- “(1) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024, and on an annual basis thereafter through 2029, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the progress of the initiative, which shall include a description of specific actions that have been taken, or that are planned to be taken, to detect, combat, and stop the use of the Department of Defense information technology network to further online child sexual exploitation.
- “(2) PARTNERSHIPS.—The Secretary shall seek to enter into partnerships and execute collaborative agreements with functional experts, including highly qualified national child protection organizations or law enforcement training centers with demonstrated expertise in the delivery of law enforcement training, to identify, investigate, and prosecute individuals engaged in online child sexual exploitation.
- “(3) MANDATORY TRAINING.—The Secretary shall establish mandatory training for criminal investigative organizations of the Department of Defense and other appropriate personnel at military installations to ensure that the capability and capacity to investigate child sexual exploitation is continuously maintained regardless of staff turnover and relocations.”.

SEC. 535.LIMITATION ON AVAILABILITY OF FUNDS FOR RELOCATION OF ARMY CID SPECIAL AGENT TRAINING COURSE.

- (a) LIMITATION.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2024 for the Army may be obligated or expended to relocate an Army CID special agent training course until—
 - (1) the Secretary of the Army submits to the Committees on Armed Services of the Senate and the House of Representatives a report on any plans of the Secretary to relocate an Army CID special agent training course, including an explanation of the business case for any transfer of training personnel proposed as part of such plan; and
 - (2) the Secretary provides to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the contents of the report specified in paragraph (1).
- (b) DEFINITIONS.—In this section:
 - (1) The term “relocate”, when used with respect to an Army CID special agent training course, means the transfer of such course to a location different than the location used for such course as of the date of the enactment of this Act.
 - (2) The term “Army CID special agent training course” means a training course provided to members of the Army to prepare such members for service as special agents in the Army Criminal Investigation Division.

SEC. 536. STUDY ON REQUIREMENT FOR UNANIMOUS VOTES FOR FINDINGS IN GENERAL AND SPECIAL COURTS-MARTIAL AND RELATED MILESTONES FOR IMPLEMENTATION.

- (a) **STUDY REQUIRED.**—The Secretary of Defense shall conduct a study to determine the feasibility and advisability of requiring unanimous votes for findings of guilty, not guilty, or not guilty only by reason of lack of mental responsibility in general and special courts-martial conducted under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).
- (b) **USE OF MILITARY JUSTICE EXPERTS.**—The Secretary of Defense shall convene a group of members of the Armed Forces and civilian employees of the Department of Defense with significant expertise in military justice matters to carry out the study required under subsection (a).
- (c) **INFORMATION TO CONGRESS.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the following:
 - (1) **REPORT.**—A report containing the results of the study required under subsection (a).
 - (2) **DRAFT LEGISLATIVE TEXT.**—Without regard to the contents of the report under paragraph (1), draft legislative text that would revise chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) to—
 - (A) require a unanimous vote of all members present in a general or special court-martial for a finding of guilty, not guilty, or not guilty only by reason of lack of mental responsibility for a specification; and
 - (B) provide that an accused may be tried a second time for the same offense if a general or special court-martial requiring such a unanimous vote does not result in a finding of guilty, not guilty, or not guilty only by reason of lack of mental responsibility for such offense.
 - (3) **MILESTONES FOR IMPLEMENTATION.**—A description of any milestones or other requirements that would need to be met for the legislative text provided under paragraph (2) to be enacted by not later than December 31, 2027.

SEC. 537. STUDY ON REMOVAL OF SEXUAL ASSAULT VICTIM ADVOCATES FROM THE CHAIN OF COMMAND OF VICTIMS.

- (a) **STUDY.**—The Secretary of Defense shall conduct a study to determine—
 - (1) the feasibility and advisability of requiring that any Sexual Assault Victim Advocate assigned to a victim under section 1565b of title 10, United States Code, be from outside the chain of command of the victim; and
 - (2) the potential effects of such a requirement on the ability of the Armed Forces to implement sexual assault prevention and response programs.
- (b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study conducted under subsection (a).

APPENDIX J. DAC-IPAD PUBLIC MEETINGS, PREPARATORY SESSIONS, AND PRESENTERS

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 29</p> <p>May 30, 2023</p> <p>Virtual</p>	<p>Discussion, Deliberations, and Voting: <i>Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense’s Disposition Guidance in Appendix 2.1, MCM</i></p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">DAC-IPAD PUBLIC MEETING 30</p> <p style="text-align: center;">June 13–14, 2023</p> <p style="text-align: center;">Arlington, VA</p>	<p>Military Criminal Investigative Organizations <i>T.L. Williams, CID, U.S. Army</i> <i>Special Agent Erin Hansen, NCIS, U.S. Navy and Marine Corps</i> <i>Special Agent Ashlee Wega, AFOSI, U.S. Air Force</i> <i>Special Agent Kathleen “Katie” Flynn, U.S. Coast Guard</i></p> <p>Prosecutors (work with SVC/VLC) <i>Lieutenant Colonel Heather Tregle, Chief, Trial Counsel Assistance Program, U.S. Army</i> <i>Captain Angela Tang, Deputy Director, Office of Special Trial Counsel, U.S. Navy</i> <i>Colonel Glen Hines, Jr., Deputy Lead Special Trial Counsel, U.S. Marine Corps</i> <i>Colonel Naomi Dennis, Deputy Director, Office of Special Trial Counsel, U.S. Air Force</i> <i>Captain Anita Scott, Chief, Military Justice, U.S. Coast Guard</i></p> <p>Prosecutors (Military and Civilian Experience) <i>Brigadier General (Ret) Bobby Christine, U.S. Army</i> <i>Lieutenant Colonel Joshua Bearden, U.S. Army</i> <i>Ms. Kathleen Muldoon, U.S. Marine Corps</i> <i>Ms. Magdalena Acevedo, Assistant U.S. Attorney, Washington DC</i></p> <p>Senior Enlisted Leaders <i>Command Sergeant Major Michael Bostic, Regional Command Sergeant Major, JAG Corps, U.S. Army</i> <i>Master Chief Tiffany George, Command Senior Enlisted Leader, U.S. Navy</i> <i>Master Gunnery Sergeant Christopher Peré, Office of the SJA to the Commandant of the Marine Corps, U.S. Marine Corps</i> <i>Chief Master Sergeant Laura Puza, Senior Enlisted Advisor, U.S. Air Force</i></p> <p>Public Comment</p> <p>Special Victims’ Counsel Organizations <i>Colonel Carol Brewer, U.S. Army, JAG Corps</i> <i>Colonel Tracy Park, U.S. Air Force, JAG Corps</i> <i>Captain Daniel Cimmino, U.S. Navy, JAG Corps</i> <i>Colonel Iain Pedden, U.S. Marine Corps, JAG Corps</i> <i>Ms. Elizabeth Marotta, U.S. Coast Guard</i></p> <p>Civilian Advocacy Organizations (Diversity) <i>Ms. Elisa Cardnell, Service Women’s Action Network (SWAN)</i> <i>Ms. Lorry Fenner, Service Women’s Action Network (SWAN)</i> <i>Ms. Rafaela Schwan, League of United Latin American Citizens (LULAC)</i></p> <p>OSTC Course Observation Feedback <i>DAC-IPAD Committee Members</i></p> <p>Subcommittee Updates: <i>Special Projects Subcommittee</i> <i>Case Review Subcommittee</i> <i>Policy Subcommittee</i></p> <p>Committee Deliberations</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">DAC-IPAD PUBLIC MEETING 31</p> <p>September 19–20, 2023</p> <p style="text-align: center;">Arlington, VA</p>	<p>Joint Service Committee Briefing on the 2023 Military Justice Executive Order <i>Captain Anita Scott, U.S. Coast Guard</i> <i>Colonel Christopher Kennebeck, U.S. Army</i></p> <p>Panel – Military Service OSTC Representatives <i>Brigadier General Warren Wells, Lead Special Trial Counsel, U.S. Army</i> <i>Rear Admiral Jonathan Stephens, Lead Special Trial Counsel, U.S. Navy</i> <i>Brigadier General Kevin Woodard, Lead Special Trial Counsel, U.S. Marine Corps</i> <i>Brigadier General Christopher A. Brown, Lead Special Trial Counsel, U.S. Air Force</i> <i>Commander Ben Gullo, Deputy Chief Prosecutor, U.S. Coast Guard</i></p> <p>Panel – Former General Court Martial Convening Authorities’ Perspectives on Article 25, Uniform Code of Military Justice <i>Major General David Hodne, U.S. Army</i> <i>Rear Admiral (Ret) Charles Rock, U.S. Navy</i> <i>Major General Len Anderson IV, U.S. Marine Corps</i> <i>Major General Kenneth Bibb, U.S. Air Force</i> <i>Rear Admiral Bryan Penoyer, U.S. Coast Guard</i></p> <p>DAC-IPAD Court-Martial Observations Presentation and Committee Discussion <i>DAC-IPAD Professional Staff</i></p> <p>Sexual Assault Case Adjudication Case Data Collection for FY 2021 and FY 2022 <i>DAC-IPAD Professional Staff</i></p> <p>Policy Subcommittee Presentation and Committee Deliberations on Article 25, UCMJ, Panel Selection <i>DAC-IPAD PSC Chair and Professional Staff</i></p> <p>Special Projects Subcommittee Presentation and Committee Deliberations on Victim Access to Information (Sec. 549B, FY23 NDAA) <i>DAC-IPAD SPSC Chair and Professional Staff</i></p> <p>Case Review Subcommittee Project Update <i>DAC-IPAD Professional Staff</i></p> <p>Collateral Misconduct Report Presentation and Committee Deliberations <i>DAC-IPAD Director and Deputy Director</i></p> <p>Public Comment</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">DAC-IPAD PUBLIC MEETING 32</p> <p style="text-align: center;">December 5–6, 2023</p> <p style="text-align: center;">Arlington, VA</p>	<p>DAC-IPAD Deliberations on the Draft Report on Randomizing Court-Martial Panel Member Selection <i>DAC-IPAD Professional Staff</i></p> <p>DAC-IPAD Deliberations on the Draft Report on Sharing Information with Victims and Their Counsel <i>DAC-IPAD Professional Staff</i></p> <p>Panel Selection Study Update and Discussion <i>DAC-IPAD Criminologist</i> <i>DAC-IPAD Professional Staff</i></p> <p>Performance Metrics for the Offices of Special Trial Counsel <i>DAC-IPAD Professional Staff</i></p> <p>Special Projects Subcommittee Update <i>DAC-IPAD Professional Staff</i></p> <p>Policy Subcommittee Update <i>DAC-IPAD Professional Staff</i></p> <p>Public Comment</p>
<p style="text-align: center;">DAC-IPAD PUBLIC MEETING 33</p> <p style="text-align: center;">February 21, 2024</p> <p style="text-align: center;">Virtual</p>	<p>DAC-IPAD Deliberations and Vote on the Draft Sixth Annual Report</p> <p>Staff briefing on military installation site visits and plans for future meetings</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">DAC-IPAD PUBLIC MEETING 34</p> <p style="text-align: center;">March 12–13, 2024 Colorado Springs, CO</p>	<p>Panel – Special Victim’s Counsel <i>Major Alexandra McCrary-Dennis, U.S. Air Force</i> <i>Captain Ryan C. Speray, U.S. Army</i> <i>Lieutenant Colonel Stacy Allen, U.S. Marine Corps</i> <i>Commander Sara de Groot, U.S. Navy</i> <i>Commander Rebecca Shults, U.S. Coast Guard</i></p> <p>Panel – Senior Defense Counsel <i>Major Matthew Leal, U.S. Air Force</i> <i>Major Ira Gallagher, U.S. Army</i> <i>Lieutenant Colonel Cory Carver, U.S. Marine Corps</i> <i>Captain R.J. Stormer, U.S. Navy</i> <i>Lieutenant Commander David Rehfuss, U.S. Coast Guard</i></p> <p>Panel – Special Trial Counsel <i>Major Alexis Brown, U.S. Air Force</i> <i>Major Alexandra Altimas, U.S. Army</i> <i>Lieutenant Colonel Nicholas Henry, U.S. Marine Corps</i> <i>Captain Hayes Larsen, U.S. Navy</i> <i>Lieutenant Commander Case Colaw, U.S. Coast Guard</i></p> <p>Panel – El Paso County, Colorado, practitioners <i>Deana M. O’Riley, Supervising Deputy Public Defender, Office of the Public Defender, Colorado Springs, CO</i> <i>Kelson Castain, Senior Deputy District Attorney, Special Victim’s Unit, 4th Judicial District Attorney’s Office, Colorado Springs, CO</i></p> <p>DAC-IPAD Deliberations on Letter to Congress re: Amending Art. 34, UCMJ</p> <p>Public Comment</p>

CASE REVIEW PREPARATORY SESSIONS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 4 and 5</p> <p style="text-align: center;">June 12–13, 2023 Arlington, VA</p>	<p>Case Review Subcommittee update and discussion on Panel Composition Study and Appellate Study</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 6</p> <p style="text-align: center;">September 18, 2023 Arlington, VA</p>	<p>Case Review Subcommittee discussion on military post-conviction relief and the current state of appellate rights <i>Ms. Julie Caruso Haines, William E. Cassara, PC</i></p> <p>Conviction Integrity Units – Standards and Processes Panel <i>Ms. Lindsey Guice Smith, Executive Director, North Carolina Innocence Inquiry Commission</i> <i>Ms. Bonnie Sard, Prosecutors’ Center for Excellence</i></p> <p>Conviction Integrity Units – Best Practices Panel <i>Mr. David Shanies, David B. Shanies Law Office</i></p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 7</p> <p style="text-align: center;">December 5, 2023 Arlington, VA</p>	<p>Case Review Subcommittee update and discussion on the Panel Member Selection Study, Conviction Integrity Unit Request for Information, and future study topics briefing</p>

POLICY PREPARATORY SESSIONS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Policy Subcommittee Preparatory Session 7</p> <p>April 12, 2023</p> <p>Arlington, VA</p>	<p>Policy Subcommittee staff briefing on Comparative Systems – Military, Federal, State; Jury Pool Selection Process</p> <p>Military Justice Chiefs Panel <i>Lieutenant Joe Vellon, U.S. Navy</i> <i>Lieutenant Colonel Peter Juetten, U.S. Army</i> <i>Major Eric W. Welch, U.S. Air Force</i> <i>Major Will Morrison, U.S. Marine Corps</i></p> <p>Staff briefings</p> <p>PSC deliberations and way ahead</p>
<p>Policy Subcommittee Preparatory Session 8</p> <p>June 13, 2023</p> <p>Arlington, VA</p>	<p>Service Military Justice Chiefs Panel (Article 25 Panel Selection Criteria RFI Follow-up) <i>Colonel Andrea M. Hall, U.S. Air Force</i> <i>Lieutenant Colonel Keaton Harrell, U.S. Marine Corps</i> <i>Colonel Chris Kennebeck, U.S. Army</i> <i>Lieutenant Commander Andrea M. Kissner, U.S. Navy</i> <i>Commander Kismet R. Wunder, U.S. Coast Guard</i></p>
<p>Policy Subcommittee Preparatory Session 9</p> <p>August 21, 2023</p> <p>Virtual</p>	<p>Article 25 Study briefing <i>DAC-IPAD Policy Subcommittee and Professional Staff</i></p>
<p>Policy Subcommittee Preparatory Session 10</p> <p>September 19, 2023</p> <p>Arlington, VA</p>	<p>Article 25 Study: review of recommendations <i>DAC-IPAD Policy Subcommittee and Professional Staff</i></p>
<p>Policy Subcommittee Preparatory Session 11</p> <p>December 5, 2023</p> <p>Arlington, VA</p>	<p>Proposed future projects discussion <i>DAC-IPAD Policy Subcommittee and Professional Staff</i></p> <p>Deliberation discussion on the draft Report on Randomizing Court-Martial Panel Member Selection <i>DAC-IPAD Policy Subcommittee and Professional Staff</i></p>

POLICY PREPARATORY SESSIONS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Policy Subcommittee Preparatory Session 12</p> <p>February 7, 2024</p> <p>Virtual</p>	<p>Testimony from Service Military Criminal Investigative Organizations regarding collection protocols of digital evidence</p> <p>Military Criminal Investigative Organizations Panel <i>Special Agent Ashlee Wega, U.S. Air Force OSI</i> <i>Mr. Scott Moreland, CID Deputy Assistant Director, U.S. Army</i> <i>Special Agent Erin Hansen, U.S. Navy, NCIS</i></p>

SPECIAL PROJECTS PREPARATORY SESSIONS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Special Projects Subcommittee Preparatory Session 7</p> <p>June 13, 2023</p> <p>Arlington, VA</p>	<p>Special Projects Subcommittee briefing on the Victim Access to Information research proposal and report development</p>
<p>Special Projects Subcommittee Preparatory Session 8</p> <p>September 19, 2023</p> <p>Arlington, VA</p>	<p>Special Projects Subcommittee review and discussion of Victims' Counsel Access to Information, Section 549B, report</p>
<p>Special Projects Subcommittee Preparatory Session 9</p> <p>December 5, 2023</p> <p>Arlington, VA</p>	<p>Special Projects Subcommittee review and discussion of future areas of study</p>

APPENDIX K. ACRONYMS AND ABBREVIATIONS

CAAF	Court of Appeals for the Armed Forces
CID	Criminal Investigation Division
CIU	Conviction Integrity Unit
CRSC	Case Review Subcommittee
CRU	Conviction Review Unit
CVRA	Crime Victims' Rights Act
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DLSA	Defense Legal Services Agency
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DoD GC	General Counsel of the Department of Defense
EO	Executive Order
e-ROT	electronic record of trial
FACA	Federal Advisory Committee Act of 1972
FOIA	Freedom of Information Act
FY	fiscal year
GCM	general court-martial
GCMCA	general court-martial convening authority
IRC	Independent Review Commission on Sexual Assault in the Military
JSC	Joint Service Committee
MCIO	military criminal investigation organization
MCM	Manual for Courts-Martial
MJRP	Military Justice Review Panel
M.R.E.	Military Rule of Evidence

NCIS	Naval Criminal Investigative Service
NDAA	National Defense Authorization Act
OSI	Office of Special Investigations
OSTC	Office of Special Trial Counsel
POD	Protect Our Defenders
PSC	Policy Subcommittee
R.C.M.	Rule or Rules for Courts-Martial
RFI	request for information
SAPRO	Sexual Assault Prevention and Response Office
SCM	summary court-martial
SJA	Staff Judge Advocate
SPCM	special court-martial
SPSC	Special Projects Subcommittee
SVC	special victims' counsel
SWAN	Service Women's Action Network
TJAG	The Judge Advocate General
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code
VLC	victims' legal counsel

APPENDIX L. SOURCES CONSULTED

1. Legislative Sources – Enacted Statutes

5 U.S.C. App. §§ 1–16 (Federal Advisory Committee Act)

5 U.S.C. §§ 552, 552a (Government Organization and Employees)

10 U.S.C. § 825 (Uniform Code of Military Justice) (2021)

10 U.S.C. § 940a (Uniform Code of Military Justice) (2016)

10 U.S.C. § 1044e (Uniform Code of Military Justice) (2013)

National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, Stat. 1636 (2018)

National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, Stat. 1198 (2019)

National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Stat. 3388 (2021)

National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, Stat. 1541 (2021)

National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, Stat. 2395 (2022)

2. Judicial Decisions – U.S. Court of Appeals for the Armed Forces

United States v. Jeter, 81 M.J. 791, 797 (C.A.A.F. 2023)

United States v. Mellette, 82 M.J. 374 (C.A.A.F. 2022)

3. Rules and Regulations

a. Executive Orders

Manual for Courts-Martial, United States (2024)

b. U.S. Department of Justice

U.S. Department of Justice, Justice Manual, United States

4. Meetings and Hearings

Transcript of DAC-IPAD Public Meeting (February 21, 2023)

Transcript of DAC-IPAD Public Meeting (June 13, 2023)

Transcript of DAC-IPAD Public Meeting (June 14, 2023)

Transcript of DAC-IPAD Public Meeting (September 19, 2023)

Transcript of DAC-IPAD Public Meeting (September 20, 2023)

Transcript of DAC-IPAD Public Meeting (December 6, 2023)

Transcript of DAC-IPAD Public Meeting (February 21, 2024)

5. Official Reports

a. DoD and DoD Agencies

Department of Defense Joint Service Committee on Military Justice, *Report on the Method of Selection of Members of the Armed Forces to Service on Courts-Martial* (1999)

b. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

DAC-IPAD, *Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces Fifth Annual Report* (March 2023)

DAC-IPAD, *Report on Victim Impact Statements at Courts-Martial Presentencing Proceedings* (March 2023)

DAC-IPAD, *Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, Manual for Courts-Martial* (June 2023)

DAC-IPAD, *Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System* (December 2023)

DAC-IPAD, *Recommendations for a Uniform Policy for Sharing Information with Victims and their Counsel* (December 2023)

c. Military Justice Review Group

Military Justice Review Group, *Report of the Military Justice Review Group* (2015)

d. Independent Review Commission

Independent Review Commission, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military* (July 2021)

e. Task Force on the Administration of Military Justice in the Armed Forces

Report of the Task Force on the Administration of Military Justice in the Armed Forces, Vol. II (November 30, 1972)

f. U.S. General Accounting Office

U.S. General Accounting Office, *Military Jury System Needs Safeguards Found in Civilian Federal Courts* (June 6, 1977)

g. Honorable Walter T. Cox III et al.

Report of the Commission on the 50th Anniversary of the Uniform Code of Military Justice (May 2001)

6. DAC-IPAD Requests for Information and Responses

DAC-IPAD Request for Information Set 2.9 (April 24, 2023)

Military Services' Responses to DAC-IPAD Request for Information Set 2.9 (April 24, 2023)

Interest Groups' Responses to DAC-IPAD Request for Information (April 24, 2023)

7. Letters and Memoranda

- Memorandum from the Undersecretary of Defense for Personnel and Readiness to the Secretaries of the Military Departments et al., subject: Safe to Report Policy for Service Member Victims of Sexual Assault (October 25, 2021)
- Memorandum from the General Counsel for the Department of Defense to Judge Karla Smith, DAC-IPAD Chair, subject: DAC-IPAD Advice on Policy Development, Workforce Structure, and Implementation of Best Practices for the Military Departments' Offices of Special Trial Counsel (May 10, 2022)
- Public Comment, DAC-IPAD to the Joint Service Committee on Military Justice, subject: Victim Impact Statements at Courts-Martial Presentencing Proceedings (December 2022)
- Memorandum from the General Counsel for the Department of Defense to the Secretaries of the Military Departments, subject: Revised Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (January 17, 2023)
- Memorandum from the Chair, Military Justice Review Group, to the General Counsel of the Department of Defense, subject: Interim Assessment of Preliminary Hearings and Prosecution Standards (June 21, 2023)
- Letter to Congress from the Secretary of Defense through the DAC-IPAD, subject: Assessment on Collateral Misconduct (September 21, 2023)
- Memorandum from the Chair, Military Justice Review Group, to the General Counsel of the Department of Defense, subject: Assessment of Article 32, UCMJ, Preliminary Hearings (December 8, 2023)
- Memorandum from the General Counsel of the Department of Defense, to the Secretaries of the Military Departments, subject: Plan Required by Section 547 of the National Defense Authorization Act for Fiscal Year 2022 (December 15, 2023)

8. Internet Resources

- Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)
<https://www.dacipad.whs.mil>
- Independent Review Commission
<https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF>
- U.S. Department of Justice
<https://www.justice.gov/jm/justice-manual>
- Military Justice Review Panel
<https://mjrp.osd.mil>
- Department of Defense, Safe to Report Policy:
<https://www.sapr.mil/policy>

