

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).

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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