

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



ANNUAL REPORT

March 2018

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



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March 2018



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

March 28, 2018

The Honorable John McCain
Chair, Committee
on Armed Services
United States Senate
Washington, DC 20510

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

The Honorable Mac Thornberry
Chair, Committee
on Armed Services
United States House of
Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, Committee
on Armed Services
United States House of
Representatives
Washington, DC 20515

The Honorable James Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to submit the annual report of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), as required by section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law No. 113-291). This report summarizes the Committee's preliminary impressions on issues of importance related to the investigation, prosecution, and defense of sexual assault crimes in the military.

Since its establishment, the Committee has held six public meetings and set up three working groups to support its mission: the Case Review Working Group, the Data Working Group, and the Policy Working Group. This report details the Committee's activities over the past year, focusing on three areas in particular: the Committee's scope and methodology for its review of investigative files from fiscal year 2017; the Committee's collection and analysis of data on sexual assault courts-martial, with an emphasis on fiscal year 2016; and the Committee's assessment of the expedited transfer policy and of commander training. The Committee makes 11 findings about the expedited transfer policy and 4 recommendations for its continued improvement and development.

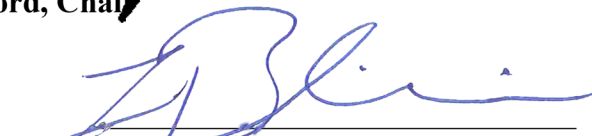
The members of the DAC-IPAD would like to express our sincere gratitude and appreciation to the Secretary of Defense and to Congress for the opportunity to make use of our

experience and expertise to develop recommendations for improving the military's response to sexual misconduct within its ranks over the course of our term.

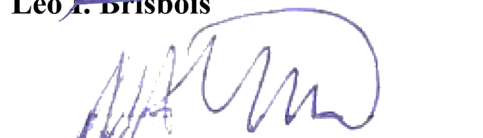
Respectfully submitted,

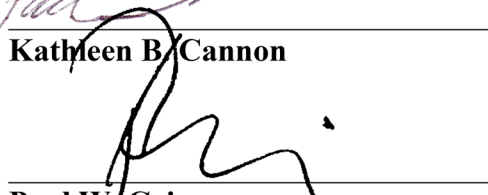

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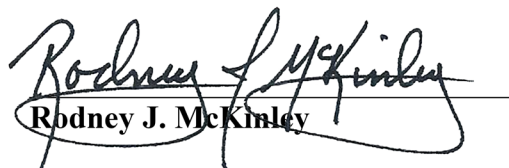

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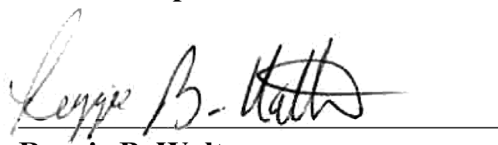

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CONTENTS

EXECUTIVE SUMMARY	1
SUMMARY OF DAC-IPAD FINDINGS	3
SUMMARY OF DAC-IPAD RECOMMENDATIONS.	5
INTRODUCTION	7
I. DAC-IPAD Establishment and Mission	7
II. Composition of the Committee.	7
III. Historical Overview of Military Sexual Assault and Department of Defense Sexual Assault Advisory Committees	8
IV. Overview of DAC-IPAD 2017 Objectives and Actions	11
CHAPTER 1: ACTIVITIES OF THE CASE REVIEW WORKING GROUP	15
I. Formation of the Case Review Working Group	15
II. Scope of Review	15
III. Fiscal Year 2017 Case Data	17
IV. Case Reviews in 2018	23
V. Case Reviews in 2019	25
CHAPTER 2: ACTIVITIES OF THE DATA WORKING GROUP	27
I. Formation of the Data Working Group	27
II. Methodology of the Data Working Group	27
III. Military Justice Information for Sexual Assault Cases Collected by the Department of Defense	28
IV. The Court-Martial Process	31
V. Military Justice Information for Sexual Assault Cases Collected by the DAC-IPAD	34
VI. The Way Forward for the Data Project	52

CHAPTER 3: ACTIVITIES OF THE POLICY WORKING GROUP. 53

1. Formation of the Policy Working Group and Initial Tasks 53

II. Methodology and Scope of Review of the Policy Working Group 53

III. Review of the Expedited Transfer Policy. 56

IV. Review of Legal and Sexual Assault Response Training for Commanders 75

V. Future Issues 82

APPENDIXES

A. Authorizing Statutes A-1

B. Committee Charter B-1

C. Committee Members C-1

D. Committee Staff D-1

E. Demographics and Adjudication of Sexual Assault Offenses

Recorded in the DAC-IPAD Database E-1

F. Meetings and Presenters F-1

G. Acronyms and Abbreviations G-1

H. Sources Consulted H-1

EXECUTIVE SUMMARY

In section 546 of the National Defense Authorization Act for Fiscal Year 2015, enacted on December 23, 2014, Congress directed the Secretary of Defense to establish the sixth congressionally mandated task force on sexual assault in the military since 2003: the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).¹ The authorizing legislation charges the Committee to execute three tasks over its five-year term:²

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 no later than March 30 of each year.

This report of the DAC-IPAD discusses the Committee's activities since its establishment. The Committee has held six public meetings and set up three working groups to support its mission: the Case Review Working Group, the Data Working Group, and the Policy Working Group.

The first chapter discusses the activities of the Case Review Working Group, focusing on the scope, methodology, and objectives of the working group's statutorily mandated case reviews for 2018. The Case Review Working Group plans to review 2,069 investigations closed in fiscal year 2017 in which a Service member was accused of committing a penetrative sexual assault offense against an adult victim. The Case Review Working Group will review three different categories of investigative files: cases resulting in no action taken, cases resulting in pretrial of charges, and cases resulting in administrative action or nonjudicial punishment. Through this broad review of investigative files, the Case Review Working Group plans to identify trends in investigations, identify factors that may affect commanders' disposition decisions, and assess whether those decisions were reasonable based solely on the information in the relevant investigative files. The first category of cases the Case Review Working Group will review are those resulting in no action taken. In 2019, the Working Group intends to turn its review to those cases in which charges were preferred.

The second chapter discusses the Data Working Group's collection and analysis of data on sexual assault courts-martial. Acting on the recommendations of the predecessor panel to the DAC-IPAD—the Judicial Proceedings Panel—the Data Working Group collected documents for 738 cases from fiscal year 2016 involving a preferred charge of sexual assault.³ The chapter records the case characteristics, disposition outcomes, and adjudication outcomes for these 738 cases.

1 National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 546, 128 Stat. 3374 (2014).

2 *Id.*

3 For purposes of the DAC-IPAD's case review and data collection, the term "sexual assault" includes the following offenses under the Uniform Code of Military Justice: rape (Article 120(a)), sexual assault (Article 120(b)), aggravated sexual contact (Article 120(c)), abusive sexual contact (Article 120(d)), forcible sodomy (Article 125), and attempts of these offenses (Article 80).

The third chapter discusses the Policy Working Group's examination of the issues of expedited transfers and sexual assault training provided to commanders and senior enlisted leaders. The Policy Working Group emphasizes that the expedited transfer policy is an important sexual assault response initiative offered by the military and makes four recommendations for its continued improvement and development. The Policy Working Group also details its progress in gathering information on legal and sexual assault response training for commanders and senior enlisted leaders and outlines its plan to continue its review of the substance and effectiveness of that training.

SUMMARY OF DAC-IPAD FINDINGS

Overall Assessment: The DAC-IPAD finds that the expedited transfer policy for sexual assault victims is an important sexual assault response initiative offered by the military and strongly recommends the continued existence and further improvement of the policy.

Finding 1: Special victims' counsel/victims' legal counsel (SVCs/VLCs), commanders (O-5) and senior enlisted advisors, special court-martial convening authorities (O-6), senior military sexual assault prosecutors, and present and former Service members who have received expedited transfers testified at the DAC-IPAD public meeting on October 19 and 20, 2017, and Policy Working Group preparatory session on December 1, 2017, that they believe the expedited transfer policy to be an overwhelmingly beneficial and effective mechanism to assist in the recovery of Service members who are victims of sexual assault.

Finding 2: Several SVCs, VLCs, and military sexual assault prosecutors testified to the Policy Working Group to a strong perception among military members across the Services that some Service member victims are abusing the expedited transfer policy in order to transfer to more favorable locations.

Finding 3: Some counsel perceive that court-martial members (jury members) may believe that the expedited transfer policy is being abused. At trial, defense counsel may use the fact that a victim received an expedited transfer to show a potential motive to fabricate a sexual assault in the hope that doing so will be enough for members who believe that there is widespread abuse of the policy to disbelieve the victim and possibly acquit the accused on that basis. While this may be a proper line of questioning within the Military Rules of Evidence, it may reinforce the members' perception of widespread abuse of the expedited transfer policy.

Finding 4: Commanders, SVCs, VLCs, and Service prosecutors overwhelmingly testified that they had not encountered abuse of the expedited transfer policy, though they do believe there are some rare cases in which it has been abused by Service members.

Finding 5: According to data reported in the Service Enclosures to the Fiscal Year 2016 Department of Defense (DoD) Annual Report on Sexual Assault in the Military, only 20% of DoD Service members who filed unrestricted reports of sexual assault requested expedited transfers.

Finding 6: The expedited transfer statute (10 U.S.C. § 673), which applies to all active duty Service members who are victims of sexual assault under Article 120, 120a, or 120c of the Uniform Code of Military Justice (UCMJ), does not differentiate between active duty Service members whose sexual assault reports are handled by the Sexual Assault Prevention and Response (SAPR) program and those handled by the Family Advocacy Program (FAP).

Finding 7: The DoD Instruction establishing the expedited transfer policy (DoDI 6495.02) applies only to active duty victims whose sexual assault reports are handled by the SAPR program and expressly excludes victims covered under FAP from the expedited transfer policy.

Finding 8: No DoD-level policy establishes an expedited transfer option for victims of sexual assault covered under FAP who are active duty Service members. DoD and Service FAP representatives testified that they use other transfer options, such as humanitarian or compassionate transfers, as needed and available.

Finding 9: In addition to expedited transfers, other out-of-cycle transfer options available in the Services are safety transfers and humanitarian/compassionate transfers. These options differ across the Services and have different standards for approval.

Finding 10: Even though the dynamics of sexual assault in the context of spousal and intimate partner relationships are different than in other sexual assaults, 10 U.S.C. § 673 requires that expedited transfer be available for all Service members who make unrestricted sexual assault reports. In some instances, the option of an expedited transfer would be beneficial to Service members covered under the FAP program, such as cases in which a Service member wishes to gain physical distance from an alleged perpetrator or to be closer to family or other support systems to assist in their recovery.

Finding 11: The Department of Defense regulation regarding procedures for military personnel assignments (DoDI 1315.18, “Procedures for Military Personnel Assignments”) references the DoD expedited transfer policy, but it does not require that assignments personnel or commanders communicate or coordinate with SAPR or FAP personnel in the expedited transfer assignments process.

SUMMARY OF DAC-IPAD RECOMMENDATIONS

Recommendation 1: 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.

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.

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.

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.

INTRODUCTION

I. DAC-IPAD ESTABLISHMENT AND MISSION

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, as amended.⁴ The 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.⁵ In order to provide that advice, the Committee is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.⁶

In accordance with the authorizing statute and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense (DoD) filed the charter for the DAC-IPAD with the General Services Administration on February 18, 2016.⁷

The DAC-IPAD is required to submit annual reports 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 each year, describing the results of its activities.⁸ This report details the Committee's activities since its inaugural meeting, focusing on three areas in particular: the Committee's scope and methodology for its review of investigative files from fiscal year 2017; the Committee's collection and analysis of data on sexual assault courts-martial, with an emphasis on fiscal year 2016; and the Committee's assessment of the expedited transfer policy and commander training.

II. COMPOSITION OF THE COMMITTEE

The Committee's authorizing legislation required the Secretary of Defense to select Committee members with experience in investigating, prosecuting, and defending against allegations of sexual assault offenses.⁹ Active duty Service members are expressly prohibited from serving on the Committee.¹⁰ In January 2017 the Secretary of Defense appointed to the DAC-IPAD 16 members, who represent a broad range of perspectives and experience related to sexual assault both within and outside the military.¹¹

4 National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [hereinafter FY15 NDAA], § 546, 128 Stat. 3292, 3374 (2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 [hereinafter FY16 NDAA], § 537, 129 Stat. 726, 817 (2015).

5 FY15 NDAA, *supra* note 4, § 546(c)(1).

6 *Id.* at § 546(c)(2).

7 Federal Advisory Committee Act of 1972, 5 U.S.C. App. §§ 1–16. *See* Appendix B, Charter of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (February 18, 2016).

8 FY15 NDAA, *supra* note 4, § 546(d).

9 *Id.* at § 546.

10 *Id.*

11 *See* Appendix C for a list and short biographies of the DAC-IPAD members.

The areas of expertise of the members of the Committee include

- Civilian sexual assault investigation and forensics
- Civilian and military sexual assault prosecution
- Civilian and military sexual assault defense
- Federal and state court systems
- Military command
- Criminology
- Academic disciplines and legal policy

Combined, the DAC-IPAD members have hundreds of years of experience dealing with sexual assault in both military and civilian jurisdictions. Four members of the Committee retired from the military and two more served previously as judge advocates.

III. HISTORICAL OVERVIEW OF MILITARY SEXUAL ASSAULT AND DEPARTMENT OF DEFENSE SEXUAL ASSAULT ADVISORY COMMITTEES

Increasing public awareness and concern about sexual assault within the United States military have given rise to numerous commissions, task forces, and advisory committees established to conduct assessments and recommend ways to eradicate this insidious crime. The DAC-IPAD is the sixth congressionally mandated task force on sexual assault in the military since 2003.

The focus on sexual misconduct in the Armed Forces began over 20 years ago, after it was reported that naval aviators sexually abused more than 80 women during a party at the 35th Annual Tailhook Symposium in Las Vegas.¹² The allegations led to the resignation of the Secretary of the Navy and ended many Navy careers. The Tailhook scandal ignited the debate that continues today about sexual misconduct in the Armed Forces.¹³

In the years following Tailhook, several additional high-profile incidents drew further attention and public scrutiny. In 1996, dozens of female Army trainees at Aberdeen Proving Grounds in Maryland alleged they had been subjected to rape and sexual harassment by their drill sergeants.¹⁴ Shortly thereafter, female trainees made similar allegations against Army trainers in Fort Leonard Wood, Missouri, and at several other Army training bases.¹⁵

In early 2003, accusations surfaced that after reporting sexual assaults, female cadets at the U.S. Air Force Academy were being ignored or retaliated against by commanders at the Academy.¹⁶ To investigate the

12 Michael Winerip, *Revisiting the Military's Tailhook Scandal*, N.Y. TIMES (May 13, 2013), <http://www.nytimes.com/2013/05/13/booming/revisiting-the-militarys-tailhook-scandal-video.html>.

13 See Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can Be Worse Than the Disease*, 14 DUKE J. OF GENDER L. & POL'Y 749, 760–64 (2007).

14 Rowan Scarborough, *Army Trainees Accuse Instructors of Rape, Harassment*, WASH. TIMES (Nov. 8, 1996), at A3.

15 See Michael Kilian, *New Sex Scandal Hits Army Ranks*, CHICAGO TRIBUNE (Nov. 13, 1996), http://articles.chicagotribune.com/1996-11-13/news/9611130215_1_trainees-sexual-misconduct-sexual-harassment.

16 See OFFICE OF THE INSPECTOR GEN. OF THE DEP'T OF DEFENSE, EVALUATION OF SEXUAL ASSAULT, REPRISAL, AND RELATED LEADERSHIP

allegations, Congress established its first military sexual assault task force.¹⁷ In September 2003 the Fowler Commission—led by former congresswoman Tillie Fowler—issued a report containing 20 recommendations.¹⁸

A second task force, established by Congress to assess “sexual harassment and violence” at the U.S. Military Academy and the Naval Academy, issued a report in June 2005 containing 15 recommendations.¹⁹ Congress then extended and renamed the task force. It directed this new entity, the Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS), to conduct a review of sexual assault across all of the Armed Forces.²⁰ DTF-SAMS began its assessment in 2008, conducting site visits at 60 installations in the United States, the Middle East, the Pacific Rim, and Europe.²¹ In its report, issued in December 2009, DTF-SAMS made 30 recommendations.²² The task force found that while the military had made significant progress in its handling of sexual assaults, there was still much work to be done: the areas that needed improvement included Sexual Assault Prevention and Response (SAPR) Program standards and oversight,²³ a DoD-wide prevention strategy, measures of the effectiveness of prevention and response,²⁴ support of and response to victims,²⁵ and the accuracy, reliability, and validity of data collected on sexual assault incidents.²⁶

While DoD and the Services were working to implement the recommendations of DTF-SAMS and the legislative reforms that followed, other events of 2012 and 2013 led to some of the most extensive legislative reforms enacted to date to address military sexual assault. Among these events was the release in the spring of

CHALLENGES AT THE UNITED STATES AIR FORCE ACADEMY (2004), available at <http://www.defenselink.mil/news/Dec2004/d20041207igsummary.pdf>.

- 17 See REPORT OF THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE U.S. AIR FORCE ACADEMY (2003), available at <http://files.eric.ed.gov/fulltext/ED480473.pdf>. On April 16, 2003, Congress passed Public Law (P.L.) 108-11 establishing a “Panel to Review Sexual Misconduct Allegations at United States Air Force Academy.” Congress required the Secretary of Defense to appoint a seven-member panel from among private United States citizens who had expertise in behavioral and psychological sciences and in standards and practices related to properly treating sexual assault victims (including their medical and legal rights and needs), as well as members from the United States military academies, to investigate reports that at least 56 cadets had been sexually assaulted at the U.S. Air Force Academy.
- 18 See *id.*; the report was issued on September 22, 2003.
- 19 See REPORT OF THE DEFENSE TASK FORCE ON SEXUAL HARASSMENT & VIOLENCE AT THE MILITARY SERVICE ACADEMIES (June 2005), available at http://www.sapr.mil/public/docs/research/High_GPO_RRC_tx.pdf. On November 24, 2003, Congress passed Public Law (P.L.) 108-136 establishing the “Defense Task Force on Sexual Harassment and Violence at the U.S. Military Academy and the U.S. Naval Academy.” Congress directed the Task Force to assess and make recommendations concerning how the Departments of the Army and the Navy may more effectively address sexual harassment and assault at the academies. The Secretary of Defense appointed six members from the four branches of the Armed Forces and six members from the civilian community to the Task Force. On June 30, 2005, the Task Force issued a report, which included 15 recommendations. *Id.*
- 20 See REPORT OF THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES (2009), available at http://www.sapr.mil/public/docs/research/DTFSAMS-Rept_Dec09.pdf. On October 28, 2004, Congress passed Public Law (P.L.) 108-375, which directed the Service Academy Task Force established by P.L. 108-136 to be extended for 18 months, renamed the “Defense Task Force on Sexual Assault in the Armed Forces (DTF-SAMS),” and tasked to examine matters relating to sexual assault cases in which members of the Armed Forces either are victims or commit acts of sexual assault. The Secretary of Defense appointed ten members: one Service member from each Military Service, one civilian official from the Office of the Secretary of Defense, and five civilians from outside the Department. DTF-SAMS completed its work and on December 1, 2009, released a report with 30 recommendations to the Secretary of Defense. *Id.*
- 21 *Id.* at ES-1.
- 22 *Id.* at ES-2–ES-6.
- 23 *Id.* at 41.
- 24 *Id.* at 57.
- 25 *Id.* at 67.
- 26 *Id.* at 77.

2012 of the Academy Award–nominated documentary *The Invisible War*.²⁷ The film details the experiences of several young female veterans and their treatment by commanders after they reported that they were sexually assaulted while serving in the military.²⁸ Shortly after viewing *The Invisible War*, then Defense Secretary Leon Panetta issued a memorandum elevating the initial disposition authority for rape and sexual assault allegations to commanders in the grade of O-6 (colonel or Navy captain) or above.²⁹ Many commanders required their noncommissioned officers and officers to view the film.³⁰ At the same time, many members of the military criticized the film for inaccuracies and misrepresentations of military law and policy.³¹

Congress also responded by establishing two panels to conduct independent assessments of the military's response to sexual assault. The first of these panels, the Response Systems to Adult Sexual Assault Crimes Panel (RSP), was directed by Congress to spend 18 months (subsequently shortened by Secretary of Defense Chuck Hagel to 12 months) reviewing and assessing the services provided by the military to sexual assault victims, the military's disciplinary response to allegations of sexual assault, and proposed legislative initiatives to modify the role of commanders in the administration of military justice.³² Composed of nine civilian members and led by former federal judge Barbara S. Jones, the RSP issued its report in June 2014: all but one of its 132 recommendations were either approved, approved in part, or sent to working groups for further study by DoD.³³

Following the release of the RSP's report, the Secretary of Defense established the congressionally mandated Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) for a three-year term.³⁴ The JPP was composed of five members appointed by the Secretary of Defense, two of whom were required to have served on the predecessor RSP.³⁵ The JPP was led by former congresswoman Elizabeth Holtzman, who had also served as a member of the RSP.³⁶ The JPP issued 11 reports with a total of 63 recommendations on the topics of Article 120 of the Uniform Code of Military Justice (UCMJ), restitution and compensation of victims of sexual assault, retaliation against those who report sexual assault, court-martial data trends, military defense counsel resources and experience, victims' appellate rights, sexual assault investigations, and concerns regarding the fair

27 See Robert E. Murch, *Barracks, Dormitories, and Capitol Hill: Finding Justice in the Divergent Politics of Military and College Sexual Assault*, 223 MIL. L. REV. 233, 243–45 (2015).

28 *Id.*

29 See Todd Perkins, “*The Invisible War*” Filmmakers Respond to Secretary of Defense Leon Panetta’s “Rock Center with Brian Williams” Appearance on *Rape in the Military*, IndieWire (September 8, 2012), <http://www.indiewire.com/2012/09/the-invisible-war-filmmakers-respond-to-secretary-of-defense-leon-panettas-rock-center-with-brian-williams-appearance-on-rape-in-the-military-44577/>. See also Memorandum from Sec’y of Def. to Sec’y of Military Dep’ts et al., subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (Apr. 20, 2012) [hereinafter Memorandum on Withholding Initial Disposition Authority].

30 See Murch, *supra* note 27, at 244–45.

31 See *id.* at 244 n.45.

32 See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239 [hereinafter FY13 NDAA], § 576, 126 Stat. 1632, 1758–60 (2012). The RSP was composed of nine members, five appointed by the Secretary of Defense and four appointed by the chairmen and ranking members of the Armed Services Committees of the Senate and House of Representatives. *Id.*

33 See REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014) [hereinafter RSP REPORT], available at http://responsesystemspanel.whs.mil/public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf; see also Memorandum from Sec’y of Def. to Sec’y of Military Dep’ts et al., subject: Department of Defense Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel (Dec. 15, 2014).

34 FY13 NDAA, *supra* note 32, § 576.

35 *Id.*

36 See Judicial Proceedings Panel website, <http://jpp.whs.mil/about/panel/holtzman>.

administration of military justice in sexual assault cases.³⁷ Out of the 63 recommendations, 8 were specifically directed at the DAC-IPAD, suggesting areas of further review and investigation.³⁸ The JPP's reports have led to numerous legislative and policy reforms related to sexual assault. By law the JPP terminated on September 30, 2017.

IV. OVERVIEW OF DAC-IPAD 2017 OBJECTIVES AND ACTIONS

A. Inaugural Meeting and Initial Report

The DAC-IPAD held its inaugural meeting on January 19, 2017. A recurring theme during the Committee's initial meeting was the need for and importance of accurate, relevant data so that members can fully understand the issues and make sound policy recommendations to the Secretary of Defense. The members expressed interest in analyzing key data points such as the impact of rank, race, and sexual orientation on charging decisions, conviction rates, and sentencing.³⁹

The Committee also discussed its directive to conduct case reviews. Recognizing the substantial privacy concerns that must be considered in reviewing cases involving children, the members agreed that they initially would concentrate exclusively on adult cases.⁴⁰ The Committee noted that the DAC-IPAD's authorizing

37 JUDICIAL PROCEEDINGS PANEL INITIAL REPORT 11 (Feb. 2015), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/01_JPP_InitialReport_Final_20150204.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES 5 (Feb. 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/02_JPP_Rest_Comp_Report_Final_20160201.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE 5–7 (Feb. 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/03_JPP_Art120_Report_Final_20160204.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES 5–10 (Feb. 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/04_JPP_Retaliation_Report_Final_20160211.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES 5–6 (Apr. 2016) [hereinafter APRIL 2016 JPP REPORT ON STATISTICAL DATA], *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON MILITARY DEFENSE COUNSEL RESOURCES AND EXPERIENCE IN SEXUAL ASSAULT CASES 5–6 (Apr. 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/06_JPP_Defense_Resources_Experience_Report_Final_20170424.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON VICTIMS' APPELLATE RIGHTS 3–4 (June 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/07_JPP_VictimsAppRights_Report_Final_20170602.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY 3–4 (Sept. 2017) [hereinafter JPP REPORT ON SEXUAL ASSAULT INVESTIGATIONS], *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/08_JPP_Report_Investigations_Final_20170907.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES FOR FISCAL YEAR 2015 3–4 (Sept. 2017) [hereinafter JPP REPORT ON FY 2015 STATISTICAL DATA], *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/09_JPP_CourtMartial_Data_Report_Final_20170915.pdf; JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES 7–13 (Sept. 2017) [hereinafter JPP REPORT ON PANEL CONCERNS], *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/10_JPP_Concerns_Fair_MJ_Report_Final_20170915.pdf.

38 JUDICIAL PROCEEDINGS PANEL FINAL REPORT 31–32 (Oct. 2017) [hereinafter JPP FINAL REPORT], *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/11_JPP_FinalReport_Final_20171016.pdf.

39 *Transcript of DAC-IPAD Public Meeting* 238 (Jan. 19, 2017) (comment by Judge Reggie Walton, Committee member); *id.* at 238 (comment by Ms. Kathleen Cannon, Committee member); *id.* at 225–26 (comment by Major General (Ret.) Marcia Anderson, Committee member); *id.* at 230–31 (comment by Ms. Martha Bashford, Committee chair); *id.* at 231 (comment by Dean Keith Harrison, Committee member).

40 *See Transcript of DAC-IPAD Public Meeting* 224 (Jan. 19, 2017) (comment by Ms. Meg Garvin, Committee member) (recommending that the DAC-IPAD review child cases and noting that there is a gap in data on children); *but see, id.* at 264 (comment by Dr. Jenifer Markowitz, Committee member) (stating that she does not think the committee should review child sex abuse cases); *id.* at 266 (comment by Ms. Martha Bashford, Committee chair) (maintaining that for her the most important issue is ensuring that adults may serve in the military without getting sexually assaulted, but also noting that that doesn't mean the Committee can't ever look at children, domestic violence, or civilians).

legislation provides little guidance on how to conduct case reviews and acknowledged the need for continuing discussions about the scope and methodology of this procedure.⁴¹

The Committee outlined the status of its strategic plan in its Initial Report, which was released on March 30, 2017.⁴²

B. Additional Meetings and Strategic Plan

The DAC-IPAD has held five public meetings since its inaugural meeting. At its April 28, 2017, and July 21, 2017, public meetings, the Committee heard informational presentations about the mechanics of a sexual assault investigation and prosecution. The Committee also learned about the military sexual assault case adjudication statistics for fiscal year 2015 collected and reported on by the JPP and the annual sexual assault reporting data published by the Department of Defense's Sexual Assault Prevention and Response Office (SAPRO).⁴³

The Committee held planning sessions during these public meetings to continue to develop its strategic plan. One of the matters discussed was the best way to approach case reviews. After receiving and reviewing sexual assault investigation data for fiscal year 2017 indicating that a low percentage of cases were preferred, the Committee decided to begin its review by looking at investigative files for cases in which charges were never preferred.⁴⁴ The members believed that such a wide-ranging review would complement the work of the JPP, which had analyzed courts-martial data only for cases in which charges were preferred. The Committee also chose to focus on cases involving penetrative offenses, because these cases typically involve the most serious sexual assault offenses.⁴⁵ The Committee agreed to create a working group to support its efforts reviewing case files.

The Committee also reiterated the importance of collecting and analyzing data on courts-martial. Dr. Cassia Spohn, a Committee member who had previously served as an independent consultant to the JPP, noted that the court-martial data analyzed by the JPP has generated more questions than answers.⁴⁶ She recommended that the DAC-IPAD look at the different outcomes across the Services to understand whether they can be attributed to differences in policies and practices, resources, or training. She also expressed interest in comparing conviction rates and punishments for cases involving civilian victims and cases involving military victims. Finally, she suggested looking closely at cases involving intimate partners and spouses.⁴⁷ The Committee agreed to create a working group to support its efforts in collecting and analyzing courts-martial data.

In addition, the Committee identified policy issues for its review. Among other topics, members suggested looking at expedited transfers, training for convening authorities, training for defense counsel, and retaliation against those who report sexual assault. The Committee decided to begin its assessment by examining expedited

41 See, e.g., *Transcript of DAC-IPAD Public Meeting* 263–64 (Jan. 19, 2017) (comment by Dr. Cassia Spohn, Committee member) (noting the need to answer foundational questions before beginning case reviews); *id.* at 271 (comment by the Honorable Leo Brisbois, Committee member) (acknowledging that the enabling legislation of the DAC-IPAD gives the Committee a lot of discretion).

42 DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES INITIAL REPORT (March 2017) [hereinafter DAC-IPAD INITIAL REPORT], available at https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Initial_Report_20170330_Final_Web.pdf.

43 See generally *Transcript of DAC-IPAD Public Meeting* (Apr. 28, 2017); *Transcript of DAC-IPAD Public Meeting* (July 21, 2017).

44 *Transcript of DAC-IPAD Public Meeting* 133–34 (July 21, 2017) (comment by Ms. Martha Bashford, Committee chair).

45 *Transcript of DAC-IPAD Public Meeting* 134–35 (July 21, 2017) (comment by Ms. Martha Bashford, Committee chair).

46 *Transcript of DAC-IPAD Public Meeting* 341 (Apr. 28, 2017) (comment by Dr. Cassia Spohn, Committee member).

47 *Transcript of DAC-IPAD Public Meeting* 341–42 (Apr. 28, 2017) (comment by Dr. Cassia Spohn, Committee member).

transfers and training for convening authorities.⁴⁸ The Committee agreed to create a working group to support its efforts reviewing and assessing Department of Defense and Service policies.

The Committee held its first substantive meeting on October 19 and 20, 2017, to begin to explore the topics of expedited transfers and of training for convening authorities. The Committee heard presentations on the Services' expedited transfer policies from special victims' counsel, commanders, and senior enlisted advisors. The Committee also heard informational briefings from commanders and senior enlisted advisors about the training they receive on how to respond to sexual assault allegations.⁴⁹

C. Working Groups

The DAC-IPAD has set up three working groups to support its mission: the Case Review Working Group, the Data Working Group, and the Policy Working Group.

The mission of the Case Review Working Group is to make recommendations to the Committee based on its review of cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Case Review Working Group is composed of a chair, Brigadier General (Ret.) James Schwenk, and six additional members: Ms. Martha S. Bashford, Ms. Kathleen B. Cannon, Ms. Jennifer Gentile Long, Mr. James P. Markey, Dr. Cassia C. Spohn, and the Honorable Reggie B. Walton. The activities of the Case Review Working Group are discussed in chapter 1.

The mission of the Data Working Group is to make recommendations to the Committee based on its collection and analysis of data from cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Data Working Group is composed of a chair, Dr. Spohn, and two additional members: Mr. Markey and Chief Master Sergeant of the Air Force (Ret.) Rodney J. McKinley. The activities of the Data Working Group are discussed in chapter 2.

Finally, the mission of the Policy Working Group is to make recommendations to the Committee based on its review of Department of Defense policies, Military Department policies, and Uniform Code of Military Justice provisions applicable to allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Policy Working Group is composed of a chair, Chief McKinley, and five additional members: Major General (Ret.) Marcia M. Anderson, Dean Keith M. Harrison, Ms. Margaret A. Garvin, Dr. Jenifer Markowitz, and Brigadier General (Ret.) Schwenk. The activities of the Policy Working Group are discussed in chapter 3.

The Case Review Working Group briefed the Committee about its activities and strategic plan at the October meeting.⁵⁰ The Committee received presentations and updates from all three working groups at its January 19, 2018, meeting.⁵¹

48 *Transcript of DAC-IPAD Public Meeting* 318–19 (July 21, 2017) (comment by Brigadier General (Ret.) James Schwenk, Committee member).

49 *See generally Transcript of DAC-IPAD Public Meeting* (Oct. 19, 2017); *Transcript of DAC-IPAD Public Meeting* (Oct. 20, 2017).

50 *Transcript of DAC-IPAD Public Meeting* 291–302 (Oct. 20, 2017).

51 *See generally Transcript of DAC-IPAD Public Meeting* (Jan. 19, 2018).

CHAPTER 1.

ACTIVITIES OF THE CASE REVIEW WORKING GROUP

I. FORMATION OF THE CASE REVIEW WORKING GROUP

The DAC-IPAD is statutorily directed to “review, on an ongoing basis, cases involving allegations of sexual misconduct”—including allegations of rape, forcible sodomy, and sexual assault—involving members of the Armed Forces.⁵² In accordance with its statutory mandate, the Committee tasked the Case Review Working Group (CRWG), composed of seven Committee members, to review sexual assault cases on an ongoing basis for the duration of the Committee’s charter. The CRWG is chaired by Brigadier General (Ret.) James Schwenk, and its other members are Ms. Martha S. Bashford, Ms. Kathleen B. Cannon, Ms. Jennifer Gentile Long, Mr. James P. Markey, Dr. Cassia C. Spohn, and the Honorable Reggie B. Walton.

This chapter outlines the activities of the CRWG since its formation. Section II discusses the approach taken by the CRWG to gather data from the military criminal investigative organizations (MCIOs)—including issuing two requests for information: one for adult sexual assault investigation data for cases closed in fiscal year 2016, and one for adult sexual assault investigation data for cases closed in fiscal year 2017. Section III discusses the population of cases from fiscal year 2017 on which the CRWG decided to focus for its 2018 case review. Section IV discusses the CRWG’s methodology and objectives for its 2018 case review. Finally, Section V discusses the CRWG’s anticipated plan for future case reviews.

II. SCOPE OF REVIEW

The enabling legislation for the DAC-IPAD does not specify the scope or methodology of the Committee’s case review.⁵³ Therefore, as a first step, the Committee sought to understand the volume of cases investigated by the Services in a year. To begin to explore the types of data available, the Committee issued a request for information (RFI) regarding adult sexual assault investigation data for cases closed in fiscal year 2016 from the four MCIOs—Naval Criminal Investigative Service (NCIS), Air Force Office of Special Investigations (AFOSI), Army Criminal Investigation Command (CID), and Coast Guard Investigative Service (CGIS).⁵⁴

The Committee requested sexual assault data directly from the MCIOs, rather than relying on data collected by DoD, in order to independently assess the adjudicative data maintained in sexual assault cases. While DoD SAPRO collects data on sexual assault cases, these data are limited, because DoD does not collect or analyze case processing data for sexual assault reports involving spouses, intimate partners, or family members of military members.⁵⁵ In addition, consistent with the recommendations from the JPP and the RSP, the CRWG wanted to review the different classifications of disposition terminology used by the MCIOs in cases in which, because

52 FY15 NDAA, *supra* note 4, § 546 (c)(2).

53 See Written Statement by Judge Leo Brisbois, Committee member (Apr. 20, 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/02_DACIPAD_Mtg_Materials/DACIPAD_Meeting_Materials_20170428.pdf.

54 DAC-IPAD Request for Information Set 3 (June 29, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set3_QR1_18_20170629_Web.pdf.

55 JPP REPORT ON FY 2015 STATISTICAL DATA, *supra* note 37, at 13.

of lack of evidence, no action is taken so that it might assess whether sexual assault cases were being reported accurately and consistently in existing data systems.⁵⁶

In its RFI, the Committee defined an “adult sexual assault allegation” as an unrestricted report of sexual assault made by an individual who is at least 16 years of age at the time of the alleged incident.⁵⁷ The Committee also clarified that a case is defined as “closed in fiscal year 2016” if the investigation was complete and a final action was taken between October 1, 2015, and September 30, 2016, regardless of the date the allegation was made or investigation opened.⁵⁸

In response to the RFI, the MCIOs provided disposition data for all sexual assault cases closed in fiscal year 2016, but did not separate data for contact cases and penetrative cases.⁵⁹ The Committee’s analysis of the data indicated that when an adult sexual assault allegation—whether for a penetrative or contact offense—was made against a person subject to the UCMJ and the allegation was fully investigated, charges were preferred in about 20% of cases in the Army, Navy, Marine Corps, and Coast Guard. The Air Force did not provide preferral data.⁶⁰

After receiving the data, all members of the CRWG were given an opportunity to review investigative case files closed in fiscal year 2016 in which no action was taken, administrative action was taken, or the case went to trial. CRWG members also reviewed records of trial. The purpose of these sessions was to orient the CRWG members to the different documents contained in an investigative file and case file and to enable them to gauge the amount of time required to review these records.⁶¹ MCIO representatives were available during the introductory review sessions to answer questions that the CRWG had about the investigation, the closure dispositions, and the organization of the case file itself.

The Committee then requested sexual assault case data for fiscal year 2017 from the MCIOs.⁶² The Committee asked for two sets of data: (1) adult sexual assault case statistics for cases closed in fiscal year 2017, and (2) data for all fiscal year 2017 sexual assault investigations for a penetrative sexual offense with a military subject and adult victim closed in fiscal year 2017.⁶³ The CRWG was interested in whether the preferral rate for penetrative offenses alone was different than the preferral rate of about 20% for cases involving both contact and penetrative offenses. The Committee defined a “penetrative sexual offense” as rape and sexual assault, in violation of Article

56 See APRIL 2016 JPP REPORT ON STATISTICAL DATA, *supra* note 37, at 5–6 (Recommendation 37); JPP REPORT ON SEXUAL ASSAULT INVESTIGATIONS, *supra* note 37, at 5–7 (Recommendations 47–51); RSP REPORT, *supra* note 33, at 4 (“[T]o enable data comparison among the Services, and potentially with civilian jurisdictions, the Services should use a single, standardized methodology to track the number and rates of judicial or other dispositions in sexual assault cases, and to calculate prosecution and conviction rates across all the Services. Additionally, the Services should standardize the process for determining if a case is ‘unfounded’ at the investigation stage. Only those reports of sexual assault that are determined to be false or baseless should be unfounded, and the Services should standardize the authority and processes for making those determinations.”); *id.* at 12 (Recommendations 3-A and 3-B).

57 The DAC-IPAD agreed it initially would concentrate only on adult cases. See DAC-IPAD INITIAL REPORT, *supra* note 42, at 18.

58 DAC-IPAD Request for Information Set 3 (June 29, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set3_QR1_18_20170629_Web.pdf.

59 See Service MCIO Responses to DAC-IPAD Request for Information Set 3 (June 29, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set3_QR1_18_20170629_Web.pdf.

60 *Id.*

61 See *Transcript of DAC-IPAD Public Meeting 293–94* (Oct. 20, 2017) (comment by Brigadier General (Ret.) James Schwenk, Committee member)

62 DAC-IPAD Request for Information Set 5 (Oct. 30, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set5_20171030_Web.pdf.

63 *Id.*

120 of the UCMJ; forcible sodomy, in violation of Article 125 of the UCMJ; and any attempt to commit such offenses, in violation of Article 80 of the UCMJ.

For the set of data on penetrative offenses only, the Committee requested that the Services provide the disposition as reflected in the Service MCIO case management systems as well as the case clearance category in DoD's centralized repository for criminal incident data known as the Defense Incident-Based Reporting System (DIBRS).⁶⁴ DIBRS collects case information for the Federal Bureau of Investigation's Uniform Crime Reporting Program.⁶⁵ The Committee sought the disposition information from both databases in order to evaluate the degree of consistency between the two.

III. FISCAL YEAR 2017 CASE DATA

After their initial familiarization with the investigations, the CRWG members, with the DAC-IPAD's approval, agreed to review cases closed in fiscal year 2017 involving a penetrative sexual assault.⁶⁶ The CRWG decided to focus on fiscal year 2017 cases, rather than fiscal year 2016 cases, because by drawing on the most recent set of cases available it could best understand the current landscape of sexual assault investigations. It chose to examine penetrative offense cases because these cases typically involve the most serious sexual assault offenses. The FY14 NDAA mandates that only a general court-martial can be used to try a penetrative sex offense and requires that a person found guilty of a penetrative sexual offense receive a sentence including a dismissal or a dishonorable discharge.⁶⁷ In addition, cases involving penetrative sexual assault require a higher disposition authority than do other crimes.⁶⁸ Given that penetrative offenses and contact offenses often result in very different outcomes, the CRWG hopes that the initial review of penetrative cases will allow it to tailor its recommendations to this specific class of Article 120 offenses.⁶⁹

The CRWG decided to consider only investigations involving a military subject and an adult victim in which the military had jurisdiction at the time of disposition. The CRWG will not consider cases in which a subject was from a different branch of Service than the MCIO service reporting the data, a member of the Reserves or National Guard, retired, a civilian, or deceased.

64 *Transcript of DAC-IPAD Public Meeting* 61 (July 21, 2017) (testimony of Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations); Dept. of Def. Manual [DoDM] 7730.47-M, Vol. 1, DEFENSE INCIDENT-BASED REPORTING SYSTEM (DIBRS) [hereinafter DoDM 7730.47-M], Encl. 3 ¶ 1b (Dec. 7, 2010). DoDM 7730.47-M implements the crime data reporting requirements contained in the Uniform Federal Crime Reporting Act of 1988 as amended, Pub. L. 111-369, 124 Stat. 4068. The Uniform Federal Crime Reporting Act directs federal agencies that routinely investigate complaints of criminal activity to report details about such crimes to the Attorney General. The Federal Bureau of Investigation (FBI) was designated as the central collection point for criminal incident data reporting.

65 NATIONAL INCIDENT-BASED REPORTING SYSTEM USER MANUAL 6 (Nov. 1, 2017), available at <https://ucr.fbi.gov/nibrs/nibrs-user-manual> ("The FBI's Uniform Crime Reporting (UCR) Program is a nationwide, cooperative statistical effort of more than 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies (LEAs) voluntarily reporting data on offenses reported or known. . . . The program's primary objective is to generate reliable information for use in [law enforcement] administration, operation, and management. However, over the years, UCR data have become one of the country's leading social indicators. Criminologists, sociologists, legislators, municipal planners, the media, and other students of criminal justice use the data for varied research and planning purposes.").

66 *See Transcript of DAC-IPAD Public Meeting* 134–35 (July 21, 2017) (comment by Ms. Martha Bashford, Committee chair).

67 National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66 [hereinafter FY14 NDAA], § 1705, 127 Stat. 672 (2013).

68 Memorandum on Withholding Initial Disposition Authority, *supra* note 29.

69 *See Transcript of DAC-IPAD Public Meeting* 136 (July 21, 2017) (comment by Dr. Cassia Spohn, Committee member) (noting that penetrative and contact offenses result in different outcomes).

Each MCIO has limited ability to close a case without conducting a thorough and complete investigation—generally because the MCIO lacks investigative jurisdiction or authority. The Services use different terms for these files: “Serious Incident Report Only,” “Closed Only,” “Information File Only,” or “Record Only.” For purposes of this report, they all will be referred to as “Information File Only,” and the CRWG decided not to review cases in that classification.

The CRWG sorted the remaining cases into two categories—“action taken” and “no action taken”—based on the dispositions provided by the MCIOs. Disposition options are outlined in Rule for Courts-Martial (R.C.M.) 306(c). “Action taken” means that one of the disposition actions listed in R.C.M. 306(c) was taken by the command, such as administrative action, nonjudicial punishment, or preferral of charges. “No action taken”—also an authorized disposition under R.C.M. 306(c)—means that the allegation was thoroughly investigated by the relevant service’s MCIO, a report of the investigation was completed and submitted to the commander, and the commander determined against taking any action, whether administrative or judicial. The CRWG’s initial reviews indicate that “no action taken” cases are generally those in which a victim declines to participate or a judge advocate declines to prosecute because of evidentiary considerations.

The CRWG did not have the opportunity to independently verify the documents detailing commander action in the case files, and to define the scope of its case review it will use only the self-reported information provided by the MCIOs. The tables included in the following sections represent the disposition classifications used by the different Services when reporting types of actions.

A. Naval Criminal Investigative Service

NCIS reported a total of 1,156 adult sexual assault investigations closed in fiscal year 2017 for both contact and penetrative offenses involving a person subject to the UCMJ. NCIS also provided the Committee with a spreadsheet on penetrative allegations that detailed the dispositions of 749 reported allegations of sexual assault, including cases with multiple subjects. The CRWG immediately excluded 36 of the cases from its analysis because the subject was retired, a reservist, a member of a different Service, or a civilian. Another 10 cases were excluded because they were opened for informational purposes only. The CRWG reviewed the data associated with the remaining 703 cases involving a penetrative sexual assault for which the military had jurisdiction over the alleged subject.⁷⁰

The disposition closure classifications used by NCIS when reporting no action are “no action taken,” “insufficient evidence,” “unknown,” and “unfounded.” For cases marked “unknown” in NCIS’s internal data system, the CRWG classified the closure by using the entry from DIBRS. The DIBRS classifications are “prosecution declined,” “victim uncooperative,” or “arrest.”⁷¹

70 Duplicate case numbers are included in this number with the understanding that there are some cases with multiple subjects associated with one case number.

71 See DoDM 7730.47-M, *supra* note 64, Vol. 2, Encl. 3, Table 10.

U.S. NAVY – REPORTED DISPOSITIONS FOR FISCAL YEAR 2017 CLOSED PENETRATIVE SEXUAL ASSAULT INVESTIGATIONS

U.S. Navy (Cases Closed FY17)		
Total Records	408	
Action Taken	146	36%
Preferral Action	65	16%
Administrative Actions	32	8%
Civilian Authority	8	2%
Nonjudicial	41	10%
No Action Taken	262	64%
Insufficient Evidence	3	1%
No Action Taken	112	27%
Unfounded	41	10%
Prosecution Declined*	81	20%
Victim Uncooperative*	25	6%
Arrest*	0	0%

*DIBRS classification when NCIS case closure is categorized as "unknown"

U.S. MARINE CORPS – REPORTED DISPOSITIONS FOR FISCAL YEAR 2017 CLOSED PENETRATIVE SEXUAL ASSAULT INVESTIGATIONS

U.S. Marine Corps (Cases Closed FY17)		
Total Records	295	
Action Taken	109	37%
Preferral Action	66	22%
Administrative Actions	19	6%
Civilian Authority	6	2%
Nonjudicial	18	6%
No Action Taken	186	63%
Insufficient Evidence	5	2%
No Action Taken	84	28%
Unfounded	23	8%
Prosecution Declined*	61	21%
Victim Uncooperative*	12	4%
Arrest*	1	0%

*DIBRS classification when NCIS case closure is categorized as "unknown"

B. Air Force Office of Special Investigations

AFOSI reported a total of 745 closed adult sexual assault investigations for both contact and penetrative offenses involving a person subject to the UCMJ in fiscal year 2017. AFOSI also provided a spreadsheet on penetrative allegations that detailed the dispositions for 431 cases.⁷² After examining the spreadsheet, the CRWG excluded 8 cases from review because the subject was a member of a different Service or deceased. The CRWG reviewed the data associated with the remaining 423 cases involving a penetrative adult sexual assault for which the military had jurisdiction over the alleged subject.⁷³

As it had done with the NCIS data, the CRWG sorted the cases according to the disposition provided. Compared to the other Services, AFOSI had more detailed disposition classifications, capturing not only the initial action but also the end result. Cases in which no judicial action was reported often contained clear descriptions of the alternative administrative action. Moreover, cases that began with judicial action but ended with an alternative administrative disposition were easily recognizable. The classifications used by the Air Force when reporting no action were “prosecution declined (evidence/threshold),” “uncooperative victim,” “allegation unfounded,” and “jurisdiction.” Unfounded cases were further categorized as “no merit” or “false.” No case was classified as “unknown.”

U.S. AIR FORCE – REPORTED DISPOSITIONS FOR FISCAL YEAR 2017 CLOSED PENETRATIVE SEXUAL ASSAULT INVESTIGATIONS

U.S. Air Force (Cases Closed FY17)		
Total Records	423	
Action Taken	183	43%
Preferral Action	117	28%
Administrative Actions	51	12%
Civilian Authority	0	0%
Nonjudicial	15	4%
No Action Taken	240	57%
Unfounded	38	9%
Prosecution Declined	114	27%
Victim Uncooperative	80	19%
Jurisdiction	8	2%

72 The CRWG excluded an additional 69 cases included in the spreadsheet that were considered informational only.

73 Duplicate case numbers are included in this number with the understanding that there are multiple subjects associated with one case number.

C. Army Criminal Investigation Command

CID reported a total of 1,771 adult sexual assault investigations closed in fiscal year 2017 for both contact and penetrative offenses involving a person subject to the UCMJ. CID also provided a detailed spreadsheet with penetrative allegations, which had a total of 1,154 entries; some of these entries were blank cells, indicating that a single case involved multiple victims. In order to do an accurate count of cases by subject and disposition, regardless of the number of victims, the CRWG removed 35 blank entries, resulting in a total of 1,119 cases. Within those 1,119 cases, 201 entries were not considered, as they were informational files only. The CRWG also excluded another 4 cases because the subject was deceased or from another Service. The CRWG then reviewed the data associated with the remaining 914 cases involving a penetrative adult sexual assault for which the military had jurisdiction over the alleged subject.⁷⁴

The classifications used by the Army when reporting no action are “unfounded” or “no action taken.” In cases marked “no action taken,” the classification listed in DIBRS was “prosecution declined,” “victim uncooperative,” “unfounded,” “founded/not applicable/other/pend[ing],” and “arrest.”⁷⁵

U.S. ARMY – REPORTED DISPOSITIONS FOR FISCAL YEAR 2017 CLOSED PENETRATIVE SEXUAL ASSAULT INVESTIGATIONS

U.S. Army (Cases Closed FY17)		
Total Records	914	
Action Taken	293	32%
Preferral Action	148	16%
Administrative Actions	93	10%
Civilian Authority	0	0%
Nonjudicial	52	6%
No Action Taken	621	68%
Unfounded	210	23%
Prosecution Declined*	113	12%
Victim Uncooperative*	47	5%
Unfounded*	120	13%
Founded/Not Applicable/Other/Pending*	6	1%
Arrest*	125	14%

*DIBRS classification when CID case closure is categorized as “no action taken”

74 Duplicate case numbers are included in this number with the understanding that there are multiple subjects associated with one case number.

75 See DoDM 7730.47-M, *supra* note 64, Vol. 2, Encl. 3, Table 10.

D. Coast Guard Investigative Service

CGIS reported a total of 71 adult sexual assault investigations closed in fiscal year 2017 for both contact and penetrative offenses involving a person subject to the UCMJ. CGIS also provided a detailed spreadsheet of penetrative allegations, containing a total of 35 entries. Out of these entries, 6 were removed and not considered because they were “record only.”

The classifications used by the Coast Guard when reporting no action cases are “CG command declined action,” “no prosecution,” and “unfounded.” The Coast Guard inputs data not into DIBRS but into the Federal Bureau of Investigation’s National Incident-Based Reporting System (NIBRS).

U.S. COAST GUARD – REPORTED DISPOSITIONS FOR FISCAL YEAR 2017 CLOSED PENETRATIVE SEXUAL ASSAULT INVESTIGATIONS

U.S. Coast Guard (Cases Closed FY17)		
Total Records	29	
Action Taken	21	72%
Preferral Action	12	41%
Administrative Actions	6	21%
Civilian Authority	0	0%
Nonjudicial	3	10%
No Action Taken	8	28%
Unfounded	1	3%
No Prosecution	7	24%

IV. CASE REVIEWS IN 2018

The CRWG believes that existing sources of data on sexual assault cases do not indicate why certain cases progress through the military justice system and others do not. Therefore, drawing on the direction given during the Committee's strategic planning sessions and the CRWG's own analysis of the information gathered through the RFIs, the CRWG determined that the case reviews conducted in 2018 will encompass 2,069 investigative files across three different categories: cases that result in no action taken, cases that result in preferral, and cases that result in administrative action or nonjudicial punishment or are classified as "civilian authority." By comparing the different categories of investigative files, the CRWG plans to explore factors from the time of the initial report through the decision to pursue formal charges that may affect the outcomes of sexual assault reports. When reviewing cases, the CRWG will also make an assessment, based on a detailed analysis of the information in the investigative file, about whether the disposition in each case was reasonable.

The CRWG will begin its review by focusing on the 1,317 investigative files in which no action was taken. The CRWG decided to examine these cases first because they comprise the majority of sexual assault cases reported and investigated in the military. The CRWG plans next to review the investigative files for the 408 cases that were preferred across the Services. The CRWG will then review the remaining 344 investigative files for cases that were not preferred but resulted in administrative action or nonjudicial punishment or were classified by the MCIOs as "civilian authority."

By comparing the investigative files that contain a commander's disposition with the adjudicative classifications provided by RFIs from the MCIOs, the CRWG will also be able to assess whether the disposition classifications used to generate data for DoD are accurate and consistent.⁷⁶ Through a better understanding of those data, the CRWG hopes to better inform public policy decisions, as was requested by the DoD General Counsel at the DAC-IPAD's inaugural meeting.⁷⁷

A. Methodology

The CRWG developed a standardized case review template based on the collective knowledge and experience of the CRWG members, review of scholarly articles, and consultation with experts in the field.⁷⁸ All case reviewers will use the template when examining the 2,069 investigative files.

The template captures demographic information about the accused and victim, including—but not limited to—race and ethnicity, age, and branch of service. It also captures information about the relationship between the victim and accused and the location where the alleged sexual assault occurred, as well as military-specific factors such as whether there was a restricted report or a mandated third-party report.

76 See *Transcript of DAC-IPAD Public Meeting* 311–15 (Apr. 28, 2017) (testimony of Dr. Nathaniel Galbreath, Deputy Director, DoD Sexual Assault Prevention and Response Office) (discussing disposition classifications used by DoD SAPRO).

77 See *Transcript of DAC-IPAD Public Meeting* 16 (Jan. 19, 2017) (testimony of the Honorable Jennifer M. O'Connor, General Counsel, Department of Defense).

78 See Cassia Spohn & Katharine Tellis, *Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office* (Feb. 2012); Æquitas, Justice Management Institute, and Urban Institute, *Model Response to Sexual Violence for Prosecutors: An Invitation to Lead* (2017); Women's Law Project, *Recommendations for Annual Advocate Sex Crimes External Review Process Based on Philadelphia Practices* (May 2017).

Drawing on their collective experience, the CRWG members also identified case complexity and evidentiary factors that may affect case outcomes and added these factors to the template. For example, among the factors that may increase case complexity are a suspect's or victim's memory loss, incapacitation, or inconsistent statements; a victim's prior sexual behavior with a suspect; a lack of physical or corroborative evidence; and a victim's decision not to cooperate.

In addition, the template captures information about the commander's stated disposition action and the reasons given for such action (if any), along with the DIBRS case categorization and any legal determination recorded in the investigative file by a judge advocate.

To ensure the validity of the information collected, the DAC-IPAD staff will review all 2,069 investigative files. Members of the CRWG will review a statistically significant random sample of cases, determined to be 182 cases.⁷⁹ CRWG members will conduct their reviews at the DAC-IPAD offices.

**NUMBER OF CASES SELECTED FOR REVIEW
BY CRWG MEMBERS THROUGH RANDOM SELECTION**

By Service	Total Sample size +/-5%	Army	Navy	Marines Corps	Air Force	Coast Guard ⁸⁰
Preferrals	36	13	6	6	10	1
Administrative Actions	18	7	3	2	5	1
Nonjudicial Punishment	12	4	3	2	2	1
Civilian Authority	2	0	1	1	0	0
No Action Taken	114	53	23	16	21	1
Totals	182	77	36	27	38	4

When review of an investigative file raises questions about whether the selected disposition was reasonable, a CRWG member and two additional members of the DAC-IPAD staff will review the same file. If the staff members and CRWG members concur, judging from the investigative file itself, that a specific investigation should have resulted in charges being preferred against a suspect, they may request additional information about the investigation.

⁷⁹ The DoD Office of Inspector General Quantitative Methods Division provided guidance to the CRWG on how to determine a random sample of cases that is large enough to ensure that the cases in the sample accurately represent the cases in the entire population. The sample size was selected from the population using a 95% confidence level and a 5% precision level and assumed a 15% error rate.

⁸⁰ Following the method described in the previous note resulted in a sample size within the Coast Guard of 1, which is not recommended. Its sample size will therefore be increased to 2.

B. 2018 Objectives

Through its review of investigative files, the CRWG hopes to achieve the following goals:

- Capture data within investigative case files that may predict disposition outcomes;
- Review and assess Service disposition categorizations to determine the accuracy and consistency of DoD reporting;
- Capture demographic information to be used in future Committee reporting;
- Review and assess investigations to identify common trends; and
- Make an assessment, based on a detailed analysis of the information in the investigative file, of whether the disposition in each case was reasonable.

In order to achieve the CRWG's stated objectives, the DAC-IPAD staff will input the demographic information, case complexity factors, and disposition determinations recorded on the template into a searchable database. A criminologist will then review and analyze the data in order to identify significant predictors of the various outcomes before preferral. The CRWG plans to report its assessment of investigative files in the DAC-IPAD's March 2019 report.

V. CASE REVIEWS IN 2019

After completing its review of non-preferred cases, the CRWG is interested in exploring trends in case attrition after preferral in order to identify when and why such attrition may occur. Among the factors relevant to this review are whether the case went to an Article 32 preliminary hearing, whether the hearing officer recommended referral to a general court-martial or some other type of judicial or administrative disposition, whether a victim decided not to participate at some point after preferral, and whether charges were dismissed at some point after preferral. The CRWG will also begin reviewing records of trial for cases in which charges for penetrative offenses were referred to trial, but a conviction was not obtained.

CHAPTER 2.

ACTIVITIES OF THE DATA WORKING GROUP

I. FORMATION OF THE DATA WORKING GROUP

Before the DAC-IPAD was established, Congress tasked the JPP with reviewing and evaluating the judicial response to sexual assault cases in the military. To conduct its analysis, the JPP sought information from court records, case documents, and other publicly available resources. Members of the JPP staff reviewed court-martial documents from cases resolved in fiscal years 2012 through 2015. Information from the cases was entered into a JPP-developed database, and the JPP coordinated with a criminologist to analyze the data and provide descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes.

In its Final Report, the JPP made two recommendations to the DAC-IPAD regarding continuation of data collection and analysis, summarized below:

JPP Recommendation 54: The DAC-IPAD should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, including certain patterns identified by the JPP in its FY15 data analysis such as less punitive outcomes for military versus civilian victims and variances in acquittal rates among the Services.

JPP Recommendation 60: The DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.⁸¹

The DAC-IPAD agreed with these recommendations and decided to form the Data Working Group (DWG) to continue the collection and analysis of data on sexual assault courts-martial. The DWG is composed of three Committee members: Dr. Cassia Spohn, who serves as the working group's chair; Chief Master Sergeant of the Air Force (Ret.) Rodney McKinley; and Mr. James Markey.

II. METHODOLOGY OF THE DATA WORKING GROUP

At the April 28, 2017, DAC-IPAD meeting, the Committee received testimony on the project started by the JPP to analyze adjudication data on military sexual assault cases. Ms. Meghan Peters, an attorney-advisor on the JPP and DAC-IPAD staff, provided an overview of the data collection process.⁸² Dr. Spohn, a current member of the Committee who was previously retained by the JPP to perform data analysis, discussed the process she employed and the fiscal year 2015 results.⁸³ Subsequently, the DWG held two preparatory sessions during which the members received a demonstration of the database created in the data analysis project and discussed the process for adding content to it.

81 See JPP FINAL REPORT, *supra* note 38, at 31–32.

82 See *Transcript of DAC-IPAD Meeting 223* (Apr. 28, 2017) (testimony of Ms. Meghan Peters, DAC-IPAD Attorney-Advisor).

83 See *Transcript of DAC-IPAD Meeting 227* (Apr. 28, 2017) (testimony of Dr. Cassia Spohn, Committee member).

In June 2017, the DAC-IPAD staff, at the direction of Chair Bashford, requested that the Military Services provide documents for cases involving a preferred charge of sexual assault that were completed in fiscal year 2016.⁸⁴ Staff screened the case records provided by the Services to identify duplicate cases, cases with incomplete documentation, cases of sexual assault that did not involve an adult victim, cases that did not involve a sex offense, and cases whose reported year of case completion was not correct. The resulting 738 cases closed in fiscal year 2016 were then added to the electronic database.

As of January 12, 2018, the database contains 3,145 cases encompassing fiscal years 2012 through 2016,⁸⁵ all of which involve at least one charge of a sexual offense deemed either penetrative (i.e., rape, aggravated sexual assault, sexual assault, forcible sodomy and attempts to commit these offenses) or contact (i.e., aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit these offenses). The sexual assault offenses in the database span three versions of Article 120, UCMJ, and other statutes.⁸⁶

III. MILITARY JUSTICE INFORMATION FOR SEXUAL ASSAULT CASES COLLECTED BY THE DEPARTMENT OF DEFENSE

A. Adjudication Information Collected by the DoD Sexual Assault Prevention and Response Office (SAPRO)

To understand the breadth of the JPP’s and DAC-IPAD’s data collection and analysis efforts, it is important to first understand the military justice data maintained by the Department of Defense. Section 563 of the NDAA for Fiscal Year 2009 required the Secretary of Defense to “implement a centralized, case-level database for the collection . . . and maintenance of information regarding sexual assaults involving a member of the Armed Forces, including information, if available, about the nature of the assault, the victim, the offender, and the

84 A “completed” case is any case tried to verdict, dismissed without further action, or dismissed and then resolved by nonjudicial punishment or administrative proceedings.

85 DoD does not collect information on the legal outcome of cases in which the victim is the spouse or intimate partner, and therefore the statistical data for fiscal years 2012 through 2014 do not include the legal outcomes of those classes of cases.

86

Pre–Oct. 2007	Article 120(1) – Rape
Pre–Oct. 2007	Article 134 – Assault – Indecent
Oct. 1, 2007–June 27, 2012	Article 120(a) – Rape Article 120(c) – Aggravated Sexual Assault Article 120(e) – Aggravated Sexual Contact Article 120(h) – Abusive Sexual Contact Article 120(m) – Wrongful Sexual Contact
June 28, 2012–Present	Article 120(a) – Rape Article 120(b) – Sexual Assault Article 120(c) – Aggravated Sexual Contact Article 120(d) – Wrongful Sexual Contact
Article 125(1)	Forcible Sodomy
Article 80	Attempts to commit the above offenses

outcome of any legal proceedings in connection with the assault.”⁸⁷ The Department of Defense was given a deadline of January 14, 2010, to implement the database, which was to “be used to develop and implement congressional reports.”⁸⁸

To meet this requirement, DoD developed the Defense Sexual Assault Incident Database (DSAID).⁸⁹ DSAID contains data for each unrestricted and restricted report of sexual assault covered by DoD’s sexual assault prevention and response policy; it is administered by the DoD Sexual Assault Prevention and Response Office (SAPRO), which is responsible for establishing policy and evaluating DoD’s efforts to address sexual assault in the military. DoD SAPRO officials coordinate with sexual assault response coordinators and Sexual Assault Prevention and Response (SAPR) Program Managers from the Military Services to provide information for DSAID. The database has three primary functions: (1) to serve as a case management system, maintaining data on sexual assault cases and tracking support for victims in each case; (2) to facilitate the administration and management of SAPR programs; and (3) to assist in developing congressional reports, responding to ad hoc queries, and analyzing trends. Information about a sexual assault case’s legal disposition and outcome, required for congressional reporting, is entered into DSAID by legal officers from the Military Services.⁹⁰

DoD began using DSAID to produce detailed statistics for its annual reports to Congress in 2014. Before that time, DoD had relied on the Services’ separate case management systems to provide information on sexual assault cases. In testimony to the JPP, DoD SAPRO’s Deputy Director explained how DSAID improved the consistency and reliability of the information that DoD provides Congress: “In the years 2013 and before . . . we didn’t have any way to kind of dig into the data, and clean it, and make sure that it was being reported in a standardized way across all four services.”⁹¹

The JPP found SAPRO’s information on case adjudication to be insufficient, however, because it cannot be used to assess thoroughly how sexual assault crimes are resolved through the military justice system.⁹² Although it has increased the amount of case information collected, DSAID omits several important case characteristics. It does not include details on all sexual assault offenses alleged and charged, the outcome of each charge, the pleas of the accused, the entity trying the accused (i.e., whether a military judge or a jury), the specific findings and sentence adjudged, and the action taken on the case by the convening authority in accordance with plea agreement terms or clemency requests.

87 National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 [hereinafter FY09 NDAA], § 563, 122 Stat. 4356 (2009).

88 *Id.*

89 See *Transcript of JPP Public Meeting 106* (Oct. 9, 2015) (testimony of Ms. Darlene Sullivan, DSAID Program Manager, DoD SAPRO) (explaining that Service SAPR officials began using DSAID in fiscal year 2012). All transcripts of Judicial Proceedings Panel public meetings are available on the JPP’s website at <http://jpp.whs.mil/>.

90 *Transcript of JPP Public Meeting 108* (Oct. 9, 2015) (testimony of Ms. Darlene Sullivan, DSAID Program Manager, DoD SAPRO).

91 *Transcript of JPP Public Meeting 223–24* (Apr. 7, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, DoD Sexual Assault Prevention and Response Office).

92 See APRIL 2016 JPP REPORT ON STATISTICAL DATA, *supra* note 37, at 12.

B. Cases Not Included in DoD SAPRO's Data

Intimate partner sexual assault cases fall outside DoD SAPRO's data collection policy and therefore are not included in DSAID or reported by DoD SAPRO in its annual or other reports.⁹³ Such cases are the responsibility of the DoD Family Advocacy Program (FAP).⁹⁴ FAP provides social work services to military families and informs law enforcement of all unrestricted sexual assault allegations it receives against Service members.⁹⁵ However, FAP does not collect case adjudication information for the cases covered by its policies.

Because DSAID and DoD SAPRO reports exclude spouse and intimate partner sexual assaults that are the responsibility of FAP, DoD's annual reports do not fully account for all sexual assault cases in the military. The JPP noted in its April 2016 Report on Statistical Data that DSAID should include sexual assault case disposition and adjudication information for all adult victim sexual assault cases, regardless of whether responsibility for monitoring the case and providing victim services is claimed by the DoD SAPRO program or by FAP. In April 2016 the JPP issued its Recommendation 38: "The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports."⁹⁶

On April 5, 2017, DoD responded to this recommendation by reaffirming its policy not to include cases covered by FAP in DoD SAPRO's reports:

Given that FAP's mission is clinical in nature with a mission towards rehabilitation, FAP is not required to collect data on legal disposition of its case and does not monitor such information. Responsibility for collecting information on alleged offender accountability and associated outcomes (including legal disposition, if appropriate) remains with the Office of the Judge Advocate General within each military Department.⁹⁷

DoD further explained that Section 544 of the NDAA for Fiscal Year 2017⁹⁸ requires that the DoD SAPRO and FAP annual reports be released simultaneously to Congress; however, DoD also noted that neither report would include information on the legal or disciplinary outcome of sexual assault cases covered by FAP policy.⁹⁹ Finally, DoD indicated it has been considering ways to include such information in future reports; it declined to elaborate further on how or when this might happen, adding that "the means for collecting and reporting legal disposition information pertaining to these allegations in the future remains pre-decisional."¹⁰⁰

93 This omission was noted by the Response Systems Panel in its report and was the subject of RSP Recommendation 66. RSP REPORT, *supra* note 33, at 33.

94 Dep't of Def. Instr. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES ¶2.b (Mar. 28, 2013) (Incorporating Change 3, Effective May 24, 2017) [hereinafter DoDI 6495.02].

95 *Transcript of JPP Public Meeting* 117 (Oct. 9, 2015) (testimony of Ms. Katherine Robertson, Associate Director/Family Advocacy Program Manager, Office of Military Family Readiness Policy, U.S. Department of Defense).

96 APRIL 2016 JPP REPORT ON STATISTICAL DATA, *supra* note 37, at 6.

97 DoD Response to JPP Request for Information 164B (Apr. 5, 2017).

98 National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 [hereinafter FY17 NDAA], § 544, 130 Stat. 2000 (2016).

99 DoD Response to JPP Request for Information 164B (Apr. 5, 2017).

100 *Id.* See also *Transcript of JPP Public Meeting* 211–17 (Apr. 7, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, DoD Sexual Assault Prevention and Response Office) (acknowledging that this issue of combining SAPRO and FAP case data in one report has been under review since the RSP issued its report in June 2014). See *supra* note 33.

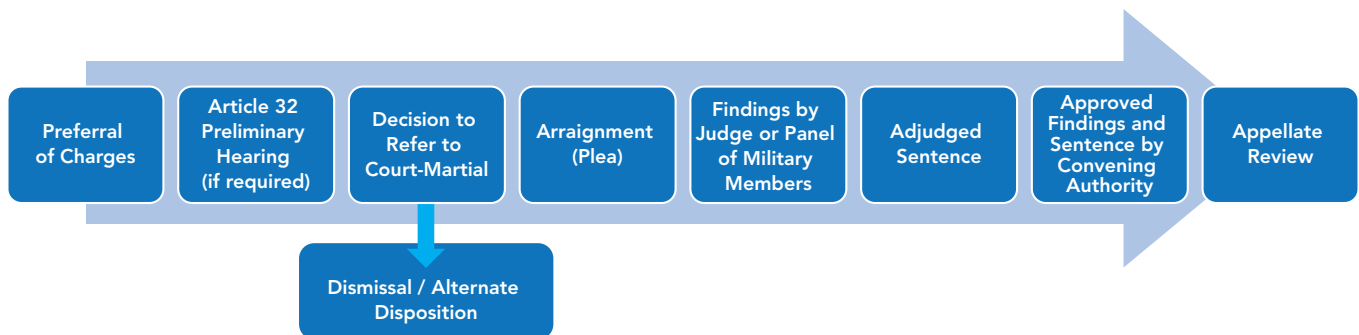
IV. THE COURT-MARTIAL PROCESS

To evaluate trends in the military's judicial response to sexual assault crimes, one must have a basic understanding of the military justice system and its similarities to and differences from civilian court systems. The military justice system is designed to “promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.”¹⁰¹ All Service members (including National Guard in federal service and Reserve Component members on inactive duty training) are subject to the UCMJ, which sets forth both substantive military criminal law and procedures for handling criminal offenses.

Historically, the military commander has been at the center of the military justice system. In order to achieve good order and discipline, commanders have a variety of tools of military justice at their disposal, and they respond to misconduct with the advice and counsel of judge advocates. A military convening authority may determine that a court-martial is not the appropriate disposition in a case and has other ways to address the misconduct, such as nonjudicial punishment, administrative discharge, or other adverse administrative action.¹⁰²

Determinations regarding the appropriate disposition for an offense under the UCMJ may change in response to a given case's circumstances and evidence. A case that is initially considered appropriate for low-level disciplinary action may later be elevated to court-martial; conversely, a criminal charge preferred with a view toward court-martial may instead be resolved by alternate means.

Once an investigation of a sexual assault report is brought to a commander for review, he or she determines whether and how the case will be resolved through judicial proceedings in accordance with the UCMJ. The following chart illustrates the process by which any criminal offense (not just a sexual offense) is resolved by court-martial.



By DoD policy, all unrestricted reports of adult sexual assault offenses must be taken to a special court-martial convening authority (SPCMCA) for the initial decision on disposition.¹⁰³ Should the commander decide, after consulting with a judge advocate, that a court-martial is warranted, the commander initiates the court-martial process with the preferral, or swearing, of charges. Once charges are preferred, the initial disposition authority

¹⁰¹ MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.) [hereinafter MCM], Preamble ¶ 3.

¹⁰² *Id.*, Rule for Courts-Martial [hereinafter R.C.M.] 306(c). Section 1705 of the FY14 NDAA (*supra* note 67) limits court-martial jurisdiction over the offenses of rape, sexual assault, forcible sodomy, and attempts to commit these offenses to trial by general court-martial.

¹⁰³ See Memorandum on Withholding Initial Disposition Authority, *supra* note 29. The SPCMCA is a senior commander, typically in the grade of O-6, and generally has at least 20 years of military service.

may refer the charges to a form of court-martial that he or she is authorized under the UCMJ to convene, forward the charges to a higher convening authority, dismiss the charges, or choose an alternate disposition for the case.

Commanders designated as convening authorities may convene courts-martial, provided that they have appropriate authority under the UCMJ to do so.¹⁰⁴ The UCMJ sets forth three types of courts-martial: summary court-martial, special court-martial, and general court-martial.¹⁰⁵

Summary courts-martial are a unique hybrid between nonjudicial punishment and a criminal trial, and they typically adjudicate minor misconduct or offenses that are less serious than those referred to special or general courts-martial. Only enlisted members may be tried at a summary court-martial. Sentences are limited to no more than one month of confinement and do not allow for separation from service.¹⁰⁶ In addition, a finding of guilt at a summary court-martial does not result in a federal conviction. A member may object to a trial by summary court-martial, in which case the member may be tried by special or general court-martial.¹⁰⁷

Special and general courts-martial are more like civilian criminal trials in appearance and function. A guilty verdict at a special or general court-martial results in a federal conviction. Defendants may elect to be tried by a military judge alone or by a panel of military members (jury). Unlike in civilian criminal trials, which hold a separate sentencing hearing weeks or months after a guilty verdict, once a Service member is found guilty at a court-martial the court immediately moves into the sentencing proceedings. Another difference in military courts-martial is the wide range of available punishments if a member is found guilty. In addition to or as an alternative to confinement in prison, a Service member may receive a punitive discharge, forfeiture of pay, a fine, a reduction in pay grade, hard labor without confinement, restriction to specified limits, or a reprimand.¹⁰⁸

A special court-martial is functionally equivalent to a civilian misdemeanor court because confinement is limited to no more than one year, even if the maximum punishment authorized for the crime is greater than one year.¹⁰⁹ In addition, because a dismissal is not an authorized punishment, officers are generally not tried by a special court-martial.¹¹⁰

A general court-martial is analogous to a civilian felony court, since the only limitations on punishment are the maximum sentences authorized for the offenses of which the member is convicted.¹¹¹ Congress, in the FY14 NDAA, mandated that penetrative sexual assault offenses (rape, sexual assault, forcible sodomy, or attempts to commit these acts) be referred to trial by general court-martial.¹¹²

104 MCM, *supra* note 101, R.C.M. 504.

105 10 U.S.C. § 816 (UCMJ, art. 16).

106 10 U.S.C. § 820 (UCMJ, art. 20). The limits of a summary court-martial sentence are confinement for one month, hard labor without confinement for 45 days, restriction to specified limits for two months, and forfeiture of two-thirds of one month's pay.

107 *Id.*

108 MCM, *supra* note 101, R.C.M. 1003(b).

109 10 U.S.C. § 819 (UCMJ, art. 19). The limits of a special court-martial are a bad conduct discharge, confinement for one year, hard labor without confinement for three months, and forfeiture of pay for one year.

110 *Id.*

111 10 U.S.C. § 818 (UCMJ, art. 18).

112 FY14 NDAA, *supra* note 67, § 1705. The NDAA provision applies to offenses committed on or after June 24, 2014. A commander may still dispose

If referral to a general court-martial is contemplated, the commander must first order that a preliminary hearing be conducted, pursuant to Article 32 of the UCMJ. Traditionally, the Article 32 hearing was a “thorough and impartial investigation” of the case in which an investigating officer, who was not necessarily a lawyer, investigated “the truth and form of the charges.”¹¹³ In sexual assault cases the victim, if he or she was a military member, was typically required to appear and give testimony and was subject to cross-examination by the defense counsel.¹¹⁴

The FY14 NDAA significantly altered the Article 32 process, making it a preliminary hearing rather than a pretrial investigation, and removed the requirement that a victim appear and testify.¹¹⁵ Under the new process, the Article 32 preliminary hearings are limited to determining whether there is probable cause to believe that an offense has been committed and that the accused committed the offense, determining whether the convening authority has court-martial jurisdiction over the offense and the accused, considering the form of the charges, and recommending the disposition that should be made of the case.¹¹⁶ At the completion of the Article 32 hearing, the hearing officer, who is a judge advocate, prepares a report of the proceedings and forwards the report, along with his or her disposition recommendation, through command channels to the general court-martial convening authority (GCMCA).

In determining whether to refer charges to a general court-martial, the GCMCA considers the Article 32 report containing the preliminary hearing officer’s recommendations and the written pretrial advice of the GCMCA’s staff judge advocate.¹¹⁷

When a court-martial convening authority refers a case to trial, a military judge arraigns the accused on the charges and presides over the court-martial proceedings.¹¹⁸ The trial process that follows largely resembles that of civilian criminal courts and uses many of the same rules of procedure and evidence. However, there are meaningful differences between military and civilian criminal proceedings, including the military’s procedures for plea agreements and sentencing and the convening authority’s role in approving the results of a court-martial.

In civilian courts, a plea agreement is made between the prosecutor and the defendant: the defendant pleads guilty to some or all of the charges in exchange for a lower sentence recommendation or some other concession, such as a reduction in the number or severity of the charges, presented by the prosecutor to the judge.¹¹⁹ The judge is not bound by this recommendation and can choose to sentence the defendant to a longer term of

of an offense by alternate means or dismiss charges, but if a court-martial is warranted the only type authorized for these offenses is a general court-martial.

113 10 U.S.C. § 832 (UCMJ, art. 32); MCM, *supra* note 101, R.C.M. 405(a) and (e).

114 MCM, *supra* note 101, R.C.M. 405(g)(2)(A) and (h)(1)(A).

115 FY14 NDAA, *supra* note 67, § 1702(a). Section 531(g) of the FY15 NDAA (*supra* note 4) makes this change effective for all preliminary hearings conducted on or after December 26, 2014.

116 FY14 NDAA, *supra* note 67, § 1702(a).

117 *Id.*; 10 U.S.C. §§ 833, 834 (UCMJ, art. 33 and art. 34).

118 10 U.S.C. § 936 (UCMJ, art. 36) (stating that rules prescribed by the President “shall, so far as he considers practicable, apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.”). *See also* MCM, *supra* note 101, R.C.M. 904; Military Rule of Evidence (M.R.E.) 1102.

119 Fed. R. Crim. P. 11(c) and (d).

confinement, though in such circumstances the judge may be required to release the defendant from the plea agreement.¹²⁰

In the military, a plea agreement is between the defendant and the convening authority, and its terms, including any specific limits on confinement, are binding on the convening authority.¹²¹ Unlike civilian court judges, a military judge is not made aware of the sentence limitations agreed to by the defendant and convening authority before deciding on a sentence.¹²² The defendant in a military court ultimately receives the benefit of the lower of the two sentences (the one determined at the court-martial and the other contained in the plea agreement).¹²³

Another key difference between civilian and military courts is that the conviction and sentence announced in civilian court by the judge or jury are final, pending appeal. In the military, the findings of guilt and the sentence announced by the court-martial panel or judge are not final and must be forwarded to the convening authority for approval. Historically, convening authorities had broad powers under Article 60 of the UCMJ to set aside or modify findings of guilt or provide clemency with regard to the sentence.¹²⁴ However, in the FY14 NDAA, Congress significantly restricted the post-conviction authority of convening authorities concerning serious sexual assault offenses, prohibiting them from setting aside or commuting findings of guilt.¹²⁵ In addition, the NDAA significantly curtailed the ability of convening authorities to provide relief from the adjudged sentence.¹²⁶

V. MILITARY JUSTICE INFORMATION FOR SEXUAL ASSAULT CASES COLLECTED BY THE DAC-IPAD

It should be noted that the DAC-IPAD relies on the Services to report all cases meeting the specified criteria. The DAC-IPAD therefore cannot assert that it has the complete universe of cases throughout the Armed Forces in which a sexual assault charge was filed. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis. In the following tables and charts, percentages may not total 100, owing to rounding errors or missing data. Also, cadets/midshipmen and warrant officers are included with “officers.”

¹²⁰ *Id.*

¹²¹ MCM, *supra* note 101, R.C.M. 705(a) and (b). *See also* R.C.M. 705(d)(4) (“*Withdrawal. (A) By accused.* The accused may withdraw from a pretrial agreement at any time; however, the accused may withdraw a plea of guilty or a confessional stipulation entered pursuant to a pretrial agreement only as provided in R.C.M. 910(h) or 811(d), respectively.” *See id.*, R.C.M. 705(d)(4)(B): “*By convening authority.* The convening authority may withdraw from a pretrial agreement at any time before the accused begins performance of promises contained in the agreement, upon the failure by the accused to fulfill any material promise or condition in the agreement, when inquiry by the military judge discloses a disagreement as to a material term in the agreement, or if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review.”).

¹²² MCM, *supra* note 101, R.C.M. 910(f)(3).

¹²³ MCM, *supra* note 101, R.C.M. 705(b)(2).

¹²⁴ *See* 10 U.S.C. § 960 (UCMJ, art. 60).

¹²⁵ FY14 NDAA, *supra* note 67, § 1702(b).

¹²⁶ *Id.* The convening authority may not disapprove, commute, or suspend an adjudged sentence that is more than six months of confinement or that includes a punitive discharge, unless (1) upon recommendation from the trial counsel, in recognition of “substantial assistance” by the accused in the investigation or prosecution of another person, including for offenses with mandatory minimum sentences; or (2) in order to honor a pretrial agreement. However, the convening authority may not commute a mandatory minimum sentence except to reduce a dishonorable discharge to a bad conduct discharge.

A. Court-Martial Case Characteristics

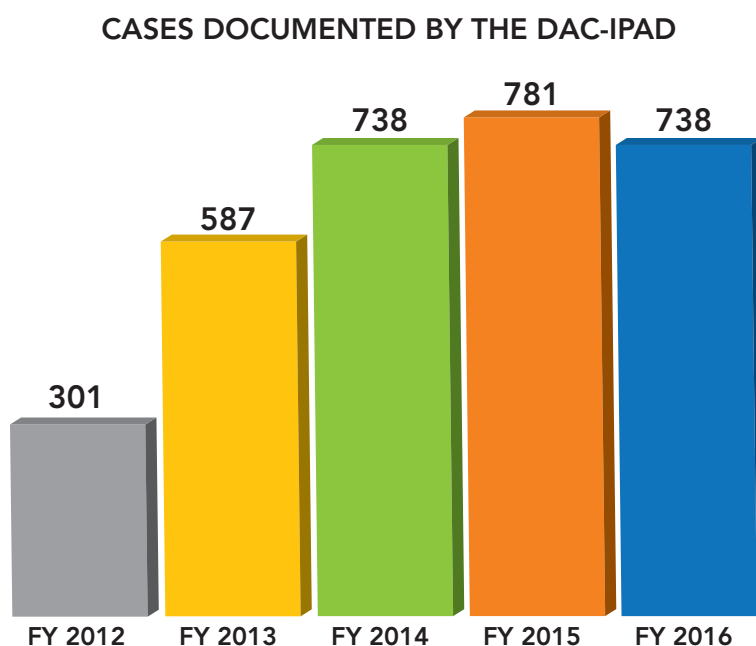
The DAC-IPAD received 738 court-martial records from the Services that involved the preferral of an adult-victim sexual assault offense and were completed in fiscal year 2016. Among the Services, the Army generated the most cases. Courts-martial records indicated that the accused was usually male and the victims were most often female. In addition, though the vast majority of courts-martial involved one military victim, there were several that involved multiple victims. In 76% of cases, the most serious charge that was preferred was a penetrative offense. Almost all cases involved an offense charged under the most current version of Article 120, UCMJ, the military's sexual assault statute, which covers offenses committed on or after June 28, 2012.

The DAC-IPAD notes that a number of characteristics are similar across the cases from fiscal year 2012 through fiscal year 2016:

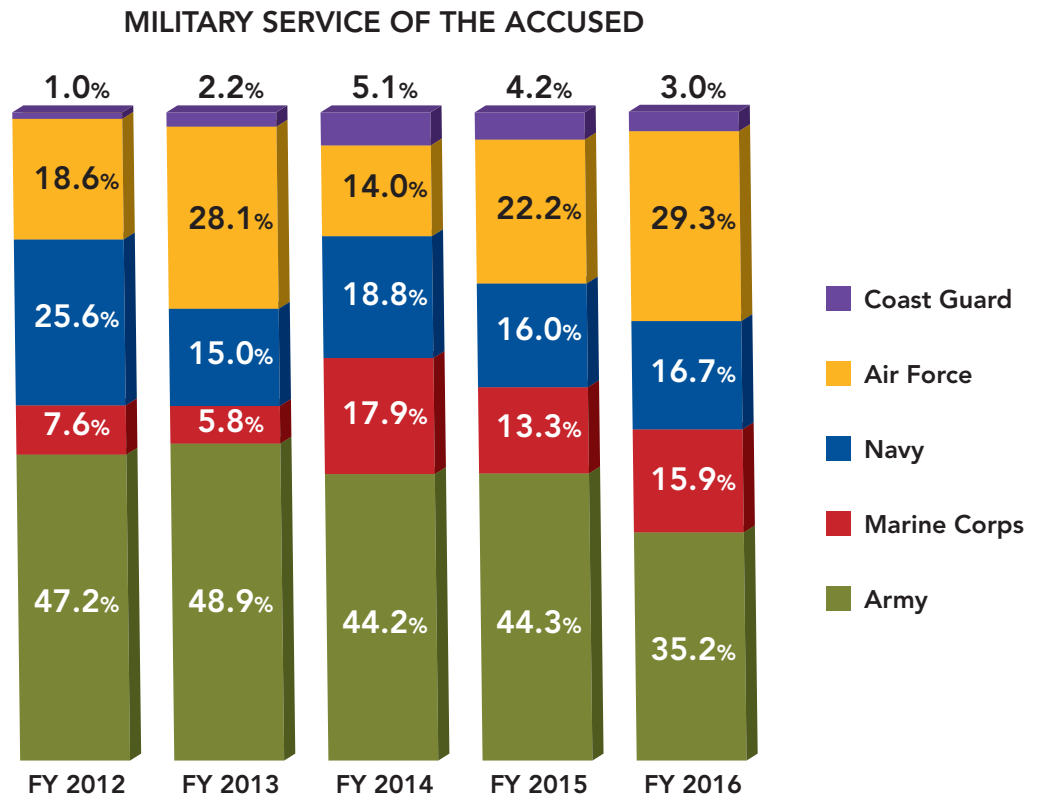
- The characteristics of the accused and the victim,
- The proportion of cases involving a penetrative offense,
- The proportion of cases tried by court-martial, and
- The proportion of penetrative offenses referred to general courts-martial.

1. Overview of Total Cases Received

Of the total number of cases in the DAC-IPAD database, 301 (10%) are from fiscal year 2012, 587 (19%) are from fiscal year 2013, 738 (23%) are from fiscal year 2014, 781 (25%) are from fiscal year 2015, and 738 (23%) are from fiscal year 2016.



Of the 738 cases received by the DAC-IPAD for fiscal year 2016, the Army generated the most cases (35%), followed by the Air Force (29%), Navy (17%), Marine Corps (16%), and Coast Guard (3%).



To provide additional context for the number of cases included in the DAC-IPAD database from each Military Service, the tables below show the active duty population in each in fiscal years 2012 through 2016, and the proportion that each Military Service constitutes of the overall active duty population.

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2012)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	546,057	38.2%	142	47.2%
Marine Corps	198,820	13.9%	23	7.6%
Navy	314,339	22.0%	77	25.6%
Air Force	328,812	23.0%	56	18.6%
Coast Guard	41,776	2.9%	3	1.0%
Total	1,429,804	100.0%	301	100.0%

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2013)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	528,070	37.4%	287	48.9%
Marine Corps	195,848	13.9%	34	5.8%
Navy	319,838	22.7%	88	15.0%
Air Force	326,573	23.1%	165	28.1%
Coast Guard	40,356	2.9%	13	2.2%
Total	1,410,685	100.0%	587	100.0%

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2014)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	504,330	36.9%	326	44.2%
Marine Corps	187,891	13.8%	132	17.9%
Navy	321,599	23.5%	139	18.8%
Air Force	312,453	22.9%	103	14.0%
Coast Guard	39,442	2.9%	38	5.1%
Total	1,365,715	100.0%	738	100.0%

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2015)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	487,366	36.4%	346	44.3%
Marine Corps	183,417	13.7%	104	13.3%
Navy	323,334	24.1%	125	16.0%
Air Force	307,326	22.9%	173	22.2%
Coast Guard	39,071	2.9%	33	4.2%
Total	1,340,514	100.0%	781	100.0%

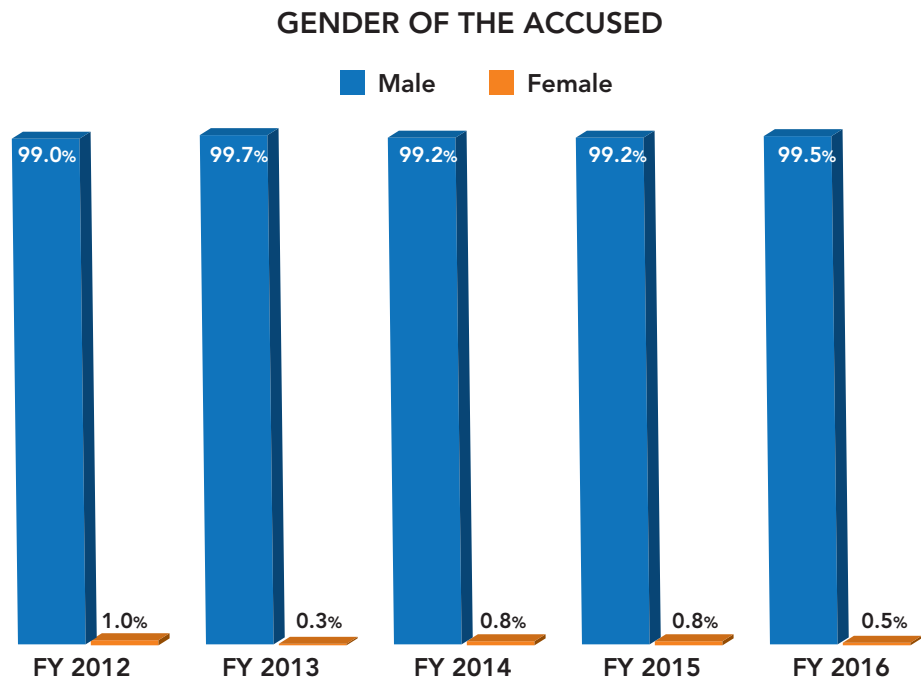
While the Army's respective share of cases in the database decreased from the fiscal year 2015 level (44.3%), as a proportion of the entire active duty population, the percentage of cases (35%) closely aligns with its percentage of the population (35.5%) in fiscal year 2016.

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2016)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	471,271	35.5%	260	35.2%
Marine Corps	183,501	13.8%	117	15.9%
Navy	320,101	24.1%	123	16.7%
Air Force	313,723	23.6%	216	29.3%
Coast Guard	39,487	3.0%	22	3.0%
Total	1,328,083	100.0%	738	100.0%

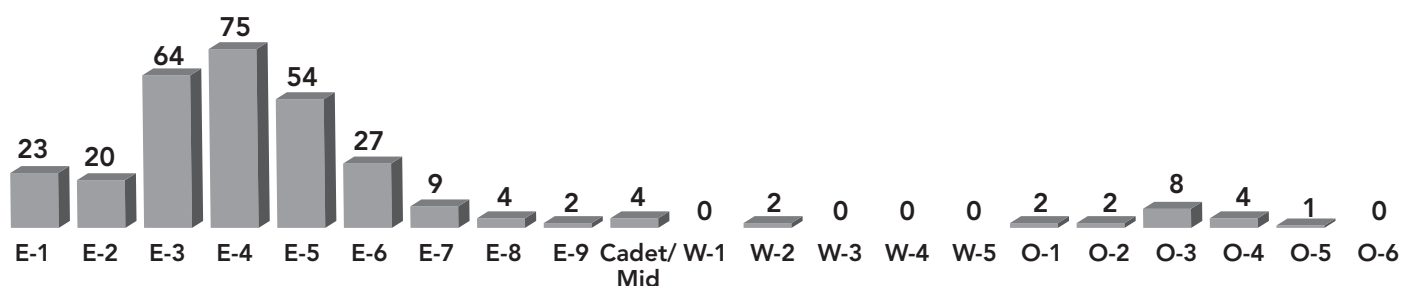
2. Accused Characteristics

For each fiscal year in the database, the accused in nearly all cases is male (99%). A female accused occurs in only 21 out of a total of 3,145 cases in the database.

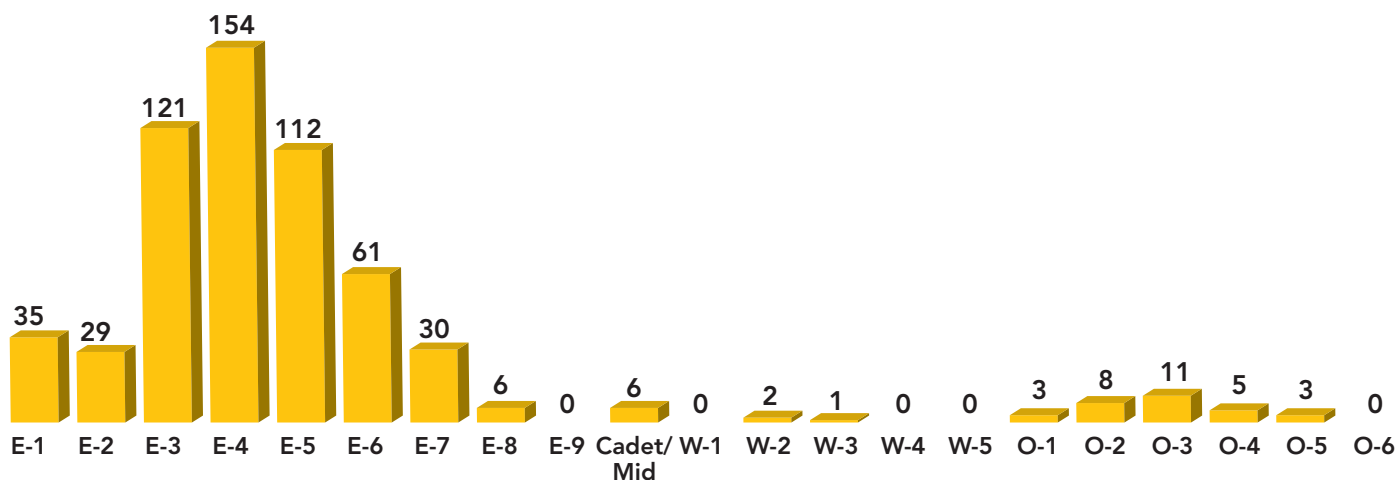


In addition, the accused is most often enlisted. In fiscal year 2016, enlisted were roughly 80% of the total active duty population but were a higher percentage of the cases (94%) in the database. Although officers were nearly 20% of the active duty population, they made up a smaller percentage of the cases (6%). In fiscal year 2016, personnel in the pay grades E3 to E5 were approximately 51% of the active duty population, but accounted for most (68%) of the enlisted accused.

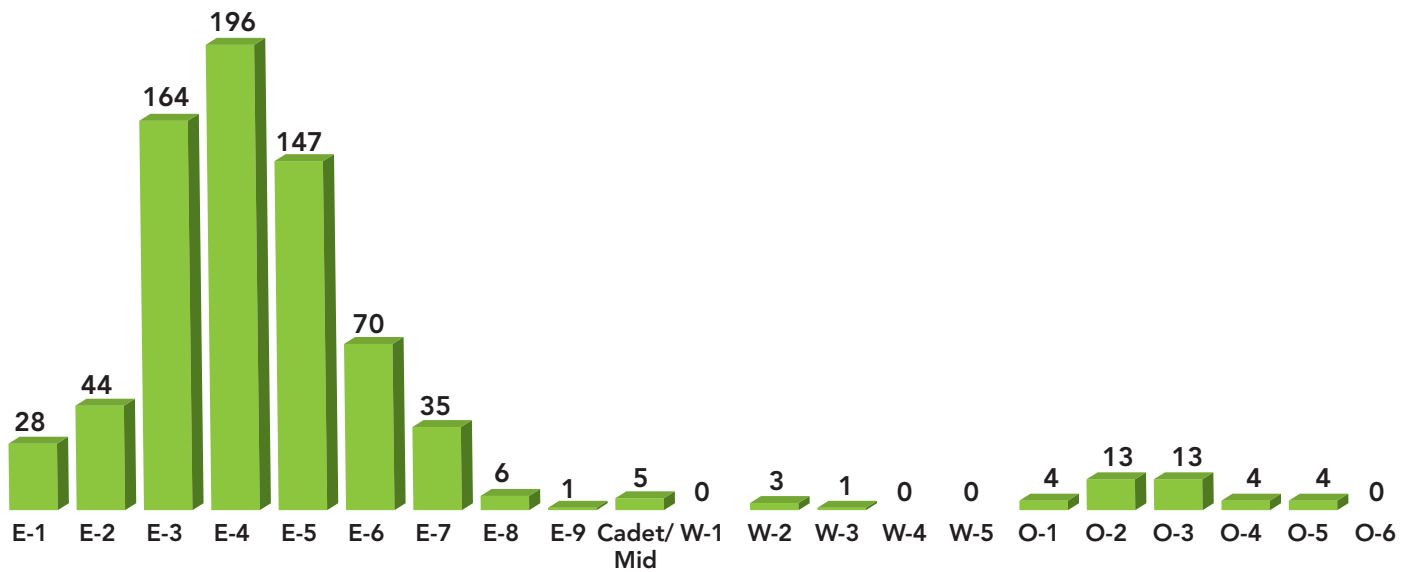
RANK OF THE ACCUSED (FY 2012)



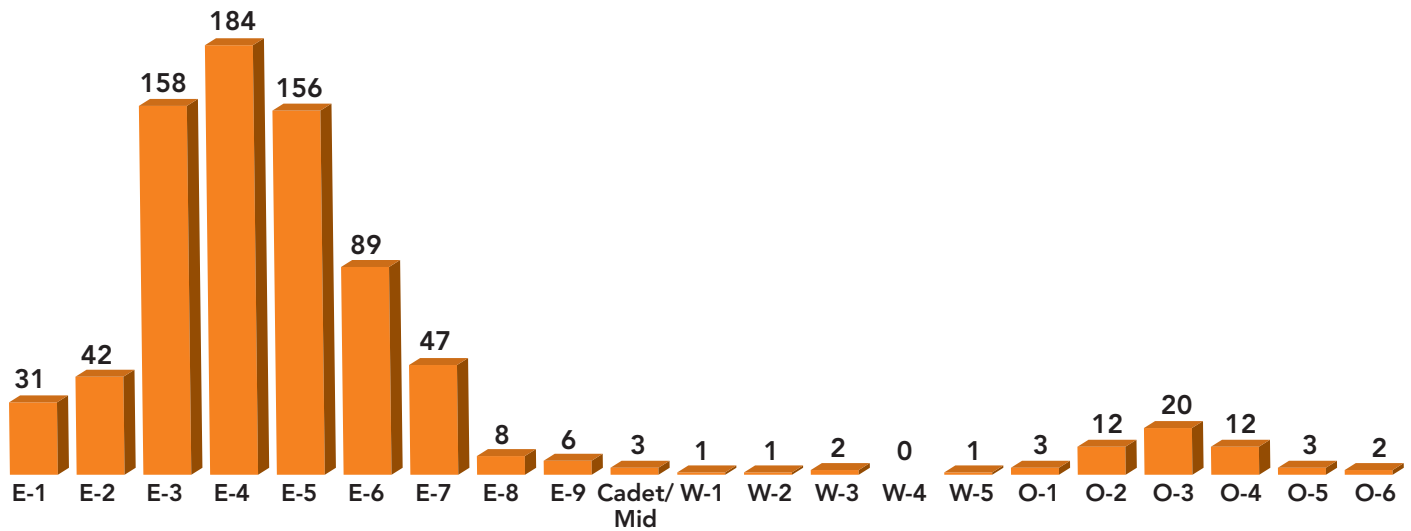
RANK OF THE ACCUSED (FY 2013)



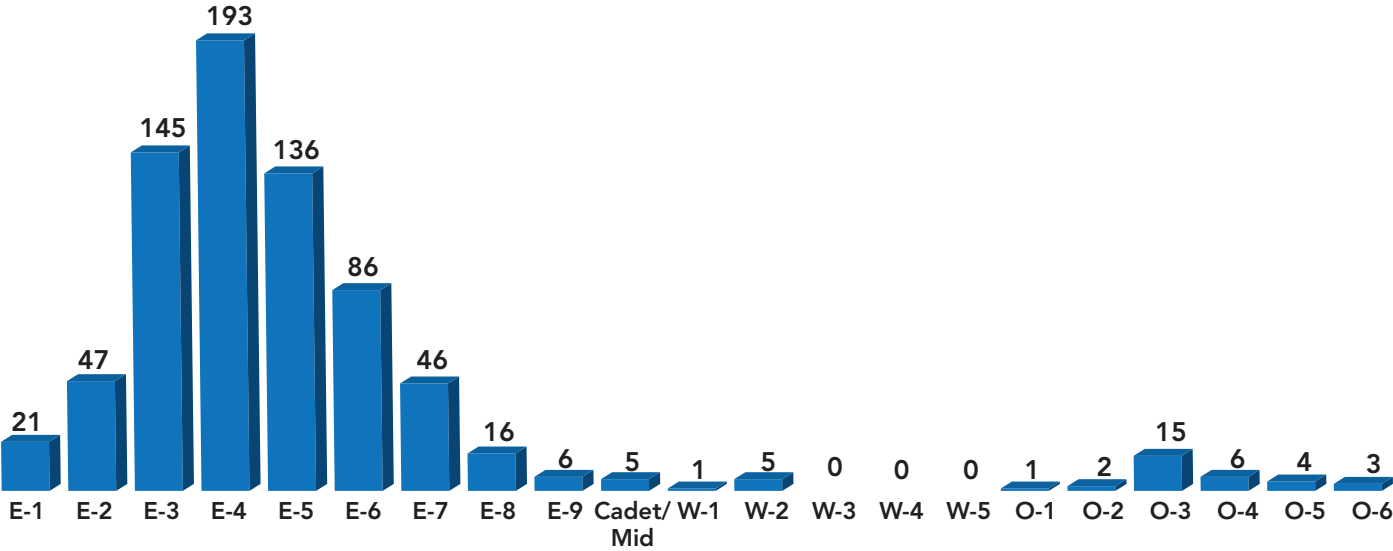
RANK OF THE ACCUSED (FY 2014)



RANK OF THE ACCUSED (FY 2015)

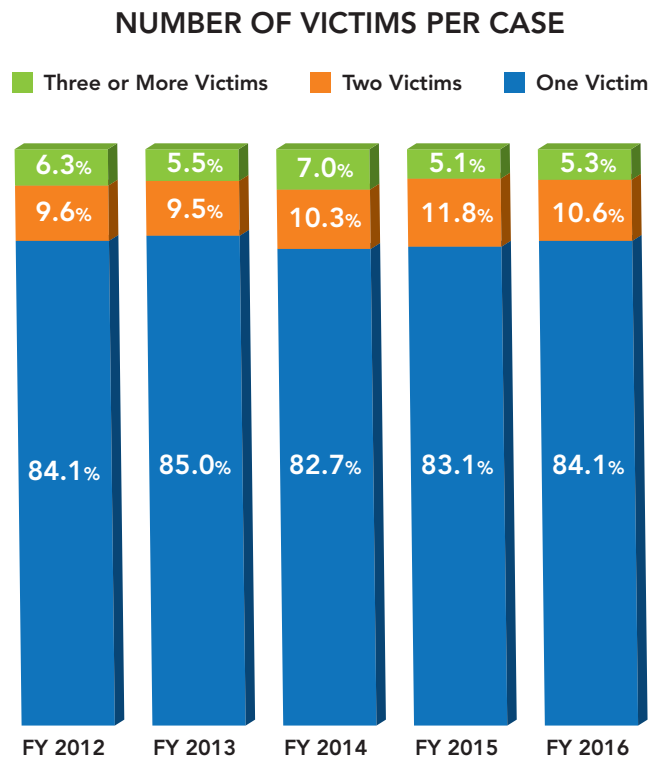
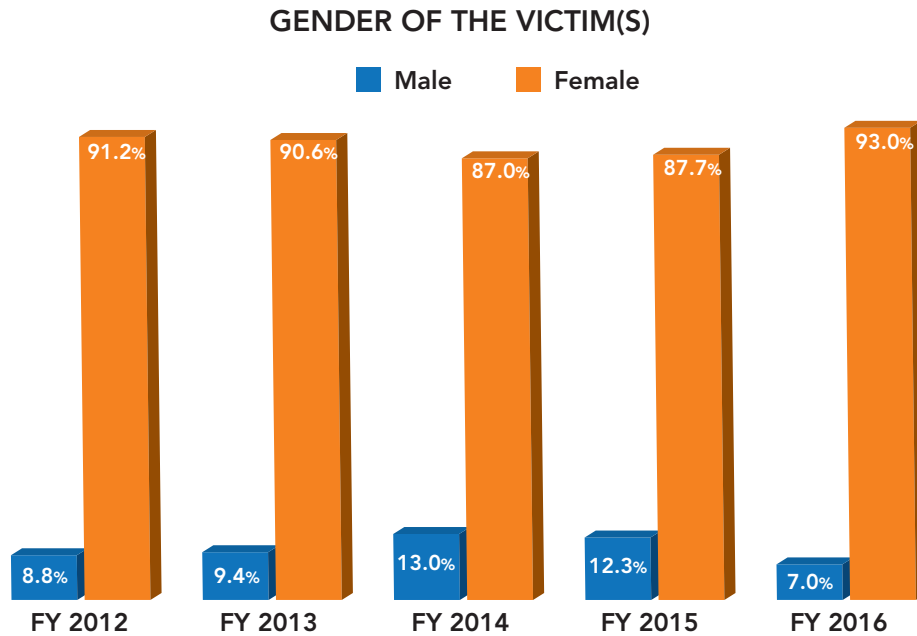


RANK OF THE ACCUSED (FY 2016)



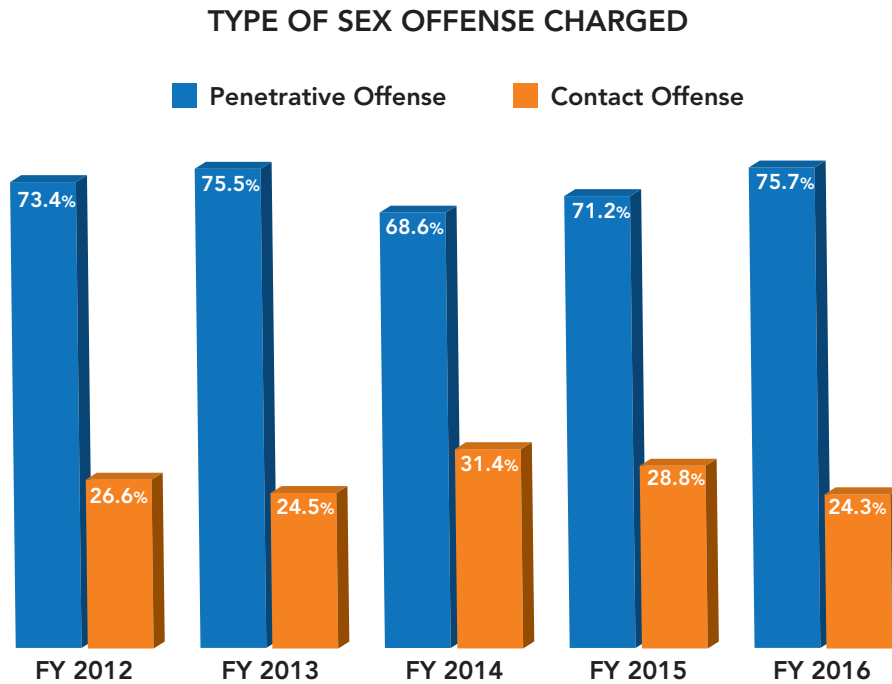
3. Victim Characteristics

In fiscal year 2016, 93% of the victims were female. The proportion of male victims (7%) represented a decline from fiscal year 2015, when 12% of the victims were male. The cause of the decline is unclear from the data. Most cases in fiscal year 2016, as well as historically, involved one (84%) or two (11%) victims.



4. Characteristics Regarding the Nature of the Charges

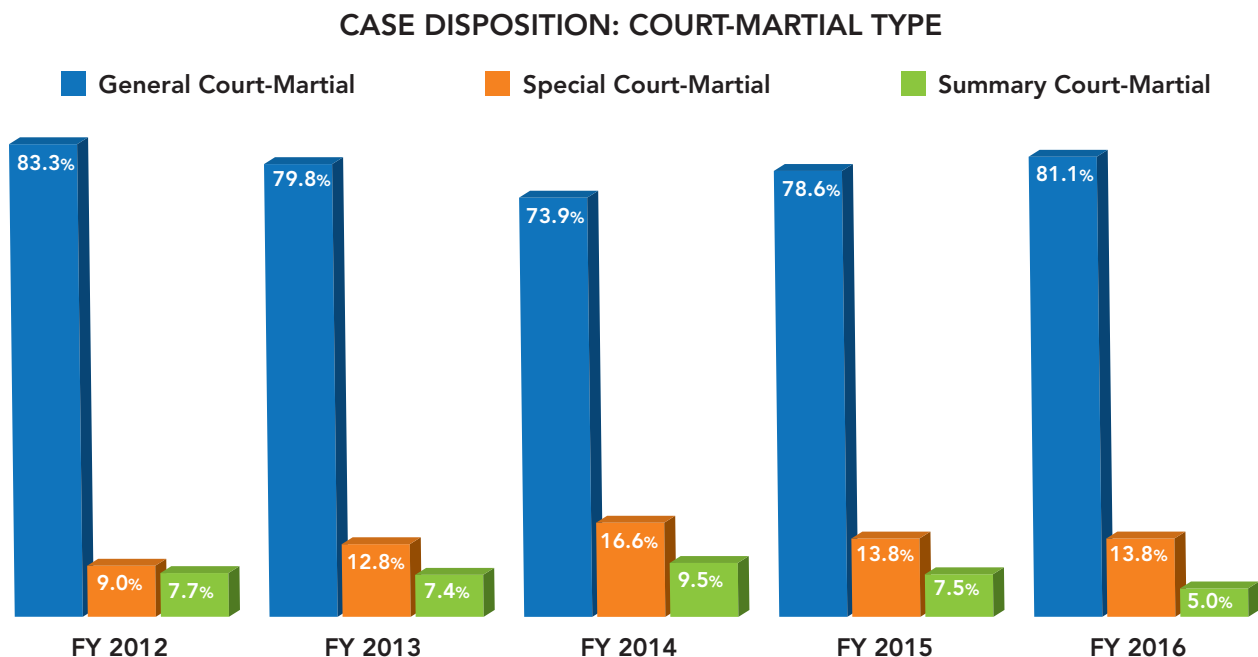
A penetrative offense,¹²⁷ as opposed to a contact offense, was the offense type more often preferred, constituting 559 of 738 cases (76%) in fiscal year 2016. This preferral rate is similar to the rates observed in fiscal years 2012 through 2015.



¹²⁷ The phrase “penetrative offense” refers to offenses under Article 120 and 125, UCMJ, involving rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses.

B. Disposition Decisions

In fiscal year 2016, convening authorities referred a total of 477 cases to trial by general, special, and summary court-martial; thus, 65% of all preferred cases were referred to trial. Conversely, convening authorities dismissed or resolved through alternate administrative means 261, or 35%, of preferred cases. Overall, 81% of referred cases in fiscal year 2016 were referred to trial by general court-martial.



The following tables illustrate case dispositions by Military Service of the accused for fiscal years 2012 through 2016.¹²⁸

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2012)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	89	84.8%	6	5.7%	10	9.5%
Marine Corps	14	73.7%	3	15.8%	2	10.5%
Navy	39	84.8%	6	13.0%	1	2.2%
Air Force	42	85.7%	5	10.2%	2	4.1%
Coast Guard	1	33.3%	0	0.0%	2	66.7%

¹²⁸ Figures obtained from the 2012 through 2016 DoD demographic reports are available at <http://www.militaryonesource.mil/mos/reports-and-surveys>. The figures do not include the number of Guard and Reserve Component members who were on active duty and subject to the UCMJ.

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2013)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	183	84.7%	13	6.0%	20	9.3%
Marine Corps	18	64.3%	6	21.4%	4	14.3%
Navy	40	67.8%	15	25.4%	4	6.8%
Air Force	100	82.6%	17	14.0%	4	3.3%
Coast Guard	2	33.3%	4	66.7%	0	0.0%

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2014)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	189	79.7%	21	8.9%	27	11.4%
Marine Corps	54	60.7%	18	20.2%	17	19.1%
Navy	73	69.5%	31	29.5%	1	1.0%
Air Force	53	86.9%	7	11.5%	1	1.6%
Coast Guard	18	56.3%	10	31.3%	4	12.5%

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2015)

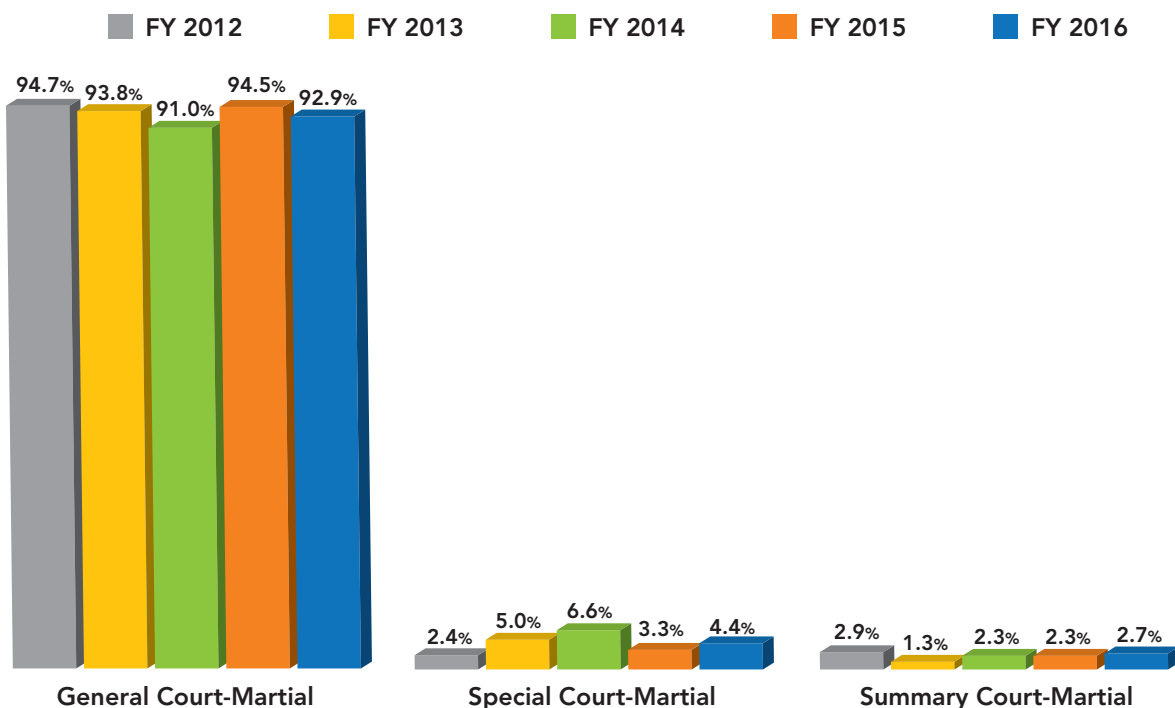
	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	219	88.3%	17	6.9%	12	4.8%
Marine Corps	50	66.7%	13	17.3%	12	16.0%
Navy	58	62.4%	27	29.0%	8	8.6%
Air Force	100	87.0%	13	11.3%	2	1.7%
Coast Guard	11	42.3%	7	26.9%	8	30.8%

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2016)

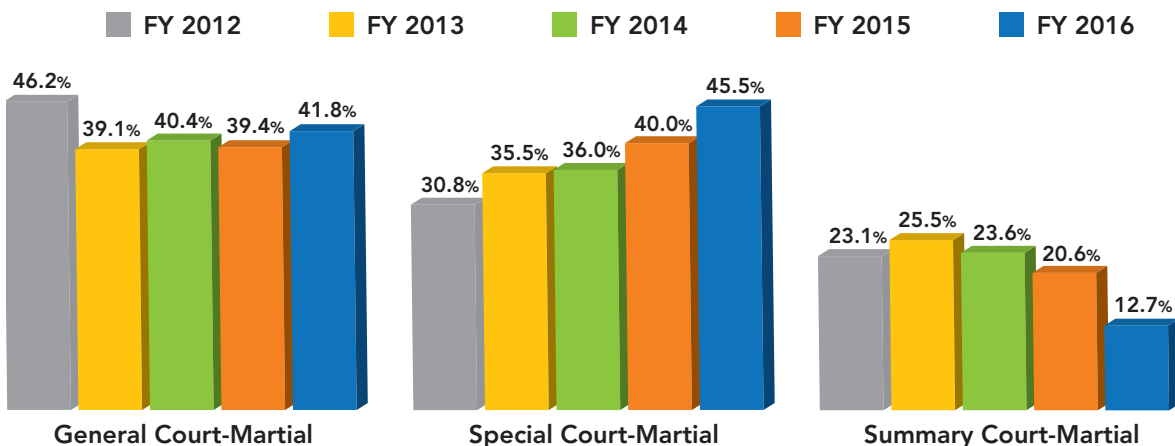
	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	177	93.2%	11	5.8%	2	1.1%
Marine Corps	49	60.5%	23	28.4%	9	11.1%
Navy	51	62.2%	23	28.0%	8	9.8%
Air Force	99	93.4%	6	5.7%	1	0.9%
Coast Guard	11	61.1%	3	16.7%	4	22.2%

The severity of offense charged influences the type of court-martial to which a charge is referred. Among cases completed in fiscal year 2016, 93% of penetrative offenses were referred to trial by general court-martial, while contact offenses were referred at about equal frequency to general (42%) and special court-martial (46%), and less often to summary court-martial (13%).

CASE DISPOSITION: PENETRATIVE OFFENSES REFERRED TO TRIAL



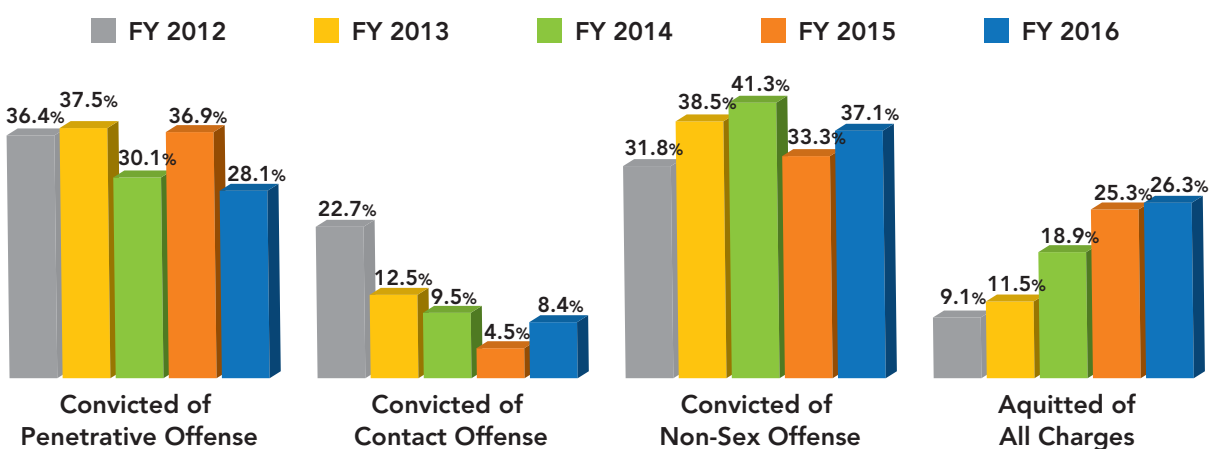
CASE DISPOSITION: CONTACT OFFENSES REFERRED TO TRIAL



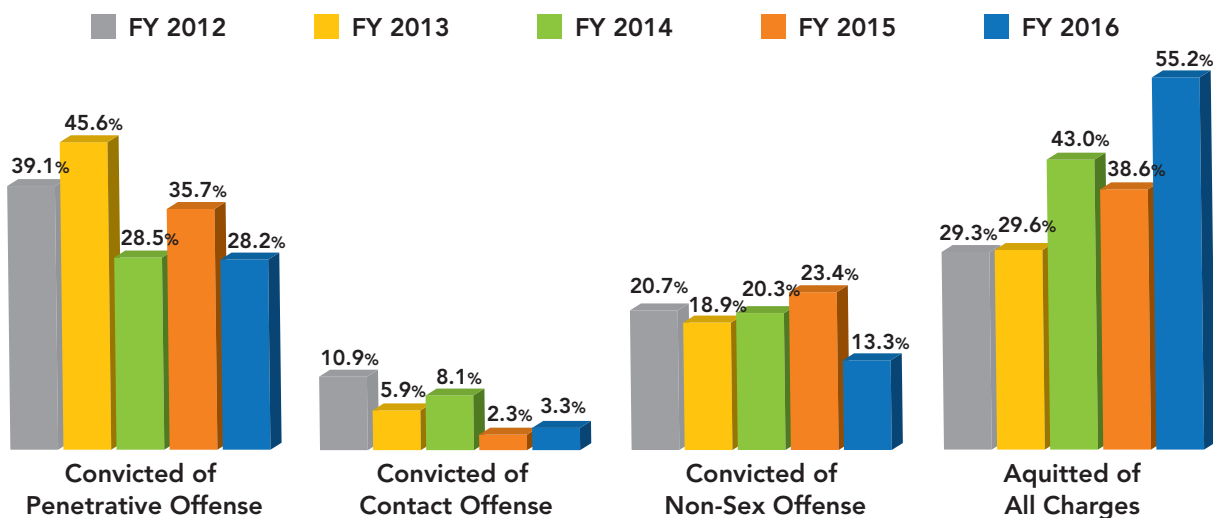
C. Adjudication Outcomes

Conviction, acquittal, and dismissal rates summarize how sexual assault prosecutions are ultimately resolved through the military justice system. The following charts illustrate case outcomes for cases according to how the case was adjudicated (by a military judge or by a panel of military members) and according to the type of offense charged (penetrative or contact).

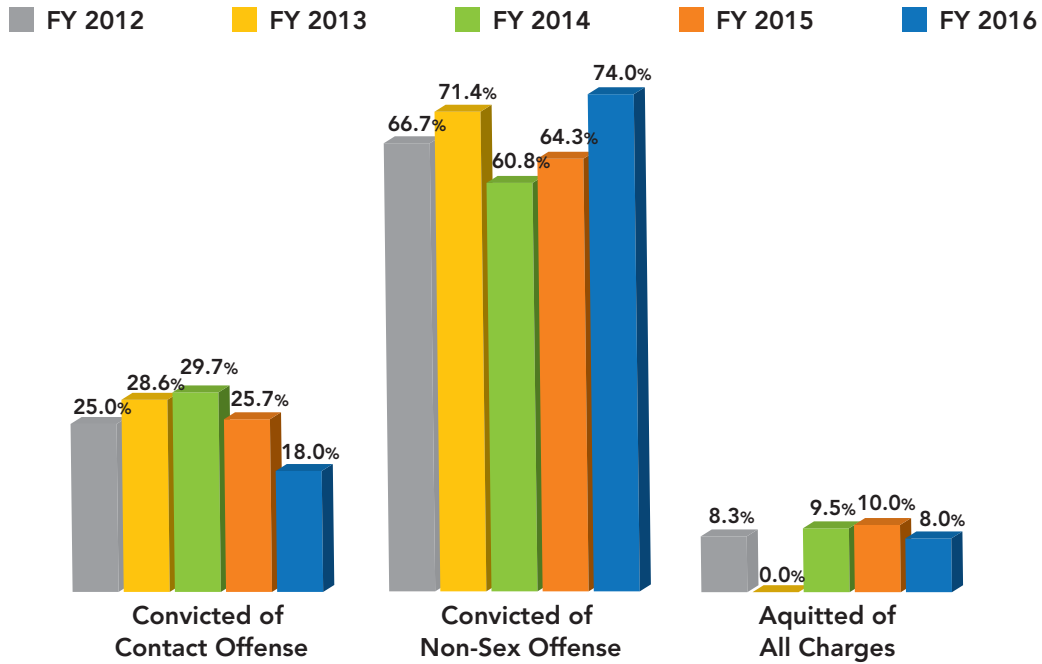
**OUTCOMES FOR CONTESTED PENETRATIVE OFFENSE TRIALS:
ADJUDICATED BY MILITARY JUDGE**



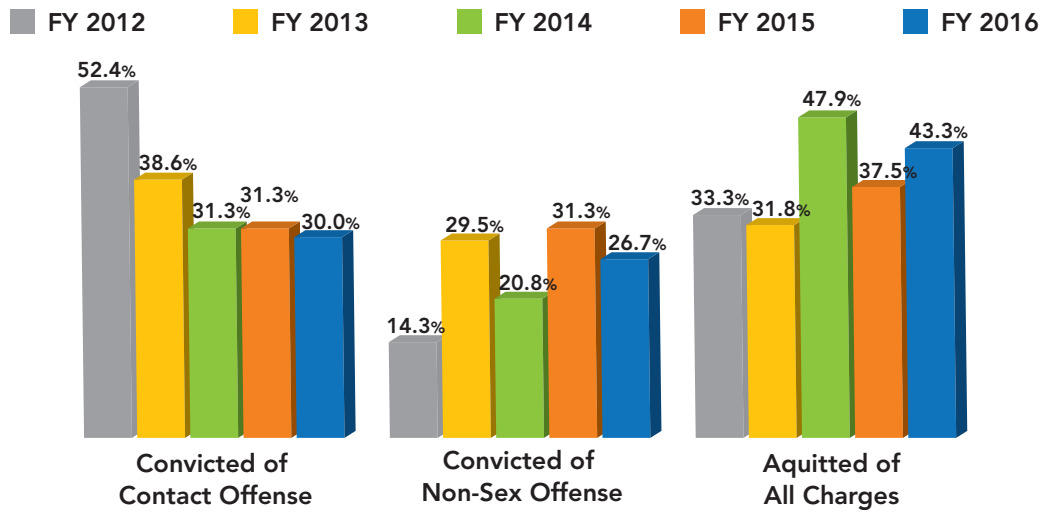
**OUTCOME FOR CONTESTED PENETRATIVE OFFENSE TRIALS:
ADJUDICATED BY PANEL OF MILITARY MEMBERS**



OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS: ADJUDICATED BY MILITARY JUDGE



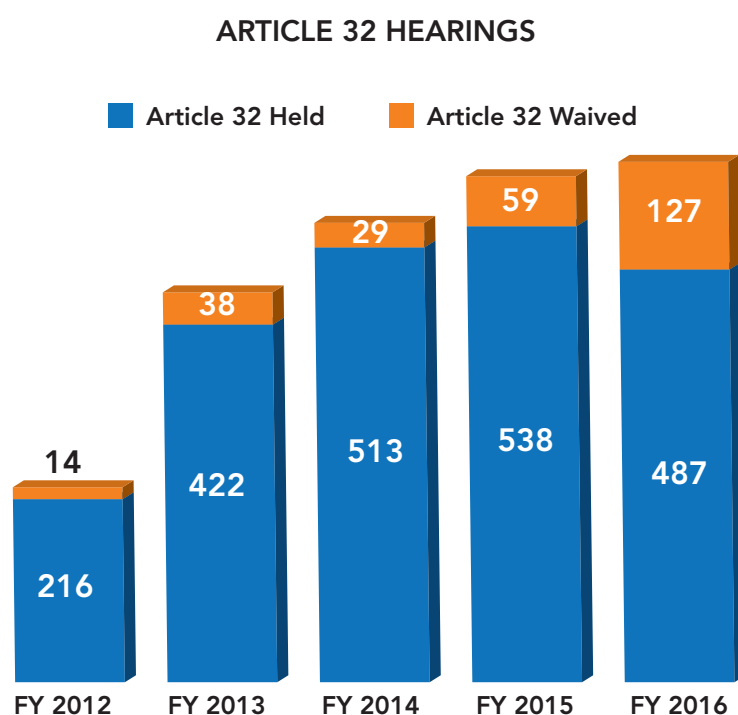
OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS: ADJUDICATED BY PANEL OF MILITARY MEMBERS



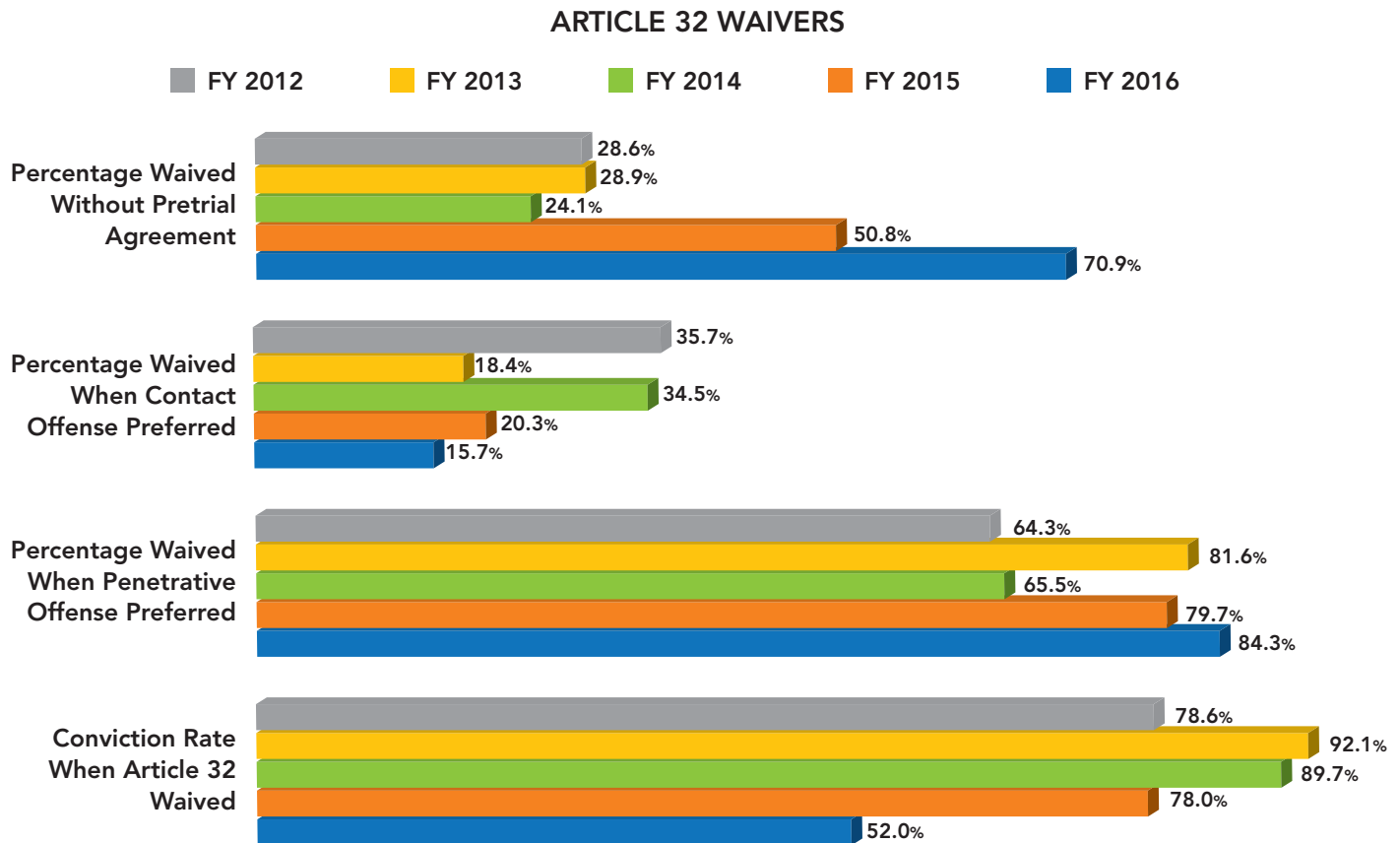
D. Article 32

On December 26, 2014, a new Article 32 framework was implemented, transforming the Article 32 process from a pretrial investigation into a less robust preliminary hearing. Under the old process, victims were frequently required to appear and testify at the Article 32 hearing and undergo cross-examination from defense counsel; this requirement has been removed from the new process.

In fiscal year 2016, Article 32 hearings were held in 487 cases and waived in an additional 127 cases. Since the change in the law, the number of hearings waived has doubled year over year from 2014 to fiscal year 2016, as shown below. No such clear pattern has emerged for the number of hearings held during this same period.



In fiscal year 2016, Article 32 hearings were waived in 90 cases without a pretrial agreement, an increase from 31 cases in fiscal year 2015. Of the 127 cases in fiscal year 2016 for which the Article 32 hearing was waived, 20 (15.7%) involved a contact offense and 107 (84.3%) involved a penetrative offense. Of the Article 32 hearings waived, the percentage involving a contact offense decreased from fiscal years 2014 to 2016, while the percentage involving a penetrative offense increased from fiscal years 2014 to 2016. The conviction rate when the Article 32 was waived continued to decrease from fiscal years 2013 (92.1%) to 2016 (52.0%).



VI. THE WAY FORWARD FOR THE DATA PROJECT

The DWG will continue the data collection and analysis project in the coming months. On January 25, 2018, the DAC-IPAD requested that the Services provide documents for cases involving a preferred charge of sexual assault completed in fiscal year 2017. As the JPP did previously, the DWG will retain the services of a criminologist to provide specialized analysis of data from fiscal years 2016 and 2017. The analysis will include descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes. In addition, the DWG anticipates further examination of data points concerning adjudged versus approved sentences, influence of the relationship between the victim and the accused on the outcome of the case, and the timeliness of the courts-martial processes among the Services.

CHAPTER 3.

ACTIVITIES OF THE POLICY WORKING GROUP

I. FORMATION OF THE POLICY WORKING GROUP AND INITIAL TASKS

At the July 21, 2017, DAC-IPAD public meeting, the Committee agreed to set up a Policy Working Group (PWG) to look at sexual assault policy issues. The Committee identified two issues as priorities for review—the DoD expedited transfer policy and legal and sexual assault response training for commanders. The Committee decided to begin by inviting presenters from the Services and DoD to discuss these issues at its October 2017 public meeting and by requesting information from DoD and the Services on commander training and expedited transfer data.

The seven Committee members serving on the PWG are Brigadier General (Ret.) James Schwenk, Major General (Ret.) Marcia Anderson, Dean Keith Harrison, Ms. Margaret Garvin, Mr. A. J. Kramer, Dr. Jenifer Markowitz, and Chief Master Sergeant of the Air Force (Ret.) Rodney McKinley, who serves as the chair.

II. METHODOLOGY AND SCOPE OF REVIEW OF THE POLICY WORKING GROUP

A. DAC-IPAD Public Meeting

To begin its assessment, the DAC-IPAD held a two-day public meeting on October 19 and 20, 2017. Members of the full Committee heard testimony from 26 individuals from DoD and each of the Military Services regarding their expedited transfer policies and practices, as well as the legal and sexual assault training given commanders. In addition, the Committee heard from a survivor about her experiences following her 2012 sexual assault while she was serving in the military.

To learn about the history and specifics of the DoD-level expedited transfer policy, the Committee received a briefing from representatives of the Department of Defense Sexual Assault Prevention and Response Office (DoD SAPRO). This was followed by presentations from policy and assignments personnel from each of the Military Services, who discussed the Services' individual expedited transfer policies and procedures. To gain a firsthand understanding of how the policy is working in the field, the Committee invited a panel of experienced special victims' counsel (SVCs) and victims' legal counsel (VLCs) representing each Service to share their experiences and insights gained from representing clients who have requested expedited transfers.¹²⁹

The Committee also heard from two panels of commanders. The first, composed of mid-level commanders at the O-5 level (lieutenant colonel or Navy commander) and their senior enlisted advisors, was asked to testify about the legal and sexual assault response training they had received, as well as their experiences in dealing with allegations within their commands and with requests for expedited transfers. The second was composed of commanders from each Service at the O-6 (colonel or Navy captain) level, who are special court-martial

¹²⁹ See generally *Transcript of DAC-IPAD Public Meeting* 132–220 (Oct. 19, 2017) (testimony of Service SVCs/VLCs). The SVC/VLC program was initiated by all of the Services at the direction of the Secretary of Defense in 2014 and provides Service member victims of sexual assault and their dependents with free legal representation throughout the military justice process. See U.S. Dep't of Def., Memorandum from the Secretary of Defense on Sexual Assault Prevention and Response (Aug. 14, 2013), available at http://www.sapr.mil/public/docs/news/SECDEF_Memo_SAPR_Initiatives_20130814.pdf.

convening authorities.¹³⁰ These panelists discussed the legal and sexual assault response training they had received, as well as their experiences in making initial disposition decisions about sexual assault allegations and in dealing with Service members who have requested expedited transfers.

B. Policy Working Group Preparatory Sessions

On December 1, 2017, the PWG held a full-day preparatory session devoted entirely to the expedited transfer policy. The members heard from 20 individuals. The first panel, composed of the director of the DoD Family Advocacy Program (FAP) and representatives from each of the Services' FAP programs, discussed whether the expedited transfer policy could and should be available to Service members covered by FAP who make unrestricted reports of sexual assault.

The PWG also heard from a panel of senior special victim prosecutors from each Service about the impact of expedited transfers on the prosecution of sexual assault cases; a second panel of SVCs and VLCs described their experiences with the expedited transfer policy. Importantly, the PWG was also able to hear from a panel of active duty Service members who had received expedited transfers and were willing to share their experiences and insights, as well as the compelling testimony of a parent of a Service member who received an expedited transfer.

C. Requests for Information Regarding Expedited Transfers and Commander Training

The Committee submitted a written request for information to DoD and the Services on September 11, 2017, seeking information on expedited transfer requests received in fiscal year 2016 (FY16) and on the legal and sexual assault response training provided to commanders.¹³¹

1. Data for Fiscal Year 2016 on Expedited Transfer Requests

To obtain more detailed information about the Service-level expedited transfer policies and procedures, the DAC-IPAD requested that the Services provide all current Service-specific policies and procedures related to expedited transfers of adult sexual assault victims and accused Service members.¹³² The DAC-IPAD also sought information on all sexual assault-related expedited transfer requests made by victims in fiscal year 2016 (FY16), asking the Services to provide the following data for each request: rank, gender, job title, and duty station of the victim at the time of the request; whether the victim was represented by an SVC or a VLC; whether the request was approved or denied; information about the individual making the decision on the request; the requested transfer locations; the location to which the victim actually transferred, if approved; the requester's job title at the new location; the disposition of the underlying sexual assault allegation; and the dates of the sexual assault report, the transfer request, the approval decision, and the transfer.¹³³ The PWG requested data for FY16 so that

130 The disposition of all penetrative sexual assault allegations are required by law and DoD policy to be handled by special court-martial convening authorities who are at least at the O-6 level. See Memorandum on Withholding Initial Disposition Authority, *supra* note 29.

131 See DAC-IPAD Request for Information Set 4 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

132 See DAC-IPAD Request for Information Set 4, Question 4 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

133 See DAC-IPAD Request for Information Set 4, Question 5 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

it might compare the data received with the statistics provided to Congress by DoD SAPRO in its FY16 annual sexual assault report.¹³⁴

The DAC-IPAD also requested similar information about each Service member accused of a sexual assault offense who was transferred.

2. Legal and Sexual Assault Response Training for Commanders

To gain insight into legal and sexual assault response training for commanders, the DAC-IPAD requested information from the Services covering three areas:

- Service-wide UCMJ legal training provided to special and general court-martial convening authorities, including the portion of such training that is devoted to dealing with sexual assault and making appropriate disposition decisions in sexual assault cases;¹³⁵
- Service-wide UCMJ legal training provided to commanders below the level of special court-martial convening authority (i.e., company commanders, squadron commanders), including the portion of such training devoted to sexual assault;¹³⁶
- Service-wide SAPR training that is provided to commanders at all levels on handling sexual assault issues and supervising both victims of sexual assault and accused Service members, including how commanders are trained regarding the different ways victims may respond to a sexual assault; how to respond to and treat a victim in the commander's unit; how to respond when both the victim and alleged perpetrator are in the commander's unit; how to address professional and peer retaliation and ostracism; and how to respond to expedited transfer requests.¹³⁷

D. Additional Stakeholders

The DAC-IPAD recognizes that there are several very important groups involved with expedited transfers that neither the full Committee nor the PWG was able to hear from in time for this report: sexual assault response coordinators (SARCs) and victim advocates (VAs), defense counsel, military criminal investigators, and providers of behavioral health services. Therefore, the Committee will continue to explore the issues of concern identified in this chapter after requesting additional testimony and input from these stakeholders.

134 The Services' enclosures to the Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year 2016 provided information on the number of expedited transfers requested during the fiscal year for each DoD Service (the Coast Guard is not included in the annual SAPRO reports) and the number of requests denied and the reason for the denial, but no additional data was available about the requests. See DEP'T OF DEF., SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2016 (May 1, 2017) [hereinafter FY16 DoD SAPRO REPORT], available at http://sapr.mil/public/docs/reports/FY16_Annual/FY16_SAPRO_Annual_Report.pdf.

135 See DAC-IPAD Request for Information Set 4, Question 1 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

136 See DAC-IPAD Request for Information Set 4, Question 2 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

137 See DAC-IPAD Request for Information Set 4, Question 3 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

III. REVIEW OF THE EXPEDITED TRANSFER POLICY

A. Overview of the Expedited Transfer Policy

Expedited transfers were first conceived in 2011, when DoD SAPRO was identifying gaps in its response to sexual assault. DoD SAPRO realized that after reporting a sexual assault, many victims were unable to move from their units or get away from the individual who had assaulted them. As a result, victims continued to be re-traumatized and were unable to fully recover.¹³⁸ After discussing the potential for a new policy with victim services personnel, members of Congress, and the Secretary of Defense, and receiving support for the initiative, DoD SAPRO developed its expedited transfer policy.¹³⁹

The next step was a DoD-wide directive issued by the Under Secretary of Defense for Personnel and Readiness on December 16, 2011.¹⁴⁰ In the initial DoD guidance, the key tenets of the policy were a presumption in favor of transferring sexual assault victims when there was a credible report, assurance that the transfer would not harm the victim's career, and authorization of an appeal process to the first general or flag officer in the chain of command.¹⁴¹ This guidance was incorporated into the DoD sexual assault prevention and response program instruction in 2013.¹⁴² Congress passed its own version of the expedited transfer authorization in the Fiscal Year 2012 NDAA, which added time frames of 72 hours for approval and for appeal.¹⁴³ Two years later, in the FY14 NDAA, Congress extended to the U.S. Coast Guard the requirement to establish an expedited transfer policy and also authorized the transfer of a suspect of a sex-related offense.¹⁴⁴

138 See *Transcript of DAC-IPAD Public Meeting* 31–33 (Oct. 19, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

139 See *id.*

140 See *Transcript of DAC-IPAD Public Meeting* 33–35 (Oct. 19, 2017) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense); see also Dep't of Def. Directive-Type Memorandum 11-063, Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault (Dec. 16, 2011).

141 See *Transcript of DAC-IPAD Public Meeting* 34–35 (Oct. 19, 2017) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

142 See *id.*; see also DoDI 6495.02, *supra* note 94.

143 See *Transcript of DAC-IPAD Public Meeting* 35 (Oct. 19, 2017) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense); see also National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112–81 [hereinafter FY12 NDAA], § 582(a), 125 Stat. 1432 (2011).

The statutory requirements for the military's expedited transfer policy are codified in 10 U.S.C. § 673:

Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense

(a) Timely Consideration and Action.—The Secretary concerned shall provide for timely determination and action on an application for consideration of a change of station or unit transfer submitted by a member of the armed forces serving on active duty who was a victim of a sexual assault or other offense covered by section 920, 920a, or 920c of this title (article 120, 120a, or 120c) so as to reduce the possibility of retaliation against the member for reporting the sexual assault or other offense.

(b) Regulations.—The Secretaries of the military departments shall issue regulations to carry out this section, within guidelines provided by the Secretary of Defense. These guidelines shall provide that the application submitted by a member described in subsection (a) for a change of station or unit transfer must be approved or disapproved by the member's commanding officer within 72 hours of the submission of the application. Additionally, if the application is disapproved by the commanding officer, the member shall be given the opportunity to request review by the first general officer or flag officer in the chain of command of the member, and that decision must be made within 72 hours of submission of the request for review.

144 See *Transcript of DAC-IPAD Public Meeting* 36 (Oct. 19, 2017) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual

The current DoD expedited transfer policy is found in DoD Instruction 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures.”¹⁴⁵ The policy applies only to active duty Service members who have made an unrestricted report of sexual assault; notably, the policy expressly excludes sexual assault victims covered under FAP policy as well as Service members who make a restricted report of sexual assault.¹⁴⁶

The purpose of the DoD expedited transfer policy is to address “situations where a victim feels safe, but uncomfortable,” such as instances when a victim experiences ostracism or retaliation as a result of the sexual assault report.¹⁴⁷ The intent behind the policy is to assist the victim’s recovery by moving the victim to a new location, where no one knows of the sexual assault.¹⁴⁸

In additional provisions of the DoD expedited transfer policy, it

1. Establishes a presumption in favor of transferring an eligible Service member who files a “credible report”;
2. Defines “credible report” as either a written or verbal report made in support of an expedited transfer that is determined to have credible information;
3. Requires a commanding officer (CO) to make a determination to approve or disapprove a request for transfer within 72 hours of receipt of the request;
4. Requires that if the initial request is disapproved, the requesting Service member be given an opportunity to appeal to the first general or flag officer in the chain of command, who then must make a decision within 72 hours of receiving the appeal; and
5. Requires the CO or appropriate approving authority to provide his or her reasons for and justification of the transfer based on a “credible report” of sexual assault and consideration of 10 additional factors.

The 10 additional factors are (1) the reason for the request, (2) the potential transfer of the alleged offender instead of the requesting Service member, (3) the nature and circumstances of the offense, (4) whether a temporary transfer would meet the needs of the requester and the unit, (5) the training status of the requester, (6) the availability of positions within other units on the installation, (7) the status of and impact on the investigation and disposition of the offense (after consultation with the MCIOs), (8) the location of the alleged offender, (9) whether the alleged offender is civilian or military, and (10) “other pertinent circumstances or facts.”¹⁴⁹

The DoD expedited transfer policy also requires the CO to ask for and take into consideration the Service member’s input before making an approval decision and determining the location of the transfer, if granted. Further, it notes that “in most circumstances, transfers to a different installation should be completed within

Assault Prevention and Response Office, U.S. Department of Defense) (noting that the FY14 NDAA authorized transferring suspects, which was already authorized in DoD policy).

¹⁴⁵ See generally DoDI 6495.02, *supra* note 94, at encl. 5.

¹⁴⁶ *Id.* at encl. 5 ¶¶ 6b(2)(a), b(2).

¹⁴⁷ *Id.* at encl. 5 ¶ a(2).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at encl. 5 ¶ 6b(8).

30 calendar days from the date the transfer is approved, and those that are on the same installation should be completed within one week of approval.”¹⁵⁰

B. Statistical Data on Expedited Transfers

1. Data Collected by the Department of Defense

DoD currently administers two surveys that include questions related to expedited transfers.¹⁵¹ The first is the Workplace and Gender Relations Survey of Active Duty Members (WGRA), which is administered force-wide; the second is the Military Investigation and Justice Experience Survey (MIJES), which goes only to victims of sexual assault who have completed their participation in the justice system.¹⁵² The response rate for the WGRA is usually between 29% and 30%.¹⁵³ Because it is a randomized, stratified sample, the results are representative of the entire force.¹⁵⁴ The MIJES, on the other hand, has a very low response rate and was completed by only about 150 victims last year.¹⁵⁵

In addition to these surveys, each fiscal year, in the Service Enclosures to its annual report to Congress, DoD SAPRO publishes the number of intra-installation and inter-installation expedited transfer requests received, approved, and rejected.¹⁵⁶

¹⁵⁰ *Id.* at encl. 5 ¶ 6b(4).

¹⁵¹ See *Transcript of DAC-IPAD Public Meeting 75* (Oct. 19, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

¹⁵² *Id.* at 75–76.

¹⁵³ *Id.* 76.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 77.

¹⁵⁶ See Service Enclosures to FY16 DoD SAPRO REPORT, *supra* note 134.

a. FY 2016 DoD Annual Report on Sexual Assault in the Military

**DOD SAPRO: EXPEDITED TRANSFER REQUESTS BY VICTIMS OF
SEXUAL ASSAULT IN FISCAL YEAR 2016**

	Army	Navy	Marine Corps	Air Force	Coast Guard*	Services Total
Total FY16 Expedited Transfer Requests	254	306	99	87	N/A	746
Total FY16 Expedited Transfers Denied/Withdrawn	2	7	9	1	N/A	19
Percent of Total Requests Approved	99%	98%	91%	99%	N/A	97%

FY16 – Service Member Unrestricted Reports	1591	955	436	738	N/A	3720
Percent of Service Member Unrestricted Repts. Requesting Transfers	16%	32%	23%	12%	N/A	20%

*Coast Guard data not included in the annual DoD SAPRO reports to Congress

Source: FY16 DoD SAPRO Report, Service Enclosures

b. 2016 Workplace and Gender Relations Survey of Active Duty Members

The Defense Research, Surveys, and Statistics Center within DoD's Office of People Analytics (OPA) has conducted gender relations surveys since 1988 to assess unwanted gender-related behaviors in the military. These surveys are designed to gauge the perceived experiences of sexual harassment and sexual assault in the military via self-reported responses from Service members.¹⁵⁷

Between July 22 and October 14, 2016, OPA sampled a total of 735,329 active duty members from the Army, Navy, Marine Corps, Air Force, and Coast Guard who were below flag rank and had been on active duty for about five months. Surveys were completed by 151,010 Service members. OPA scientifically weights the survey data so that findings can be generalized to the full population of active duty members.¹⁵⁸ The weighted response rate for the 2016 WGRA was 24%, which is typical for large DoD-wide surveys.¹⁵⁹

The results were as follows:¹⁶⁰

- Of the 31% of DoD women and the 15% of men who reported a sexual assault to the military, 24% of women and 16% of men received an expedited transfer

¹⁵⁷ OFFICE OF PEOPLE ANALYTICS, 2016 WORKPLACE AND GENDER RELATIONS SURVEY OF ACTIVE DUTY MEMBERS REPORT v-vi (2017).

¹⁵⁸ According to the WGRA report, "OPA scientifically weighted the 2016 WGRA respondents to be generalizable to the active duty population using the generalized boosted modeling (GBM) approach. Within this process, statistical adjustments are made to ensure the sample respondents accurately reflect the characteristics of the population from which it was drawn and provide a more rigorous accounting to reduce nonresponse bias in estimates. This ensures oversampling within any one subgroup does not result in overrepresentation in the Total Force estimates." *Id.* at 24.

¹⁵⁹ *Id.* at vii-viii.

¹⁶⁰ *Id.* at 113-15.

- Of the 24% of DoD women who indicated that they received an expedited transfer after reporting a sexual assault in the military:
 - 54% indicated that their living situation was better than before, 35% indicated that it was about the same as before, and 12% indicated that it was worse than before
 - 47% indicated that their treatment by leadership was better than before, 37% indicated that it was about the same as before, and 16% indicated that it was worse than before
 - 47% indicated that their treatment by peers was better than before, 40% indicated that it was about the same as before, and 13% indicated that it was worse than before
 - 45% indicated that their medical and mental health care was better than before, 45% indicated that it was about the same as before, and 9% indicated that it was worse than before
 - 42% indicated that their social support was better than before, 34% indicated that it was about the same as before, and 24% indicated that it was worse than before
 - 42% indicated that their career progression was better than before, 34% indicated that it was about the same as before, and 24% indicated that it was worse than before
- Results were not reportable for DoD men

c. 2016 Military Investigation and Justice Experience Survey

The MIJES is an anonymous survey designed to assess the investigative and legal processes experienced by military members who have made a report of sexual assault, gone through the military investigation process, and agreed to voluntarily participate in the survey. The MIJES was created in response to a Secretary of Defense directive requiring that a survey be administered to offer sexual assault victims the opportunity to provide feedback on their experiences with victim assistance, the military health system, the military justice process, and other areas of support.¹⁶¹

The 2016 MIJES reflects the attitudes and opinions of military members who brought forward a report of sexual assault to military officials and whose case was closed (investigation done, disposition complete, and case information entered into the Defense Sexual Assault Incident Database [DSAID]) between April 1, 2015, and March 31, 2016. Participants in the survey were required to be current uniformed military members, whose report resulted in a criminal investigation by an MCIO, who chose to participate in the investigation or military justice process, and whose alleged perpetrator was a military member. Out of a total eligible sample number of 2,041 members, the 2016 MIJES had 225 responders.¹⁶²

The 2016 MIJES was not weighted; therefore, results are not generalizable to Service members who had a closed case in DSAID.¹⁶³ The results were as follows:

¹⁶¹ OFFICE OF PEOPLE ANALYTICS, 2016 MILITARY INVESTIGATION AND JUSTICE EXPERIENCE SURVEY (MIJES): OVERVIEW REPORT iii (March 2017).

¹⁶² *Id.* at 6.

¹⁶³ *Id.* at 4–5.

- 43% of respondents indicated that they requested and received an expedited transfer as a result of their report of sexual assault¹⁶⁴
- Of respondents who received an expedited transfer:¹⁶⁵
 - 69% reported that their living situation was better than before, 21% reported that it was about the same as before, and 10% reported that it was worse than before
 - 61% reported that their treatment by leadership was better than before, 26% reported that it was about the same as before, and 12% reported that it was worse than before
 - 59% reported that their treatment by peers was better than before, 31% reported that it was about the same as before, and 10% reported that it was worse than before
 - 56% reported that their social support was better than before, 28% reported that it was about the same as before, and 16% reported that it was worse than before
 - 51% reported that their medical/mental health care was better than before, 33% reported that it was about the same as before, and 16% reported that it was worse than before
 - 47% reported that their career progression was better than before, 31% reported that it was about the same as before, and 22% reported that it was worse than before
- No significant association was found between receiving an expedited transfer and the decision to recommend to another survivor that he or she should make a report¹⁶⁶

2. DAC-IPAD Request for Information

The DAC-IPAD Chair sent a written request for information to the Service Secretaries on September 11, 2017, asking that they provide specific information on all sexual assault–related expedited transfer requests made by victims in FY16—including those made pursuant to DoDI 6495.02 or any other policies, such as transfers made within the purview of FAP—so that the DAC-IPAD could assess the policy. Data were sought in response to 16 questions related to expedited transfers of victims and 13 questions related to transfers of the accused.¹⁶⁷ The Chair requested responses within four weeks.

The DAC-IPAD staff was notified by DoD SAPRO on September 26, 2017, that the data request was too onerous to be completed in four weeks; instead, responses would be available from the DoD Services three months from the request date.

Because the DAC-IPAD has not had time to fully examine and follow up on the information received, the Committee does not draw here any definitive conclusions from the data. The PWG plans to continue its review and analysis, which will be incorporated into a future report. The Committee is publishing the aggregated

¹⁶⁴ *Id.* at 113.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 124.

¹⁶⁷ See DAC-IPAD Request for Information Set 4, Questions 5 and 6 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

statistics in this report because they may be useful to those in DoD, Congress, and the public who seek to better understand how the expedited transfer policy is being implemented and is operating in the field.

Only the Navy provided data on the number of Service members requesting expedited transfers who were represented by victims' counsel. Out of 302 requests for expedited transfer in the Navy, 300 of the requesters, or 99%, were represented by VLCs.¹⁶⁸ The Committee believes that tracking SVC/VLC representation of those who request transfers would be extremely useful in assessing the benefits of both the SVC/VLC program and the expedited transfer policy.

The DAC-IPAD summarized the data provided by the Services for all expedited transfer requests submitted in FY16 and compiled the results of key statistics in the charts below.¹⁶⁹ A total of 900 expedited transfer requests were submitted in FY16 across all of the Services; 29 of the requests were denied or withdrawn, yielding an approval rate of 97%.¹⁷⁰

RFI SET 4: EXPEDITED TRANSFER REQUESTS BY VICTIMS OF SEXUAL ASSAULT IN FISCAL YEAR 2016

	Army	Navy	Marine Corps	Air Force	Coast Guard	Services Total
Total FY16 Expedited Transfer Requests	276	302	98	206	18	900
Total FY16 Expedited Transfers Denied/Withdrawn	12	5	8	3	1	29
Percent of Total Requests Approved	96%	98%	92%	99%	94%	97%

FY16 – Service Member Unrestricted Reports (DoD SAPRO Rept)	1,591	955	436	738	116	3,836
Percent of Service Member Unrestricted Reports Requesting Transfers	17%	32%	22%	28%	16%	23%

¹⁶⁸ See Service responses to DAC-IPAD Request for Information Set 4, Questions 5 and 6 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

RFI SET 4 QUESTION 5, ATTACHMENT A – SUMMARY OF RESPONSES (FY 2016)

RANK OF MEMBER REQUESTING EXPEDITED TRANSFER

Army			Navy			Marine Corps			Air Force			Coast Guard		
C-3	1	0.4%	E-1	15	5%	E-1	3	3%	E-1	1	0.5%	E-1	0	0%
E-1	22	8%	E-2	44	15%	E-2	20	20%	E-2	9	4%	E-2	1	6%
E-2	40	14%	E-3	100	33%	E-3	47	48%	E-3	78	38%	E-3	5	28%
E-3	84	30%	E-4	77	25%	E-4	18	18%	E-4	61	30%	E-4	10	56%
E-4	98	36%	E-5	52	17%	E-5	8	8%	E-5	29	14%	E-5	1	6%
E-5	15	5%	E-6	7	2%	E-6	2	2%	E-6	13	6%	E-6	1	6%
E-6	10	4%	E-7	2	1%	98		100%	E-7	7	3%	18		100%
E-7	2	1%	E-8	2	1%				O-1	1	0%			
O-1	1	0.4%	O-1	2	1%				O-2	3	1%			
O-2	1	0.4%	O-2	1	0.3%				O-3	2	1%			
O-3	1	0.4%	302		100%				O-4	1	0.5%			
O-4	1	0.4%							O-5	1	0.5%			
276		100%							206		100%			

GENDER OF MEMBER REQUESTING EXPEDITED TRANSFER

Army			Navy			Marine Corps			Air Force			Coast Guard		
Female	239	87%	Female	255	84%	Female	81	83%	Female	165	80%	Female	13	72%
Male	37	13%	Male	47	16%	Male	17	17%	Male	41	20%	Male	5	28%
276		100%	302		100%	98		100%	206		100%	18		100%

APPROVAL RATE FOR EXPEDITED TRANSFER

Army			Navy			Marine Corps			Air Force			Coast Guard		
Approved	263	95%	Approved	292	97%	Approved	90	92%	Approved	203	99%	Approved	17	94%
Approved/ Deleted	1		Disapproved	10		Denied	5		Disapproved	3		Disapproved	1	
Disapproved	2		276			Rescinded	3		206			18		
RWA*/Intra Post Move	2					98								
RWA/Not Credible	6													
RWA/Not Eligible	1													
Withdrawal	1													
276														

*Returned Without Action

INSTALLATIONS WHERE MOST EXPEDITED TRANSFER REQUESTS ARE RECEIVED (TOP 10)

Army		Navy		Marine Corps		Air Force		Coast Guard
FT Campbell, KY	21	USS GEORGE BUSH (CVN 77)	14	Okinawa, Japan	24	RAMSTEIN	12	Coast Guard data not provided, because some installations are too small to protect the anonymity of transferees.
FT Hood, TX	20	USS RONALD REAGAN (CVN 76)	9	Camp Lejeune, NC	19	ELLSWORTH	10	
FT Bragg, NC	19	USS GUNSTON HALL (LSD-44) HAMPTON RDS VA	7	Camp Pendleton, CA	13	DOVER	9	
FT Bliss, TX	17	USS NIMITZ	7	Twentynine Palms, CA	5	HICKAM	9	
FT Riley, KS	16	USS EISENHOWER	6	Cherry Point, NC	3	MALMSTROM	7	
Joint Base Lewis-McChord, WA	16	USS PEARL HARBOR (LSD 52)	6	Quantico, VA	3	WRIGHT PATTERSON	7	
FT Drum, NY	13	USS BONHOMME RICHARD (LHD-6)	5	San Diego, CA	3	AVIANO	6	
FT Carson, CO	12	USS ANTIETAM (CG-54)	4	Beaufort, SC	2	MINOT	6	
Schofield Barracks, HI	11	USS GEORGE H. W. BUSH	4	Henderson Hall, VA	2	HOLLOMAN	5	
Camp Humphreys, Korea	9	USS GEORGE WASHINGTON	4	Jacksonville, NC	2	LANGLEY	5	

INSTALLATIONS RECEIVING THE MOST SERVICE MEMBERS VIA EXPEDITED TRANSFER (TOP 10)

Army		Navy		Marine Corps		Air Force		Coast Guard
FT Carson, CO	26	NAVMEDCEN SAN DIEGO CA	14	Camp Pendleton, CA	14	NELLIS AFB	11	Coast Guard data not provided, because some installations are too small to protect the anonymity of transferees.
FT Hood, TX	22	NAVMEDCEN PORTSMOUTH	10	Camp Lejeune, NC	11	MACDILL AFB	11	
FT Stewart, GA	20	NAVSTA NORFOLK VA	9	Cherry Point, NC	8	TRAVIS AFB	9	
FT Bragg, NC	15	USS ABRAHAM LINCOLN NORVA	8	Miramar, CA	8	SCOTT AFB	9	
Joint Base Lewis-McChord, WA	13	USS GEORGE WASHINGTON NORVA	8	Jacksonville, NC	7	LACKLAND AFB	9	
FT Campbell, KY	11	MARMC NORFOLK VA	7	Okinawa, Japan	6	EGLIN AFB	9	
FT Eustis, VA	8	NAVBASE SAN DIEGO, CA	7	New River, NC	5	MCCHORD AFB	8	
FT Gordon, GA	8	USS THEODORE ROOSEVELT CA	6	MCAS Kaneohe Bay, HI	4	LANGLEY AFB	7	
FT Lee, VA	8	USS HARRY S TRUMAN NORVA	5	Twentynine Palms, CA	3	HURLBURT FIELD	7	
Hunter AAF, GA	8	NAVBASE CORONADO SAN DIEGO CA	4	Parris Island, SC	2	CHARLESTON AFB	7	

PERCENTAGE OF EXPEDITED TRANSFERS MADE TO REQUESTED LOCATION

Army		Navy		Marine Corps		Air Force		Coast Guard	
Approved Requests	263	Approved Requests	292	Approved Requests	90	Approved Requests	203	Approved Requests	17
Requested Location	89%	Requested Location	78%	Requested Location	72%	Requested Location	90%	Requested Location	76%

C. Overall DAC-IPAD Assessment of the Expedited Transfer Policy

After reviewing the data collected and the testimony received from numerous individuals who have worked with sexual assault victims in the military—commanders and senior enlisted advisors, SVCs/VLCs, senior military prosecutors—the Committee concludes that the expedited transfer policy is clearly working. It is achieving its primary goal of enabling sexual assault victims to leave safe but uncomfortable situations in which they may not be able to avoid contact with the alleged perpetrator, as well as making it possible for them to escape the rumor mill and social ostracism that often accompany a sexual assault report.¹⁷¹ Expedited transfers also enable victims to move closer to family members or others who can support them, aiding them in getting a fresh start away from the installation where the assault occurred.¹⁷²

An Air Force senior trial counsel reported that in his experience, the expedited transfer program has been lauded by every single victim who has availed themselves of it.¹⁷³ A Navy victims' legal counsel agreed, stating that the expedited transfer program is “absolutely necessary” and an “indispensable tool.”¹⁷⁴

The Committee was strongly persuaded by the testimony of sexual assault victims who had received expedited transfers. While many of these experiences were not without problems, the victims who testified at the PWG preparatory session believe that the expedited transfer program is beneficial and should be continued.¹⁷⁵ One sexual assault survivor who received an expedited transfer told the PWG that her expedited transfer saved her career and made her proud again to be in the Navy.¹⁷⁶ She also noted that she had just been promoted to E-5

171 See *Transcript of DAC-IPAD Public Meeting* 61–62 (Oct. 19, 2017) (testimony of Captain Brittany Tedford, U.S. Air Force, Special Victims' Counsel) (stating that victims ask for transfers for a variety of reasons, including to move closer to their families or other support systems; to get away from the subject, especially in cases in which the subject may be a supervisor or in the chain of command; to separate themselves from other airmen who may gossip or discuss the case, especially in cases in which many members of the same unit are involved; and to have the opportunity for a fresh start away from the physical location where the assault occurred); *id.* at 175 (testimony of Commander Paul Markland, U.S. Coast Guard, Special Victims' Counsel) (stating that, in his experience, the most common reason for requesting the transfer is relief from the distracting and relentless rumor mill that pervades cutters and small boat stations); *Transcript of PWG Preparatory Session* 369 (Dec. 1, 2017) (testimony of Lieutenant Kevin Larson, U.S. Navy, Victims' Legal Counsel) (stating that all but one of his clients who requested a transfer did so because the alleged offender was attached to the same command and all of his clients requesting transfer were attached to a ship or a command that is deployable with a ship—noting that this makes sense because the ships are very tight and closed spaces, and victims easily come into contact with the accused).

172 *Transcript of PWG Preparatory Session* 369 (Dec. 1, 2017) (testimony of Lieutenant Kevin Larson, U.S. Navy, Victims' Legal Counsel).

173 *Id.* at 263 (testimony of Major Pete Havern, U.S. Air Force, Senior Trial Counsel).

174 *Id.* at 349–50, 361 (testimony of Captain Eliot Rasmussen, U.S. Marine Corps, Victims' Legal Counsel); *id.* at 360 (testimony of Lieutenant Nathaniel Eichler, U.S. Coast Guard, Special Victims' Counsel) (stating that he believes the expedited transfer is a great device and it's a commonsense tool that should remain in all Services' toolboxes).

175 See also *id.* at 305 (testimony of a petty officer third class, U.S. Coast Guard) (stating that her new command has been very supportive and she feels the expedited transfer was a good thing).

176 *Id.* at 292 (testimony of a petty officer second class, U.S. Navy).

and did not think she would have remained in the military without having had the opportunity to start over at a new command.¹⁷⁷ Another victim stated that she believes receiving an expedited transfer was a great decision and only wishes she had taken advantage of the program earlier.¹⁷⁸ She added that she was able to get a fresh start with the transfer and now has a good support system in place.¹⁷⁹ These sentiments are further supported by victims who received expedited transfers and responded to the 2016 MIJES and 2016 WGRA survey questions regarding their expedited transfer experience (see above).

Finding 1: Special victims' counsel/victims' legal counsel (SVCs/VLCs), commanders (O-5) and senior enlisted advisors, special court-martial convening authorities (O-6), senior military sexual assault prosecutors, and present and former Service members who have received expedited transfers testified at the DAC-IPAD public meeting on October 19 and 20, 2017, and Policy Working Group preparatory session on December 1, 2017, that they believe the expedited transfer policy to be an overwhelmingly beneficial and effective mechanism to assist in the recovery of Service members who are victims of sexual assault.

Overall Assessment: The DAC-IPAD finds that the expedited transfer policy for sexual assault victims is an important sexual assault response initiative offered by the military and strongly recommends the continued existence and further improvement of the policy.

D. DAC-IPAD Recommendations for Improvements to the Expedited Transfer Policy

Issue 1: Many Service members have a mistaken perception that victims abuse the expedited transfer policy.

The JPP's September 2017 Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases raised concerns about a perception among military defense counsel and prosecutors that sexual assault victims are abusing the expedited transfer policy to transfer to more desirable locations.¹⁸⁰ These counsel also viewed victims who transferred to a different location as less likely to cooperate with the prosecution of the case.¹⁸¹

Senior military prosecutors who spoke to the PWG at the December 2017 preparatory session stated that military members who serve on court-martial panels seem to share this perception that the expedited transfer policy is being abused.¹⁸² A former Army trial counsel reported that many in the Army believe that victims are abusing the expedited transfer policy in order to transfer to a better location, though she emphasized that she does not think this perception is accurate.¹⁸³

¹⁷⁷ *Id.* at 294.

¹⁷⁸ *Id.* at 291 (testimony of an airman first class, U.S. Air Force).

¹⁷⁹ *Id.*

¹⁸⁰ See JPP REPORT ON PANEL CONCERNS, *supra* note 37, at 12.

¹⁸¹ *Id.*

¹⁸² *Transcript of PWG Preparatory Session* 156 (Dec. 1, 2017) (testimony of Major Jennifer Venghaus, U.S. Army, Plans Officer, Personnel, Plans, and Training Office, Office of the Judge Advocate General) (stating that she believes that members have a perception of abuse of the expedited transfer program, and in her experience this perception is stronger among enlisted members than officers); *id.* at 156–57 (testimony of Major Pete Havern, U.S. Air Force, Senior Trial Counsel) (stating that the perception of abuse may come from the fact that expedited transfers are granted very early, often right after a victim has made an allegation, when there is no other evidence).

¹⁸³ *Id.* at 153–54 (testimony of Major Jennifer Venghaus, U.S. Army, Plans Officer, Personnel, Plans, and Training Office, Office of the Judge Advocate General).

Another concern noted by the JPP in its September 2017 report was that defense counsel may use the perception that victims are abusing the expedited transfer policy to “challenge the victim’s motives during a court-martial, causing the panel members to question the victim’s credibility.”¹⁸⁴ This sentiment was reinforced by a trial counsel who spoke to the PWG at the December 2017 preparatory session, stating that “a good defense counsel creates that stigma [of abuse of the expedited transfer policy] at trial every single time, and you’ll never eliminate that. It is a fair cross. It is a motive to fabricate.”¹⁸⁵

The testimony and data received by the Committee, however, indicate that the policy is not being widely abused. The DAC-IPAD learned that in FY16, only 20% of all eligible sexual assault victims requested expedited transfers: thus, 80% percent of Service members who make an unrestricted report chose to remain in their units.¹⁸⁶ This fact alone argues against the view that abuse of the system is common. In addition, panels of military members from all Services who have worked with victims who have requested expedited transfers—mid-level and senior commanders, SVCs/VLCs, and senior sexual assault prosecutors—testified that they have not encountered widespread abuse of the policy.¹⁸⁷

Any policy may be subject to abuse, and several of the attorneys and commanders who testified before the DAC-IPAD and PWG acknowledged that in some cases the expedited transfer policy may be abused—but most expressed the view that abuse of the policy is not widespread and that victims are using the policy for its intended purposes.¹⁸⁸ Sexual assault victims who request expedited transfers are typically doing so in order to get away from the alleged perpetrator, to move closer to family members or others who can provide support, and to escape negative associations with or retaliation from the unit.¹⁸⁹

In addition, most of the SVCs/VLCs testified that receipt of an expedited transfer has had no impact on the victim’s willingness to cooperate with the investigation and prosecution of the case.¹⁹⁰ Indeed, several noted

184 *Id.*

185 *Transcript of PWG Preparatory Session* 164 (Dec. 1, 2017) (testimony of Captain Brandon Regan, U.S. Marine Corps, Complex Trial Team, Legal Services Support Section – East).

186 *See Service Enclosures to FY16 DoD SAPRO REPORT*, *supra* note 134.

187 *See Transcript of DAC-IPAD Public Meeting* 233 (Oct. 20, 2017) (testimony of Colonel Ty Neuman, U.S. Air Force, Commander, 2nd Bomb Wing) (stating that he feels that the importance of providing space for healing to the victim is worth the cost and that he has never denied an expedited transfer and isn’t familiar with any cases where they have been denied); *id.* at 186 (testimony of Captain John Bushey, U.S. Navy, Commander, Navy Installations Command, Director of Public Safety) (noting that he has never seen a case where an expedited transfer wasn’t the right thing to do for the member); *id.* at 21–22, 111–12 (testimony of Lieutenant Colonel Erin Miller, U.S. Army, former Commander, 101st Airborne Division) (stating that while there are individuals that are capable of abusing the expedited transfer policy, very few actually do).

188 *See Transcript of DAC-IPAD Public Meeting* 21, 111–12 (Oct. 20, 2017) (testimony of Lieutenant Colonel Erin Miller, U.S. Army, former Commander, 101st Airborne Division) (stating that she believes the expedited transfer is a good tool and a resource for the soldier to be removed from a situation where they feel unsafe and noting that she believes a very small portion of those individuals abuse the policy); *id.* at 194 (testimony of Colonel Erik Gilbert, U.S. Army, Chief of Staff to the Director, Joint Future Force Development, Joint Staff) (stating that he doesn’t think abuse is common, but did suspect that was the case in a few of the allegations he has dealt with).

189 *See Transcript of DAC-IPAD Public Meeting* 61–62 (Oct. 19, 2017) (testimony of Captain Brittany Tedford, U.S. Air Force, Special Victims’ Counsel) (stating that victims ask for transfers for a variety of reasons, including to move closer to their families or other support systems; to get away from the subject, especially in cases in which the subject may be a supervisor or in the chain of command; to separate themselves from other airmen who may gossip or discuss the case, especially in cases in which many members of the same unit are involved; and to have the opportunity for a fresh start away from the physical location where the assault occurred).

190 *See Transcript of DAC-IPAD Public Meeting* 175 (Oct. 19, 2017) (testimony of Commander Paul Markland, U.S. Coast Guard, Special Victims’ Counsel) (noting that clients who don’t want to cooperate with the prosecution tend to make that decision clear, whether or not they are interested in an expedited transfer and noting the most common reason he has seen for victims becoming uninterested in the prosecution is because the process takes too long); *id.* at 137 (testimony of Major Simone Jack, U.S. Army, Special Victims’ Counsel) (stating that after they transferred, all

that in some cases the transfer actually increased a client's willingness to participate in the process.¹⁹¹ In the experience of trial counsel, however, some victims lose interest in the trial once they have transferred and moved on with their lives.¹⁹²

Finding 2: Several SVCs, VLCs, and military sexual assault prosecutors testified to the Policy Working Group to a strong perception among military members across the Services that some Service member victims are abusing the expedited transfer policy in order to transfer to more favorable locations.

Finding 3: Some counsel perceive that court-martial members (jury members) may believe that the expedited transfer policy is being abused. At trial, defense counsel may use the fact that a victim received an expedited transfer to show a potential motive to fabricate a sexual assault in the hope that doing so will be enough for members who believe that there is widespread abuse of the policy to disbelieve the victim and possibly acquit the accused on that basis. While this may be a proper line of questioning within the Military Rules of Evidence, it may reinforce the members' perception of widespread abuse of the expedited transfer policy.

Finding 4: Commanders, SVCs, VLCs, and Service prosecutors overwhelmingly testified that they had not encountered abuse of the expedited transfer policy, though they do believe there are some rare cases in which it has been abused by Service members.

Finding 5: According to data reported in the Service Enclosures to the Fiscal Year 2016 DoD Annual Report on Sexual Assault in the Military, only 20% of DoD Service members who filed unrestricted reports of sexual assault requested expedited transfers.

DAC-IPAD Recommendation 1: 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: 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.

of her clients continued to cooperate with investigators and the prosecution); *id.* at 165 (testimony of Captain Brittany Tedford, U.S. Air Force, Special Victims' Counsel) (stating that she has not seen a negative impact on any case due to an expedited transfer and noting that all of her clients have traveled back for the Article 32 hearings and trials); *see also Transcript of PWG Preparatory Session 348* (Dec. 1, 2017) (testimony of Captain Eliot Rasmussen, U.S. Marine Corps, Victims' Legal Counsel) (reporting that of his eight clients who left the base as part of an expedited transfer, six fully participated in the military justice process); *id.* at 364–65 (testimony of Captain Matthew Blyth, U.S. Air Force, Special Victims' Counsel) (reporting that of his thirteen clients who transferred, ten participated in the military justice process as much as possible, two participated but declined to testify—a decision both made before going through the expedited transfer process—and one declined to participate at all because someone else had reported the assault and she didn't want it resolved); *id.* at 381–82 (testimony of Captain Alana Hines, U.S. Army, Special Victims' Counsel) (reporting that overall, the expedited transfer has been a great process for clients, that she doesn't believe it has hindered the military justice process, and noting that one of her clients who transferred from Korea actually elected to go back to participate in person multiple times for proceedings).

191 *Transcript of PWG Preparatory Session 365* (Dec. 1, 2017) (testimony of Matthew Blyth, U.S. Air Force, Special Victims' Counsel) (stating that one of his clients initially declined to participate in the court-martial, but after the process of transferring and getting settled on her new base, changed her mind and testified); *id.* at 175–76 (testimony of Commander Paul Markland, U.S. Coast Guard, Special Victims' Counsel) (pointing to a couple of cases in which clients reengaged after their transfer because they felt safer without the accused around and saw the move as an opportunity to get their careers back on track).

192 *See id.* at 173–74 (testimony of Major Jennifer Venghaus, U.S. Army, former trial counsel) (stating that one of the biggest issues with the distance of an expedited transfer is that victims have moved on with their life, and don't want to come back to try to go to trial); *id.* at 174 (testimony of Lieutenant Commander Katherine Shovlin, U.S. Navy, Senior Trial Counsel) (stating that she has had victims who no longer want to participate in the process after moving to a new location, though she couldn't estimate a percentage of cases in which she has seen this happen).

The PWG will continue to evaluate data received on expedited transfer requests and associated training.

Issue 2: Active duty Service member spouses and intimate partners covered by the Family Advocacy Program (FAP) are excluded from the DoD-level expedited transfer policy.

In the Fiscal Year 2012 National Defense Authorization Act, Congress statutorily required the Services to enact an expedited transfer policy for active duty Service members who are sexual assault victims.¹⁹³ This statute did not differentiate between victims who are married to or in other intimate relationships with the alleged offender and those that are not.¹⁹⁴ However, DoD has implemented this statute in a way that treats victims differently depending on their relationship status.¹⁹⁵ DoD SAPRO has enacted an expedited transfer policy to benefit Service member victims who are not married to or in a relationship with the alleged offender. DoD FAP has chosen not to enact a similar policy for those who fall under their program, including Service member victims who are married to or in a relationship with the alleged offender.¹⁹⁶

Ms. Kathy Robertson, the DoD Family Advocacy Program Manager, explained that when the expedited transfer policy was first introduced in 2011, leaders from DoD and Service FAP organizations who held meetings and discussions at that time decided that FAP had adequate policies and processes already in place to make sure that victims are safe and able to be transferred. Therefore, FAP chose not to adopt or implement an expedited transfer policy.¹⁹⁷ Service FAP offices instead often rely on other types of transfers—such as safety transfers or humanitarian/compassionate transfers—to accommodate victims who would otherwise be eligible for an expedited transfer under the terms of the statute.¹⁹⁸ However, these other transfers have different standards and

193 FY12 NDAA, *supra* note 143, at § 582(a).

194 See 10 U.S.C. § 673 (outlining “[c]onsideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense”).

195 See DoDI 6495.02, *supra* note 94, at encl. 5 ¶ 6b(2)(a) (“This Instruction does not address victims covered under FAP”).

196 *Transcript of PWG Preparatory Session 24*, 26 (Dec. 1, 2017) (testimony of Ms. Kathy Robertson, Associate Director/Family Advocacy Program Manager, Office of Military Family Readiness Policy, U.S. Department of Defense).

197 *Id.*

198 *Id.* at 25–26; see also U.S. DEP’T OF DEF., INSTR. 1315.18, PROCEDURES FOR MILITARY PERSONNEL ASSIGNMENTS (Oct. 28, 2015) (Inc. Ch. 1, Apr. 14, 2017) [hereinafter DoDI 1315.18] available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131518p.pdf>. DoDI 1315.18 provides that Service members may request moves for “humanitarian” reasons such as a “nonviable” family care plan, becoming a single parent, or qualifying for the Exceptional Family Member Program, which deals with family members’ special needs. *Id.* at encl. 3 ¶ 3b(9), 4d(1), 5g(3), 9b–e. DoDI 1315.18 also refers to “safety” moves for

[a] Service member who is or who has dependents who are threatened with bodily harm or death and the circumstances are such that military and civilian authorities are unable to provide for their continued safety. The appropriate investigative agency (such as the Air Force Office of Special Investigations, Army Criminal Investigation Command, or Naval Criminal Investigative Service) and a local judge advocate will verify the threats and circumstances.

Id. at encl. 3 ¶ 3b(18). Most notably, the Instruction states that it is DoD policy that

Service members who make an Unrestricted Report of being sexually assaulted may request an *expedited transfer* as authorized in DoDI 6495.02 (Reference (h)) and in accordance with section 673 of Title 10, United States Code (Reference (i)). Sexual assault against adults includes rape and sexual assault in violation of Article 120 of the Uniform Code of Military Justice (see section 920 of Reference (i)), forcible sodomy in violation of Article 125 of the Uniform Code of Military Justice (see section 925 of Reference (i)), and attempts to commit those offenses. Service members accused of committing a sexual assault may be transferred in accordance with Reference (h) [DoDI 6495.02] instead of the Service member who requests an expedited transfer.

Id. at ¶ 3d (emphasis added).

timelines for approval than do expedited transfer requests, and some of these differences may be less favorable to victims.

While the Committee recognizes that expedited transfer requests may be more difficult to carry out when the victim and the alleged offender are spouses or intimate partners, especially when they have children in common, expedited transfers should be available to eligible victims who choose to request them, as required by statute.

The DAC-IPAD also found that the DoD policy on military assignments includes no requirement that assignments personnel or commanders work together with SAPR and FAP personnel when transfer requests involve Service members who are using or are eligible to use FAP or SAPR assistance to ensure that those members have a smooth transition and receive coordinated services and support. The FAP program managers who spoke to the PWG highlighted the lack of such coordination as a problem. The DAC-IPAD agrees that requiring military assignments personnel or commanders to coordinate expedited transfer requests with the servicing FAP and SAPR offices would benefit victims.¹⁹⁹

Finding 6: The expedited transfer statute (10 U.S.C. § 673), which applies to all active duty Service members who are victims of sexual assault under Article 120, 120a, or 120c of the Uniform Code of Military Justice (UCMJ), does not differentiate between active duty Service members whose sexual assault reports are handled by the Sexual Assault Prevention and Response (SAPR) program and those handled by the Family Advocacy Program (FAP).

Finding 7: The DoD Instruction establishing the expedited transfer policy (DoDI 6495.02) applies only to active duty victims whose sexual assault reports are handled by the SAPR program and expressly excludes victims covered under FAP from the expedited transfer policy.

Finding 8: No DoD-level policy establishes an expedited transfer option for victims of sexual assault covered under FAP who are active duty Service members. DoD and Service FAP representatives testified that they use other transfer options, such as humanitarian or compassionate transfers, as needed and available.

Finding 9: In addition to expedited transfers, other out-of-cycle transfer options available in the Services are safety transfers and humanitarian/compassionate transfers. These options differ across the Services and have different standards for approval.

Finding 10: Even though the dynamics of sexual assault in the context of spousal and intimate partner relationships are different than in other sexual assaults, 10 U.S.C. § 673 requires that expedited transfer be available for all Service members who make unrestricted sexual assault reports. In some instances, the option of an expedited transfer would benefit Service members covered under the FAP program, such as cases in which a Service member wishes to gain physical distance from an alleged perpetrator or to be closer to family or other support systems to assist in their recovery.

Finding 11: The Department of Defense regulation regarding procedures for military personnel assignments (DoDI 1315.18, “Procedures for Military Personnel Assignments”) references the DoD expedited transfer policy, but it does not require that assignments personnel or commanders communicate or coordinate with SAPR or FAP personnel in the expedited transfer assignments process.

¹⁹⁹ *Transcript of PWG Preparatory Session* (Dec. 1, 2017) (testimony of Ms. Jackie Richardson, U.S. Army Family Advocacy Program) (suggesting that if a soldier is having a problem and goes to his or her command, the commander should ensure that FAP is contacted so it can do an assessment and create a safety plan prior to the commander transferring the soldier; this does not always happen currently).

DAC-IPAD Recommendation 3: The DoD-level and Coast Guard equivalent 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 SAPR policy and consistent with 10 U.S.C. § 673.

DAC-IPAD Recommendation 4: The DoD-level military personnel assignments policy (DoDI 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.

E. Issues Related to the Expedited Transfer Policy That the PWG Will Continue to Review

Issue 1: The expedited transfer option is not available to Service members who make restricted sexual assault reports.

Under current policy, expedited transfers are available only to Service members who file unrestricted reports of sexual assault.²⁰⁰ The Committee has asked the PWG to explore the advisability and practicality of allowing Service members who file restricted reports to request expedited transfers.

Service members who are sexually assaulted have various reasons for filing restricted reports—privacy and career concerns, among others. Yet these members may still be in positions where they will have to face their attacker at work or on the installation, possibly adding to their trauma. They may also need the assistance of family or other support systems to help with their recovery. Under current DoD policy, a Service member who files an unrestricted report may request an expedited transfer but in most circumstances is not required to participate in the investigation or prosecution of the case. However, policy does require that the MCIOs continue to investigate the allegation, and this investigation often includes interviewing the victim's friends and co-workers, possibly against the strong wishes of the victim.

While the logistics of making an expedited transfer available to a member who filed a restricted report may be difficult or complex, this program's overwhelmingly positive effects on victims may make the idea worth pursuing. Perhaps allowing a victim the opportunity to get a fresh start at a new installation, without the fear of encountering the alleged perpetrator, will encourage the victim to change his or her report to unrestricted and allow the allegation to be investigated.²⁰¹

The Committee notes that the statute requiring an expedited transfer policy does not itself limit such transfers to Service members who file unrestricted reports.²⁰²

DAC-IPAD Interim Assessment: The DAC-IPAD believes that the development of a workable option allowing Service members who make restricted reports to request and receive expedited transfers without triggering an investigation would be beneficial for certain victims. The PWG will continue to explore this issue.

200 DoDI 6495.02, *supra* note 94, at ¶ 4(o) ("Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC or SAPR VA at the time of making the report, or as soon as practicable, of the option to request an Expedited Transfer.").

201 See e.g. *Transcript of PWG Preparatory Session 360* (Dec. 1, 2017) (testimony of Lieutenant Nathaniel Eichler, U.S. Coast Guard, Special Victims' Counsel) (explaining that he has witnessed total changes in the demeanor of his clients after an expedited transfer from a state of fear and reluctance to actual participation with the military justice process).

202 See 10 U.S.C. § 673(a) (providing the expedited transfer option to a "member of the armed forces serving on active duty who was a victim of a sexual assault or other offense covered by section 920, 920a, or 920c of this title (article 120, 120a, or 120c)").

Issue 2: The approval standard and the purpose of DoD's expedited transfer policy are not sufficiently clear or comprehensive.

The stated purpose of the expedited transfer policy—to address situations in which a victim feels safe, but uncomfortable—does not cover the important purpose of helping the victim to recover and seek needed care before resuming military duties.²⁰³ In addition, the standard that commanders must follow to approve expedited transfers is unclear. First, a commander must find that a “credible report” has been made.²⁰⁴ This term is not clearly defined and is coupled with a presumption in favor of the transfer.²⁰⁵ In addition, pursuant to the DoD-level policy, the commander must consider a list of 10 additional criteria, including moving the suspect instead.²⁰⁶

DAC-IPAD Interim Assessment: The DAC-IPAD believes that the purpose, standards, and criteria outlined in the expedited transfer policy should be further evaluated and clarified. The PWG will continue to explore this issue.

Issue 3: Some active duty Service members who are sexually assaulted are not able to successfully return to duty even after an expedited transfer, because their need for transitional assistance is not met.

At the December PWG meeting, the mother of a medically retired Service member who was violently sexually assaulted by two Service members while in the Army described her daughter's experience and the need for a period of transitional care for sexual assault victims who require it.²⁰⁷ The DoD expedited transfer policy does not address such transitional care, though many of the victims who testified at the December PWG meeting agreed that it would greatly benefit those sexual assault victims who need it.²⁰⁸

For many victims, the chance to start over at a new installation without having to fear running into the alleged perpetrator, combined with mental health counseling, is enough to enable them to move on with their lives and successfully continue their careers. But for other victims, the ongoing trauma from the assault may make an immediate return to work, even at a different location, too difficult. As some of the SVC/VLC and sexual assault victims told the PWG, many victims are reluctant to get the mental health care they need for fear that their supervisors and co-workers, who are likely unaware of the sexual assault, may disparage them for missing too much work.²⁰⁹ Statistics show that one-third of active duty sexual assault victims leave the military within one year of reporting a sexual assault.²¹⁰ Allowing those victims who require it to attend a transitional care program away from their units—perhaps something similar to the Wounded Warrior programs for military members

203 See DoDI 6495.02, *supra* note 94, at encl. 5.

204 *Id.* at encl. 5.

205 *Id.* at encl. 5.

206 *Id.* at encl. 5.

207 *Transcript of PWG Preparatory Session 305–22* (Dec. 1, 2017) (testimony of Ms. Amanda Hagy, DAC-IPAD Paralegal).

208 *Id.* at 330 (testimony of a U.S. Army specialist) (stating that a transition period would have been helpful because she didn't want anyone to know about the assault and as a result she did not seek any mental health treatment, though she wanted to); *id.* at 342 (testimony of Ms. Amanda Hagy, DAC-IPAD paralegal) (stating that having more substantial transition assistance when arriving at a new unit would be helpful).

209 *Id.* at 330 (testimony of a U.S. Army specialist) (stating that she hasn't gone to a mental health professional because she doesn't want the entire chain of command to know and judge her or her peers to wonder why she's gone and judge her for that).

210 *Transcript of DAC-IPAD Public Meeting 290–91* (Jan. 19, 2017) (testimony of Mr. Don Christensen, President, Protect Our Defenders) (citing a DoD Inspector General report stating that one-third of active duty victims discharge within one year of reporting a sexual assault).

wounded in action—may enable them to return to full duty status as healthy, functioning members of their units.

DAC-IPAD Interim Assessment: The DAC-IPAD believes that some active duty Service members who are sexually assaulted are in need of transitional assistance before they are able to successfully return to duty. The PWG will continue to explore this issue.

Issue 4: The expedited transfer policy includes temporary intra-installation moves as well as permanent moves to new installations or locations.

Under DoD policy, a sexual assault victim may request an expedited transfer to another unit on the same installation or to a different installation.²¹¹ Though there are many reasons for Service members to undertake temporary intra-installation transfers, these moves do not always adequately separate sexual assault victims from the accused or from their problematic situations.

Several counsel described scenarios in which a victim requested an intra-installation transfer but continued to run into the alleged offender at various locations on base, making it necessary for the victim to then request another expedited transfer to another installation.²¹² The Committee is concerned that victims who request and receive more than one expedited transfer may be viewed unfavorably by supervisors or commanders and that these multiple moves may harm the victim's career.

The PWG will explore whether reserving the term “expedited transfer” solely for moves to a different installation would alleviate some of these issues. While a commander, at the victim's request, could transfer the victim to another unit on base, not referring to this move as an expedited transfer might forestall difficulties for a victim who eventually requests a transfer to a different installation. Having only one transfer request in their record may be less problematic than having two or more requests.

Further, a Marine Corps judge advocate noted that in the Marine Corps, when a command denies a request, it typically opts to move the victim internally—raising questions about whether the Services are categorizing both intra- and inter-installation moves uniformly as expedited transfers, as well as about what each Service considers a “denial” of a request.²¹³

DAC-IPAD Interim Assessment: The DAC-IPAD is concerned that Service members who initially receive an intra-installation expedited transfer may be penalized if the transfer does not resolve the problems in their situation and they subsequently request a second expedited transfer to leave the installation. The PWG will continue to explore this issue.

211 See DoDI 6495.02, *supra* note 94, at encl. 5.

212 *Transcript of PWG Preparatory Session 189–90* (Dec. 1, 2017) (testimony of Captain Brandon Regan, U.S. Marine Corps, Complex Trial Team, Legal Services Support Section - East) (stating that he had one case where a victim was moved from one side of Camp Lejeune to the other, which he at first thought was great because it showed the victim was committed to the case and wanted to see it through; however, she continued seeing the accused on base and so she requested another transfer—which the defense counsel will use against her); *id.* at 190–91 (testimony of Major Jennifer Venghaus, U.S. Army, former trial counsel) (stating that the Army does quite a few intra-installation expedited transfers because some victims want to stay on post—they've made friends and want to be with the people they've become close to—but there are those times when you move them to another brigade, and they still run into each other at the post exchange).

213 *Transcript of PWG Preparatory Session 63–64* (Dec. 1, 2017) (testimony of Major Tyler Brummond, U.S. Marine Corps, Deputy Branch Head, Military Personnel Law, Judge Advocate Division).

Issue 5: The expedited transfer policy is limited to Service members who are victims of sexual assault and does not include Service members whose civilian spouses or children are sexual assault victims, even though all may face exactly the same difficult situations at the installation.

By statute and by DoD-level policy, expedited transfers are available only to active duty Service member victims.²¹⁴ However, there may be instances when expedited transfers should be available to Service members whose family members are sexually assaulted by other Service members. For example, if a civilian spouse of an active duty Service member is sexually assaulted by another Service member at the same duty station, the victim's Service member spouse may also need a transfer to a new location to avoid contact with the alleged offender or retaliation from within the community.

DAC-IPAD Interim Assessment: 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.

Issue 6: Inadvertent disclosures to command of sexual assaults and reports made by third parties deny Service members the opportunity to make a restricted report and protect their privacy, if they so desire.

Current DoD policy allows a victim to disclose a sexual assault to a friend, family member, or roommate and still make a restricted report.²¹⁵ However, if the victim inadvertently discloses the assault to a member of his or her chain of command or if the assault is disclosed to law enforcement or the victim's chain of command by a third party, the victim no longer has the option of filing a restricted report and the assault must be investigated by the MCIO.²¹⁶ In most instances, the victim can choose not to cooperate with the investigation; however, the MCIO is still required to complete the investigation, which often includes interviewing the victim's co-workers and friends. If the victim's goal is to maintain privacy, he or she may find this investigation quite upsetting.

The PWG will explore whether it is feasible or advisable to allow a victim to re-restrict his or her report in the event of a third-party report made without the victim's consent or an unintentional disclosure by the victim to a member of his or her chain of command. This idea was proposed during the October 2017 DAC-IPAD meeting by Navy Captain John Bushey, a special court-martial convening authority. Several other commanders agreed that they would support the ability of victims to re-restrict their reports in some circumstances.

DAC-IPAD Interim Assessment: The DAC-IPAD believes that victims who lose the ability to make a restricted report, whether because of third-party reports or because they are unaware of the consequences of reporting to a member of their chain of command, may benefit from being able to restrict further disclosure or investigation of the incident if they wish to protect their privacy. The PWG will continue to explore this issue.

²¹⁴ See DoDI 6495.02, *supra* note 94, at encl. 5.

²¹⁵ See DoDI 6495.02, *supra* note 94, at encl. 5.

²¹⁶ *Id.*

IV. REVIEW OF LEGAL AND SEXUAL ASSAULT RESPONSE TRAINING FOR COMMANDERS

A. Background

To pursue its interest in legal and sexual assault response training for commanders, the DAC-IPAD issued a request for information on those topics to the Department of Defense and the military Services.²¹⁷ In addition, the Committee heard from a panel of special court-martial convening authorities (SPCMCAs) and a panel of mid-level (O-5) commanders on these topics at its public meeting on October 19 and 20, 2017.

B. Commander Legal Training

1. Special Court-Martial Convening Authority Legal Training

In the military, commanders are given the responsibility and authority to administer discipline. This includes convening courts-martial and making decisions regarding the appropriate disposition of offenses. For penetrative sexual assault offenses (i.e., rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses), only a commander in the grade of O-6 or higher who is serving as an SPCMCA is authorized to make the initial decision regarding how the allegation will be handled (i.e., court-martial, an alternate disposition, or no action).²¹⁸

Because of the authority possessed by SPCMCA in the military, the DAC-IPAD wanted to know the amount and type of legal training and support that commanders holding this position were given. According to the Service responses to the DAC-IPAD's request for information, all commanders who serve as SPCMCA receive formal training, which includes training on sexual assaults. Commanders attend these courses upon selection to, or shortly after assuming, the role of SPCMCA. The following chart offers a sketch of this training by Service.

SPCMCA LEGAL TRAINING COURSES

	Army	Air Force	Navy / USMC	Coast Guard
Name	Senior Officer Legal Orientation (SOLO)	Senior Officer Legal Orientation (SOLO)	Senior Officer Course	Command Leadership Courses
Location	Army JAG School (TJAGLCS) Charlottesville, VA	Air Force JAG School Maxwell AFB, AL	Naval Justice School Various locations	Coast Guard Leadership Development Center New London, CT
Length	1 week	2 days	2.5 days	6 hours
Attendees	SPCMCAs – brigade and battalion commanders (prior to assuming command)	SPCMCAs – wing, vice wing, and group commanders (prior to or soon after assuming command)	Navy – captains (prior to assuming command) USMC – commanding officers, executive officers, and officers in charge	All prospective commanding officers and executive officers
Subjects	Criminal, administrative, and operational law and ethics	4 hours of UCMJ training	3-hour military justice block, of which 1.5 hours is dedicated to sexual assault	SAPR training, UCMJ training

Source: Service Responses to DAC-IPAD Request for Information 4, Question 2 (Sept. 11, 2017)

²¹⁷ See DAC-IPAD Request for Information 4, Questions 1–3 (Sept. 11, 2017), and Service Responses, *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

²¹⁸ Memorandum on Withholding Initial Disposition Authority, *supra* note 29.

SPCMCAs from all of the Services who spoke to the DAC-IPAD at the October 2017 public meeting stated they received valuable legal training at these formal courses. In addition, they all emphasized that they relied on close working relationships with their staff judge advocates (SJAs) for coordination of sexual assault cases and other legal issues.²¹⁹

2. Mid-Level Commander Legal Training

The Services provide some formalized legal training, including material on sexual assault, for lower or mid-level commanders (O-4 or O-5), though the amount and type of such training varies widely by Service.²²⁰ These commanders do not have the authority to decide the disposition of penetrative sexual assault cases, but they may make recommendations to the SPCMCA regarding an appropriate disposition.

Like the SPCMCA panel, the panel of mid-level commanders from each of the Services who spoke to the Committee at the October 2017 DAC-IPAD public meeting all stated that they relied on their SJAs and had their SJAs on “speed dial” for consultation as legal issues arose and progressed.²²¹

3. Additional Resources

Each of the Services produces a legal handbook for use by commanders and senior leaders.²²² These handbooks provide basic legal information covering search and seizure, Article 31 rights, disposition of cases, and other legal topics. Each of these handbooks provides information on sexual assault cases.

C. Sexual Assault Response Training for Commanders

Lower and mid-level commanders (company/brigade or squadron commanders or their equivalents) and noncommissioned officers (NCOs) frequently are faced with having a sexual assault victim, the alleged

219 Colonel Ty Neuman, the Air Force SPCMCA on the panel, stated, “The most invaluable training, however, comes directly from routine interactions I have with my SJA in all matters regarding these issues.” He emphasized the value of this interaction, adding, “Each time I consider disposing of a sexual assault allegation, I meet one on one with my SJA to review the facts and circumstances and discuss the range of disciplinary actions at my disposal.” *Transcript of DAC-IPAD Public Meeting* 171–73 (Oct. 20, 2017) (testimony of Colonel Ty Neuman, U.S. Air Force, Commander, 2nd Bomb Wing). These points were echoed by the Navy SPCMCA, who told the Committee, “While serving as an installation commander, I met with my JAG almost daily . . . [a]nd we discussed a myriad of concerns, involving NJP [nonjudicial punishment], court-martial and other issues.” *Id.* at 184–85 (testimony of Captain John Bushey, U.S. Navy, Commander, Navy Installations Command, Director of Public Safety). The Army SPCMCA agreed, stating, “In summary, I felt that I had adequate training and good access to the required expertise and the resources to deal with the uniqueness of all sexual assault and harassment cases I handled as a commander.” *Id.* at 194 (testimony of Colonel Erik Gilbert, U.S. Army, Chief of Staff to the Director, Joint Future Force Development, Joint Staff).

220 See Service Responses to DAC-IPAD Request for Information 4, Question 2 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

221 *Transcript of DAC-IPAD Public Meeting* 13 (Oct. 20, 2017) (testimony of Lieutenant Colonel Erin Miller, U.S. Army, Assistant Chief of Staff, G4, Chief of Sustainment, 101st Airborne Division); *id.* at 30 (testimony of Commander Chad Livingston, U.S. Navy, Deputy Director, Financial Policy and Systems); *id.* at 38 (testimony of Lieutenant Colonel Jennifer Nash, U.S. Marine Corps, Commanding Officer, 7th Engineer Support Battalion); *id.* at 45 (testimony of Major Christopher Seamans, U.S. Air Force, Commander, 69th Maintenance Squadron).

222 See COMMANDER’S LEGAL HANDBOOK at 83–90, Misc. Pub. 27-8 (2015), The Judge Advocate General’s Legal Center and School, United States Army, available at http://www.jag.navy.mil/distrib/instructions/Commanders_ARMY_Legal_HB_2015_C1.pdf; THE MILITARY COMMANDER AND THE LAW at 157–75, Edition 13 (2016), The Judge Advocate General’s School, United States Air Force, available at [www.holloman.af.mil/Portals/101/documents/JA Documents/References/MCL 2016 web.pdf?ver=2016-11-28-145828-903](http://www.holloman.af.mil/Portals/101/documents/JA%20Documents/References/MCL%2016%20web.pdf?ver=2016-11-28-145828-903); USN/USMC COMMANDER’S QUICK REFERENCE LEGAL HANDBOOK (QUICKMAN) at 1–8, 13–14 (Oct. 2017), Naval Justice School, United States Navy, available at http://www.jag.navy.mil/documents/NJS/QUICKMAN_October_2017.pdf.

perpetrator, or both serving in their units. These commanders and NCOs must provide leadership to the unit as a whole, assist the victim, and treat the alleged perpetrator fairly while action is pending. Though these commanders and NCOs often are not making legal decisions in such cases, they are responsible for morale and good order and discipline in their units while the investigation is ongoing and while legal actions are pending. Carrying out these responsibilities can be especially difficult because investigating and resolving an allegation of sexual assault can take considerable time. Throughout the process, commanders and NCOs may have to deal with rumors about and peer ostracism of the victim or alleged perpetrator, expedited transfer requests, the need to address the mental health of the victim or alleged perpetrator, and other complex issues. The DAC-IPAD tasked the PWG with reviewing the types and amount of training that these commanders and NCOs receive on handling these issues.

1. Service Responses to DAC-IPAD Request for Information

The DAC-IPAD requested information from the Services on sexual assault response training provided to commanders and senior enlisted leaders.²²³ The type and amount of sexual assault response training varies by Service and includes a DoD regulatory requirement that the SARC meet with new commanders for one-on-one SAPR training within 30 days of their taking command.²²⁴ The following is a summary of training, by Service.

a. Army

- Company Commander/First Sergeant Pre-Command Course. This course is for company commanders (O-3) and first sergeants (E-8). The training contains a 90-minute lesson consisting of a male sexual assault/hazing video followed by a discussion. This lesson also covers sexual assault reporting options, privileged communications, consent, collateral misconduct, expedited transfers, military protective orders, the management of alleged offenders, retaliation, and other related topics.²²⁵
- Battalion/Brigade Pre-Command Course. This course is for battalion commanders (O-5), brigade commanders (O-6), and command sergeant majors (E-9). The training contains a 240-minute presentation and facilitation session used to reinforce learning outcomes from previous small-group discussions on promoting and safeguarding the Army's Sexual Harassment/Assault Response and Prevention Program. This presentation includes roundtable discussions and scenarios on managing cases of sexual harassment and sexual assault.²²⁶
- To meet the DoD regulatory requirement, the Army has developed the Emergent Leader Immersive Training Environment – Command Team Trainer, an interactive scenario-based program that SARCs use to guide command teams through right and wrong decisions when dealing with a sexual assault.²²⁷

223 See DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

224 See DoDI 6495.02, *supra* note 94, at encl. 5 ¶ 3b.

225 See Army Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), available at https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

226 *Id.*

227 *Id.*

b. Air Force

- Wing Commander Course. This course is for wing commanders, vice wing commanders, and group commanders (O-6). SAPR content is incorporated into a 4-hour block delivered by the Deputy Chief of Staff for Manpower, Personnel and Services (A1/CC), on the commander's responsibility to care for airmen. Students are evaluated via knowledge check scenarios. Students also receive a primer addressing SAPR topics.²²⁸
- Major Command Squadron Commander Course. This course is for squadron commanders (O-4/O-5). In a 3-hour block, the major command SARC train incoming squadron commanders on sexual assault response topics, including the neurobiology of trauma, victimology and survivability (victim's reactions and responses), a commander's role in sexual assault prevention and response, the sexual assault incident response oversight (SAIRO) report, and expedited transfer policies. Training on the expedited transfer process includes scenario-based discussions on items to consider, complex situational dynamics, victim advocacy, access to resources, military justice and accountability, reporting options, the presence of victim and subject in the same unit, retaliation, male victimization, offenders' rights, and opportunities for prevention.²²⁹
- To meet the DoD regulatory requirement, SARCs meet with new commanders for a minimum of one hour, and training is tailored to local policies, procedures, and trends.²³⁰

c. Navy

- Senior Officer Course. Navy captains (O-6) attending this course receive training in sexual assault investigations, administrative reporting requirements, expedited transfers, and disposition of sexual assault allegations.²³¹
- Naval Leadership and Ethics Center. Prospective major commanding officers, commanding officers, executive officers, and command master chiefs are required to attend a 2-hour training titled "Empowered to Act" prior to assuming command. This training includes scenario-based videos and facilitated small-group discussions that cover sexual assault response, awareness, investigative and accountability considerations, victim assistance considerations, and prevention.²³²
- Senior Shore Leadership Course (SSLC). During the quarterly SSLC, the installation commanding officers, executive officers, and command master chiefs receive SAPR training

228 See Air Force response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

229 *Id.*

230 See Air Force Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

231 See Navy Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

232 *Id.*

and review policy on case management groups; attendees also conduct a mock case management group. The course is 1 hour and 20 minutes long.

- To meet the DoD regulatory requirement, within 30 days of taking command new commanding officers, executive officers, and command master chiefs meet with the SARC to discuss sexual assault topics. The SARC uses a commander's checklist to provide training on the SAPR program, victim support and services, expedited transfer process, sexual assault prevention and response, retaliation, reporting, treatment of the alleged offender, command climate, command-specific trends, and designated personnel. The briefing is allotted 30 minutes to one hour, depending on command needs.²³³

d. Marine Corps

- Cornerstone: Commandant's Combined Commandership Course. During this training, new or incoming commanders (O-5/O-6) and sergeants major receive three hours of SAPR training conducted by a subject matter expert who provides guidance, instruction, and interactive discussion on the commander's role in the SAPR program. Attendees are trained on retaliation, reprisal, ostracism, and maltreatment, as well as expedited transfers, military protective orders, victim services, victim response to sexual assault, and maintaining an appropriate command climate.²³⁴
- To meet DoD regulatory requirements, within 30 days of taking command new commanders meet with the SARC to discuss sexual assault topics.²³⁵

e. Coast Guard

- Coast Guard Leadership Development Center (LDC) Commander Course. The Coast Guard provides a 6-hour formal SAPR course for officers assuming command. Commanders receive training on different reporting methods, on understanding the ways individuals may respond to victimization, and on how to ensure victims are directed to appropriate resources. They also receive training on the rights of the subject of a sexual assault complaint, and on what to do when the subject makes a cross-claim of sexual assault. The course covers reducing the barriers to reporting sexual assault as well as fostering a healthy command climate, including prevention of retaliation and reprisal. Finally, commanders are trained on the command's responsibilities when in receipt of an expedited transfer request. This course always includes both an attorney and a SARC, who are present throughout to answer questions.²³⁶
- Coast Guard LDC Courses for Mid-Level Supervisors and New Officer Accessions. Mid-level supervisors take the 2.5-hour class and receive general guidance on what the reporting

233 See Navy Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

234 See Marine Corps Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

235 DoDI 6495.02, *supra* note 94, at encl. 5 ¶ 3b.

236 See Coast Guard Response to DAC-IPAD Request for Information 4, Question 3 (Sept. 11, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready.pdf.

options are, how to dispel myths about sexual offenses, and how to foster a positive command climate. New officer accessions take the 3.5-hour class, which goes into some depth about reporting options, duties and responsibilities of the command to the victim and subject, and the need to embrace a climate of professionalism in order to prevent sexual assault. Both the 3.5-hour and 2.5-hour modules may be supported by an attorney and/or SARC if one is available, but their presence is optional.²³⁷

2. Commander Perspectives on Sexual Assault Response Training

The mid-level commanders and senior enlisted leaders who spoke to the DAC-IPAD at the October 19 and 20, 2017, public meeting discussed the importance of their relationships with their assigned SARCs and VAs. These commanders found the training provided by their SARCs or VAs to be very valuable in their understanding of the proper handling of sexual assault cases and issues.²³⁸ Several of the commanders stated that they had their SARCs or VAs on “speed dial,” echoing their comments about their judge advocates, and relied on them when dealing with sexual assault cases in their units.²³⁹

The commanders on the panel held varying opinions of the formal training provided to them at their respective commander courses, with some finding it helpful and others finding it cursory.²⁴⁰ One commander said that a written commander’s sexual assault prevention and response guide given to him by the SARC was a valuable resource.²⁴¹

3. Victim Perspectives

As noted above in the expedited transfer section, several sexual assault victims testified at the December 1, 2017, PWG preparatory session regarding their experiences with the expedited transfer process and with command

237 *Id.*

238 *Transcript of DAC-IPAD Public Meeting 26* (Oct. 20, 2017) (testimony of Commander Livingston, U.S. Navy); *id.* at 33 (testimony of Lieutenant Colonel Nash, U.S. Marine Corps); *id.* at 41 (testimony of Sergeant Major Stennett Rey, U.S. Marine Corps, Senior Enlisted Advisor, 7th Engineer Support Battalion); *id.* at 61 (testimony of Commander Jonathan Carter, U.S. Coast Guard, Commanding Officer, Coast Guard Cutter *Legare*).

239 The Army commander told the Committee she spent at least an hour every week with her VA “having conversations about atmosphere, what was going on in the unit, what was going on in the barracks, and then, really talking about the status of the victims inside the formation, to understand where they were in their process of healing or dealing with what had occurred[.]” She discussed a situation she had dealt with in which both the victim and alleged perpetrator were in her unit and she worked closely with the judge advocate and VA to move the alleged perpetrator to another unit. *Transcript of DAC-IPAD Public Meeting 15–16* (Oct. 20, 2017) (testimony of Lieutenant Colonel Miller, U.S. Army); *id.* at 29–30 (testimony of Commander Livingston, U.S. Navy); *id.* at 45 (testimony of Major Seamans, U.S. Air Force); *id.* at 52–53 (testimony of SMSgt Terry Zanella, U.S. Air Force, First Sergeant, 69th Maintenance Squadron).

240 The Navy commander recalled some of the formal sexual assault training he had received at the commander course and stated he wished they had spent more time discussing the legal and administrative requirements involved in sexual assault cases, rather than spending time trying to convince senior officers that sexual assault is “bad and detrimental to the command.” *Transcript of DAC-IPAD Public Meeting 27* (Oct. 20, 2017) (testimony of Commander Livingston, U.S. Navy). The Air Force commander described the initial sexual assault response training he received at his major command squadron commander course and hearing from a sexual assault victim about her experiences and from the victim’s commander and first sergeant regarding how they handled that case. He described his formal training as “cursory,” but stated it prepared him because he knew who to contact at his installation for help. *Id.* at 44–46 (testimony of Major Seamans, U.S. Air Force). The Coast Guard commander told the Committee he received extensive sexual assault response training prior to assuming command. This training was interactive and involved a sexual assault victim, a judge advocate, and a SARC, as well as case studies. *Id.* at 61, 71 (testimony of Commander Carter, U.S. Coast Guard).

241 *Id.* at 28 (testimony of Commander Livingston, U.S. Navy).

and senior enlisted personnel. While some victims described their commanders or first sergeants as helpful and supportive following their sexual assaults, some were more critical of their commanders' involvement.

An Air Force victim of sexual assault told the PWG that her first sergeant was helpful to her in processing her expedited transfer request and she felt her command handled her assault well.²⁴² On the other hand, a petty officer second class, a Navy victim, stated that she felt a lack of support from her chain of command following her assault, adding that she felt that she and the bystanders who had helped her were punished to the same extent as the accused. For these and other reasons, she requested an expedited transfer. She stated that her commander made her feel like a victim of "victim shaming."²⁴³ However, her new command was "extremely supportive," ensuring she received time off from work for counseling and had everything she needed. She explained, "My new command helped me to believe in myself again, to have the courage to do things I never would have done a year ago."²⁴⁴ A petty officer third class, a Coast Guard victim, told the PWG that her command has been similarly supportive and helped her with whatever she needed.²⁴⁵

One victim from the Army highlighted the unintended consequences of the actions of leaders who mean well but do not have experience handling a sexual assault report. She explained that after hearing about her report, both her first sergeant and commander showed up at her barracks room, along with the SARC. Because her unit was very small and she was the only woman in it, she felt that everyone knew what had happened to her.²⁴⁶ She stated that her commander and first sergeant were "calling people and trying to figure out what to do."²⁴⁷

In addition to this testimony, a senior airman who was medically retired from the Air Force shared her experiences following her 2012 sexual assault with the Committee at the October 2017 DAC-IPAD public meeting. She told the Committee that when she reported her assault to the command, her commander told her that nothing would be done.²⁴⁸ She spent time at an inpatient program to treat post-traumatic stress disorder, but because of her absence from work, she received a lower rating on her Enlisted Performance Report.²⁴⁹ She said that two years after her assault, when sexual assault awareness had increased among military members, her first sergeant told her they had handled her sexual assault poorly and asked what he could do to help her.²⁵⁰

D. Analysis and Future Review

The PWG has made good progress gathering information on legal and sexual assault response training for commanders and senior enlisted leaders. Commanders who spoke at the DAC-IPAD public meeting on October 19 and 20, 2017, consistently emphasized the importance of having immediate and continuous access to judge advocates and SARCs when they were faced with sexual assault allegations in their units. Frequent contact with

²⁴² *Transcript of PWG Preparatory Session* 289, 323 (Dec. 1, 2017) (testimony of an airman first class, U.S. Air Force).

²⁴³ *Transcript of PWG Preparatory Session* 294–95, 325 (Dec. 1, 2017) (testimony of a petty officer second class, U.S. Navy).

²⁴⁴ *Id.* at 295.

²⁴⁵ *Transcript of PWG Preparatory Session* 305, 329 (Dec. 1, 2017) (testimony of a petty officer third class, U.S. Coast Guard).

²⁴⁶ *Transcript of PWG Preparatory Session* 326 (Dec. 1, 2017) (testimony of a U.S. Army specialist).

²⁴⁷ *Id.* at 327.

²⁴⁸ *Transcript of DAC-IPAD Public Meeting* 12 (Oct. 19, 2017) (testimony of former Airman Hannah Stolberg, U.S. Air Force, Retired).

²⁴⁹ *Id.* at 14–15.

²⁵⁰ *Id.* at 13.

assigned judge advocates and SARCs, as well as the training provided by those individuals, seemed to support and supplement the formal training that these commanders had received upon assuming command.

The PWG will continue to review the substance and effectiveness of formal training to commanders and senior enlisted leaders in order to determine whether current training is effective, whether improvements are needed, and whether there should be more uniformity in legal and sexual assault response training across the Services.

V. FUTURE ISSUES

Going forward, the PWG will continue to review the issues related to the expedited transfer policy identified in section IV of this chapter. The PWG will also continue its review of the substance and effectiveness of legal and sexual assault training for commanders.

The DAC-IPAD has also asked the PWG to review the new Article 140a of the UCMJ, which was enacted in the FY17 National Defense Authorization Act.²⁵¹ Article 140a requires the Services to develop and implement a uniform military justice data collection system that will support case management, data analysis, and public access to case documents by December 2020. The PWG will explore and make recommendations on the standards and criteria that should be used to determine what data related to sex offenses are most important to track and should be uniformly collected across the Services.

251 FY17 NDAA, *supra* note 98, § 1104(a).

APPENDIX A. AUTHORIZING STATUTES

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SECTION 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

(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

SECTION 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.”.

APPENDIX B. COMMITTEE CHARTER

Charter

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

1. Committee's Official Designation: The Committee will be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces ("the Committee").
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 ("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), established this non-discretionary Committee.
3. Objectives and Scope of Activities: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy 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.
4. Description of Duties: Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel (GC) for the Department of Defense (DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
5. Agency or Official to Whom the Committee Reports: The Committee will report to the Secretary and Deputy Secretary of Defense, through the GC DoD.
6. Support: The DoD, through the GC DoD, the Washington Headquarters Services, and the DoD Components, will provide staffing and resources to support the Committee's functions, and will ensure compliance with requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended) ("the Sunshine Act"), governing Federal statutes and regulations, and established DoD policies and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, including travel, meetings, and contract support, is approximately \$2,000,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The Committee's Designated Federal Officer (DFO), pursuant to DoD policy, will be a full-time or permanent part-time DoD employee or military member, designated in accordance with established DoD policies and procedures.

The Committee's DFO is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly designated to the Committee

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

according to DoD policies and procedures, will attend the entire duration of all of the Committee or subcommittee meetings.

The DFO, or the Alternate DFO, will call all of the Committee and its subcommittee meetings; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: The Committee will meet at the call of the Committee's DFO, in consultation with the GC DoD and the Committee's Chair. The Committee will meet at a minimum of once per year.
10. Duration: The Committee will remain in effect until terminated as provided for by sections 546(e)(1) and (2) of the FY 2015 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to sections 546(e)(1) and (2) of the FY 2015 NDAA, the Committee will terminate on the date that is five years after the date the Committee is established unless the Secretary of Defense determines that continuation of the Committee after that date is advisable and appropriate. If the Secretary of Defense determines to continue the Committee after that date, the Secretary of Defense will submit to the President and the Committees on Armed Services of the Senate and House of Representatives a report describing the reasons for that determination and specifying the new termination date for the Committee.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the 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 members of the Committee.

The appointment of Committee members will be authorized by the Secretary of Defense or the Deputy Secretary of Defense, and administratively certified by the GC DoD, for a term of service of one to four years, and their appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Members of the Committee who are not full-time or permanent part-time Federal officers or employees will 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 officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as regular government employee (RGE) members. No member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD federal advisory committees at one time.

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

All members of the Committee are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

Consistent with authority delegated to DoD Sponsors, the GC DoD will appoint the Committee's Chair from among the membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

13. Subcommittees: The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Establishment of subcommittees will be based upon a written determination, including terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD as the DoD Sponsor.

Such subcommittees will not work independently of the Committee and will report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, orally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, orally or in writing, directly to the DoD or any Federal officers or employees. If a majority of Committee members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same notice and openness requirements of FACA which govern the Committee's operations.

Pursuant to Secretary of Defense policy, the GC DoD is authorized to administratively certify the appointment of subcommittee members if the Secretary of Defense or the Deputy Secretary of Defense has previously authorized the individual's appointment to the Committee or another DoD advisory committee. If the Secretary of Defense or the Deputy Secretary of Defense has not previously authorized the appointment of the individual to the Committee or another DoD advisory committee, then the individual's subcommittee appointment must first be authorized by the Secretary of Defense or the Deputy Secretary of Defense and subsequently administratively certified by the GC DoD.

Subcommittee members, with the approval of the Secretary of Defense, will be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member will serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time Federal officers or employees, will 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 officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as RGE members. With the exception of reimbursement for travel and per diem as it pertains to official travel related to

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

the Committee or its subcommittees, subcommittee members will serve without compensation.

The Secretary of Defense authorizes the GC DoD to appoint the chair of any appropriately approved subcommittee from among the subcommittee membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

Each subcommittee member is appointed to provide advice on the basis of his or her best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Committee and its subcommittees will be managed in accordance with General Record Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policies and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).
15. Filing Date: February 18, 2016

APPENDIX C. COMMITTEE MEMBERS

MS. MARTHA S. BASHFORD, CHAIR



Martha Bashford is the chief of the New York County District Attorney's Office Sex Crimes Unit, which was the first of its kind in the country. 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 in cases in which 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.

MAJOR GENERAL MARCIA M. ANDERSON, U.S. ARMY, RETIRED



Marcia Anderson has been the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin since 1998, where she is 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.

THE HONORABLE LEO I. BRISBOIS



Leo I. Brisbois has been a U.S. Magistrate Judge for the District of Minnesota chambered in Duluth, Minnesota, since 2010. Prior to his appointment to the bench, Judge Brisbois served as an Assistant Staff Judge Advocate, U.S. Army, from 1987 through 1998, both on active duty and then in the reserves; his active duty service included work as a trial counsel and as an administrative law officer, both while serving in Germany. From 1991 to 2010, Judge Brisbois was in private practice with the Minneapolis, Minnesota, firm of Stich, Angell, Kreidler, Dodge & Unke, where his practice included all aspects of litigation and appeals involving the defense of civil claims in state and federal courts. Judge Brisbois has also previously served on the Civil Rules and Racial Fairness in the Courts advisory committees established by the Minnesota State Supreme Court, and he has served on the Minnesota Commission on Judicial Selection. From 2009 to 2010, Judge Brisbois was the first person of known Native American heritage to serve as President of the more than 16,000–member Minnesota State Bar Association.

MS. KATHLEEN B. CANNON



Kathleen Cannon is a criminal defense attorney in Vista, California, specializing in serious felony and high-profile cases. Prior to entering private practice in 2011, Ms. Cannon was a public defender for over 30 years, in Los Angeles and San Diego Counties. Over the course of her career, Ms. Cannon supervised branch operations and training programs within the offices and handled thousands of criminal cases. She has completed hundreds of jury trials, including those involving violent sexual assault and capital murder with special circumstances. Since 1994, Ms. Cannon has taught trial advocacy as an adjunct professor of law at California

Western School of Law in San Diego, and has been on the faculty of the National Institute of Trial Advocacy as a team leader and teacher. She is past-President and current Training Coordinator for the California Public Defenders' Association, providing educational seminars for criminal defense attorneys throughout the state of California. Ms. Cannon has lectured on battered woman syndrome evidence at the Marine Corps World Wide Training Conference at Marine Corps Recruit Depot (MCRD), San Diego, and was a small-group facilitator for the Naval Justice School course "Defending Sexual Assault Cases" in San Diego. Ms. Cannon has received numerous awards, including Top Ten Criminal Defense Attorney in San Diego, Lawyer of the Year from the North County Bar Association, and Attorney of the Year from the San Diego County Public Defender's Office.

MS. MARGARET A. GARVIN



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.

THE HONORABLE PAUL W. GRIMM



Paul W. Grimm serves as a U.S. District Judge for the District of Maryland. Previously, he served as a U.S. Magistrate Judge and as Chief Magistrate Judge for the District of Maryland. In 2009, the Chief Justice of the United States appointed Judge Grimm to serve as a member of the Civil Rules Advisory Committee, where he served for six years and chaired the Discovery Subcommittee. Before his appointment to the court, Judge Grimm was in private practice for 13 years, handling commercial litigation. Prior to that, he served as an Assistant Attorney General for Maryland, an Assistant States Attorney for Baltimore County, Maryland, and an

active duty and Reserve Army Judge Advocate General's Corps officer, retiring as a lieutenant colonel in 2001. Judge Grimm has served as an adjunct professor of law at the University of Maryland School of Law and at the University of Baltimore School of Law, and has published many articles on evidence and civil procedure.

DEAN KEITH M. HARRISON

Keith Harrison began his legal career as a judge advocate in the U.S. Coast Guard. After military service he began what was supposed to be a two-year stint as a law teacher. More than 30 years later he has been a member of the full-time faculty at three law schools and a visiting faculty member at four others. In 2016 he joined the faculty of the Savannah Law School as a visiting professor and acting associate dean.

Dean Harrison's primary areas of teaching are in the criminal justice area, including criminal law, criminal procedure, military criminal law, and intellectual property crimes. He was the founding chair of the International Criminal Law & Justice Graduate Programs at Franklin Pierce Law Center. He served as a public member of the Uniform Code of Military Justice Code Committee. He has served as a volunteer guardian ad litem for CASA (Court Appointed Special Advocates), New Hampshire. He is a graduate of Leadership New Hampshire and has served on several arts, education, and community boards, including the Endowment for Health and the board of St. John's College.

MR. A. J. KRAMER

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.

MS. JENNIFER GENTILE LONG

Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of Æquitas 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 the Fels School of Government.

MR. JAMES P. MARKEY



Jim Markey has over 30 years of law enforcement experience with the Phoenix Police Department. Serving in a variety of positions, Mr. Markey was recognized with more than 30 commendations and awards. For over 14 years he directly supervised the sexual assault unit, which is part of a multidisciplinary sexual assault response team co-located in the City of Phoenix Family Advocacy Center. Mr. Markey oversaw the investigation of more than 7,000 sexual assaults, including more than 150 serial rape cases. In 2000, he was able to secure Violence Against Women grant funding to design, develop, and supervise a first-of-its-kind sexual assault cold case team with the City of Phoenix. This team has been successful in reviewing nearly 4,000 unsolved sexual assault cases dating back over 25 years. For the past 15 years Mr. Markey has been a certified and nationally recognized trainer delivering in-person and online webinar training for numerous criminal justice organizations on sexual assault investigations and response. Currently, he is a contract consultant for the DOJ Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI), where his team provides technical assistance and training to more than 50 SAKI grantees across the United States. His expertise and experience have been used in investigative case review as well as assessment of sexual assault unit response. This includes a recently completed comprehensive assessment for the Tempe Police Department (Tempe, AZ) Sexual Assault Unit. Mr. Markey currently serves as a member of the National Institute of Justice (NIJ) Sexual Assault Forensic Evidence Reporting (SAFER) Working Group and Editorial Team, NIJ Cold Case Working Group, Arizona Commission on Victims in the Courts (COVIC), and the Arizona Forensic Advisory Committee.

DR. JENIFER MARKOWITZ



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.

CHIEF MASTER SERGEANT OF THE AIR FORCE RODNEY J. MCKINLEY, RETIRED

Chief Master Sergeant of the Air Force Rodney J. McKinley represented the highest enlisted level of leadership and, as such, provided direction for the enlisted corps and represented their interests, as appropriate, to the American public and to those in all levels of government. He served as the personal advisor to the Chief of Staff and the Secretary of the Air Force on all issues regarding the welfare, readiness, morale, and proper utilization and progress of the enlisted force. Chief McKinley is the 15th chief master sergeant appointed to the highest noncommissioned officer position. His background includes various duties in medical and aircraft maintenance, and he served 10 years as a first sergeant. He also served as a command chief master sergeant at wing, numbered Air Force, and major command levels. He is currently the co-chair of the Air Force Retiree Council and frequently is a guest speaker at bases across the Air Force. He is an honors graduate of St. Leo College, Florida, and received his master's degree in human relations from the University of Oklahoma.

BRIGADIER GENERAL JAMES SCHWENK, U.S. MARINE CORPS, RETIRED

BGen 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.

DR. CASSIA C. SPOHN

Cassia Spohn is a Foundation Professor and the Director of the School of Criminology and Criminal Justice at Arizona State University. She received a Ph.D. in political science from the University of Nebraska–Lincoln. Prior to joining the ASU faculty in 2006, she was a faculty member in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha for 28 years. She is the author or co-author of seven books, including *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System* and *How Do Judges Decide? The Search for Fairness and Equity in Sentencing*. Her research interests include prosecutorial and judicial decision making; the intersections of race, ethnicity, crime, and justice; and case processing decisions in sexual assault cases. In 2013, she received ASU's Award for Leading Edge Research in the Social Sciences and was selected as a Fellow of the American Society of Criminology.

MS. MEGHAN A. TOKASH



Meghan Tokash is an Assistant United States Attorney (AUSA) at the U.S. Department of Justice serving the Western District of New York in the violent crimes unit. For eight years she served as a judge advocate in the U.S. Army Judge Advocate General's Corps, where she prosecuted a wide range of cases relating to homicide, rape, sexual assault, domestic violence, and child abuse. AUSA Tokash was selected by the Judge Advocate General of the U.S. Army to serve as one of 15 Special Victim Prosecutors; she worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office and U.S. Army Europe/Central Command. Previously, AUSA Tokash served as an Army trial defense counsel and as a civilian victim-witness liaison officer for the Department of the Army. AUSA Tokash clerked for the United States Court of Appeals for the Armed Forces. She is a graduate of the Catholic University Columbus School of Law. She earned her master of laws degree in trial advocacy from the Beasley School of Law at Temple University, where at graduation she received the program's Faculty Award.

THE HONORABLE REGGIE B. WALTON



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 STAFF

COMMITTEE STAFF

Captain Tammy P. Tideswell, JAGC,
U.S. Navy, Staff Director

Colonel Steven B. Weir, JAGC,
U.S. Army, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Ms. Julie Carson, Attorney

Dr. Janice Chayt, Investigator

Dr. Alice Falk, Editor

Ms. Theresa Gallagher, Attorney

Ms. Nalini Gupta, Attorney

Ms. Amanda Hagy, Senior Paralegal

Mr. Glen Hines, Attorney

Mr. R. Chuck Mason, Attorney

Ms. Laurel Prucha Moran, Graphic Designer

Ms. Meghan Peters, Attorney

Ms. Stacy A. Powell, Senior Paralegal

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney

Ms. Kate Tagert, Attorney

DESIGNATED FEDERAL OFFICIALS

Mr. Dwight H. Sullivan
Associate Deputy General Counsel for
Military Justice
U.S. Department of Defense
Designated Federal Official

Mr. David J. Gruber
Associate Deputy General Counsel for
Military Personnel, Readiness, and Voting
U.S. Department of Defense
Alternate Designated Federal Official

Major Israel King
U.S. Air Force
Office of the General Counsel
U.S. Department of Defense
Alternate Designated Federal Official

APPENDIX E. DEMOGRAPHICS AND ADJUDICATION OF SEXUAL ASSAULT OFFENSES RECORDED IN THE DAC-IPAD DATABASE

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended. The Committee is tasked by its authorizing statute 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, drawing on its review of such cases on an ongoing basis.

Before the DAC-IPAD was established, Congress tasked the Judicial Proceedings Panel (JPP) with reviewing and evaluating the judicial response to sexual assault cases in the military. To conduct its analysis, the JPP sought information from court records, case documents, and other publicly available resources. Members of the JPP staff reviewed court-martial documents from the Military Services that were resolved in fiscal years 2012 through 2015. Information from the court-martial cases were entered into a JPP-developed database, and the JPP coordinated with a criminologist to analyze the data and provide descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes. Further, the JPP made two recommendations to the DAC-IPAD regarding the continuation of data collection and analysis:

- JPP Recommendation 54: The successor federal advisory committee to the JPP, the DAC-IPAD, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:
 - a. Cases involving military victims tend to have fewer punitive outcomes than cases involving civilian victims; and
 - b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services.
 - c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.¹
- JPP Recommendation 60: The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.²

In 2017, the DAC-IPAD staff requested that the Military Services provide documents for cases involving a preferred charge of sexual assault that were completed in fiscal year 2016. As of January 12, 2018, the database

1 JPP Report on Data for FY15, at 6 (Recommendation 54).

2 *Id.* at 11 (Recommendation 60).

contains 3,145 cases encompassing fiscal years 2012–16, all of which involve at least one charge of a sexual offense deemed either penetrative (i.e., rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses) or contact (i.e., aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit these offenses). The sexual assault offenses in the database span three versions of Article 120, UCMJ, and other statutes:

Pre–Oct. 2007	Article 120(1) – Rape
Pre–Oct. 2007	Article 134 – Assault - Indecent
Oct. 1, 2007–June 27, 2012	Article 120(a) – Rape Article 120(c) – Aggravated Sexual Assault Article 120(e) – Aggravated Sexual Contact Article 120(h) – Abusive Sexual Contact Article 120(m) – Wrongful Sexual Contact
June 28, 2012–Present	Article 120(a) – Rape Article 120(b) – Sexual Assault Article 120(c) – Aggravated Sexual Contact Article 120(d) – Wrongful Sexual Contact
Article 125(1)	Forcible Sodomy
Article 80	Attempts to commit the above offenses

The following tables provide a general overview of data contained in the DAC-IPAD database for fiscal years 2012–16 and are the source material for the data charts and discussion in chapter 2 of this report. It should be noted that the DAC-IPAD relies on the Services to report all cases meeting the specified criteria. The DAC-IPAD therefore cannot assert that it has the complete universe of cases throughout the Armed Forces in which a sexual assault charge was filed. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis. In interpreting the data, readers should keep in mind that

- Percentages may not total 100, owing to rounding errors or missing data.
- Cadets/Midshipmen and warrant officers are included with “officers” in tables.

TABLE 1A.
CASE CHARACTERISTICS (FY 2012)

	N	%
FY 2012 Total Cases	301	
Military Service of the Accused		
Army	142	47.2%
Marine Corps	23	7.6%
Navy	77	25.6%
Air Force	56	18.6%
Coast Guard	3	1.0%
Rank of Accused		
Enlisted	278	92.4%
Officer	23	7.6%
Pay Grade of Accused		
Enlisted	278	
E-1	23	8.3%
E-2	20	7.2%
E-3	64	23.0%
E-4	75	27.0%
E-5	54	19.4%
E-6	27	9.7%
E-7	9	3.2%
E-8	4	1.4%
E-9	2	0.7%
Officer	23	
Cadet/Midshipman	4	17.4%
W-1	0	0.0%
W-2	2	8.7%
W-3	0	0.0%
W-4	0	0.0%
W-5	0	0.0%
O-1	2	8.7%
O-2	2	8.7%
O-3	8	34.8%
O-4	4	17.4%
O-5	1	4.3%
O-6	0	0.0%
O-7	0	0.0%
O-8	0	0.0%
O-9	0	0.0%
O-10	0	0.0%

Sex of Accused		
Male	298	99.0%
Female	3	1.0%
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	207	68.8%
OCONUS	64	21.3%
Vessel	30	10.0%
Sex of Victim(s)		
All Female	279	92.7%
All Male	22	7.3%
Female and Male	0	0.0%
Status of Victim(s)		
All Military	216	71.8%
All Civilian	76	25.2%
Military and Civilian	9	3.0%
Accused Charged with Penetrative Offense		
Yes	221	73.4%
No	80	26.6%
Accused Convicted of Penetrative Offense		
Yes	59	26.7%
No	162	73.3%
Accused Charged with Contact Offense		
Yes	80	26.6%
No	221	73.4%
Accused Convicted of Contact Offense		
Yes	28	35.0%
No	52	65.0%

TABLE 1B.
CASE CHARACTERISTICS (FY 2013)

	N	%
FY 2013 Total Cases	587	
Military Service of the Accused		
Army	287	48.9%
Marine Corps	34	5.8%
Navy	88	15.0%
Air Force	165	28.1%
Coast Guard	13	2.2%
Rank of Accused		
Enlisted	548	93.4%
Officer	39	6.6%

APPENDIX E. DEMOGRAPHICS AND ADJUDICATION OF SEXUAL ASSAULT
OFFENSES RECORDED IN THE DAC-IPAD DATABASE

Pay Grade of Accused		
Enlisted	548	
E-1	35	6.4%
E-2	29	5.3%
E-3	121	22.1%
E-4	154	28.1%
E-5	112	20.4%
E-6	61	11.1%
E-7	30	5.5%
E-8	6	1.1%
E-9	0	0.0%
Officer	39	
Cadet/Midshipman	6	15.4%
W-1	0	0.0%
W-2	2	5.1%
W-3	1	2.6%
W-4	0	0.0%
W-5	0	0.0%
O-1	3	7.7%
O-2	8	20.5%
O-3	11	28.2%
O-4	5	12.8%
O-5	3	7.7%
O-6	0	0.0%
O-7	0	0.0%
O-8	0	0.0%
O-9	0	0.0%
O-10	0	0.0%
Sex of Accused		
Male	585	99.7%
Female	2	0.3%
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	406	69.2%
OCONUS	140	23.9%
Vessel	41	7.0%
Sex of Victim(s)		
All Female	543	92.5%
All Male	40	6.8%
Female and Male	4	0.7%
Status of Victim(s)		
All Military	422	71.9%
All Civilian	147	25.0%
Military and Civilian	18	3.1%

Accused Charged with Penetrative Offense		
Yes	443	75.5%
No	144	24.5%
Accused Convicted of Penetrative Offense		
Yes	126	28.4%
No	317	71.6%
Accused Charged with Contact Offense		
Yes	144	24.5%
No	443	75.5%
Accused Convicted of Contact Offense		
Yes	41	28.5%
No	103	71.5%

TABLE 1C.
CASE CHARACTERISTICS (FY 2014)

	N	%
FY 2014 Total Cases	738	
Military Service of the Accused		
Army	326	44.2%
Marine Corps	132	17.9%
Navy	139	18.8%
Air Force	103	14.0%
Coast Guard	38	5.1%
Rank of Accused		
Enlisted	691	93.6%
Officer	47	6.4%
Pay Grade of Accused		
Enlisted	691	
E-1	28	4.1%
E-2	44	6.4%
E-3	164	23.7%
E-4	196	28.4%
E-5	147	21.3%
E-6	70	10.1%
E-7	35	5.1%
E-8	6	0.9%
E-9	1	0.1%

APPENDIX E. DEMOGRAPHICS AND ADJUDICATION OF SEXUAL ASSAULT
OFFENSES RECORDED IN THE DAC-IPAD DATABASE

Officer	47	
Cadet/Midshipman	5	10.6%
W-1	0	0.0%
W-2	3	6.4%
W-3	1	2.1%
W-4	0	0.0%
W-5	0	0.0%
O-1	4	8.5%
O-2	13	27.7%
O-3	13	27.7%
O-4	4	8.5%
O-5	4	8.5%
O-6	0	0.0%
O-7	0	0.0%
O-8	0	0.0%
O-9	0	0.0%
O-10	0	0.0%
Sex of Accused		
Male	732	99.2%
Female	6	0.8%
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	503	68.2%
OCONUS	180	24.4%
Vessel	55	7.5%
Sex of Victim(s)		
All Female	665	90.1%
All Male	67	9.1%
Female and Male	6	0.8%
Status of Victim(s)		
All Military	540	73.2%
All Civilian	180	24.4%
Military and Civilian	18	2.4%
Accused Charged with Penetrative Offense		
Yes	506	68.6%
No	232	31.4%
Accused Convicted of Penetrative Offense		
Yes	106	20.9%
No	400	79.1%
Accused Charged with Contact Offense		
Yes	232	31.4%
No	506	68.6%
Accused Convicted of Contact Offense		
Yes	56	24.1%
No	176	75.9%

**TABLE 1D.
CASE CHARACTERISTICS (FY 2015)**

	N	%
FY 2015 Total Cases	781	
Military Service of the Accused		
Army	346	44.3%
Marine Corps	104	13.3%
Navy	125	16.0%
Air Force	173	22.2%
Coast Guard	33	4.2%
Rank of Accused		
Enlisted	721	92.3%
Officer	60	7.7%
Pay Grade of Accused		
Enlisted	721	
E-1	31	4.3%
E-2	42	5.8%
E-3	158	21.9%
E-4	184	25.5%
E-5	156	21.6%
E-6	89	12.3%
E-7	47	6.5%
E-8	8	1.1%
E-9	6	0.8%
Officer	60	
Cadet/Midshipman	3	5.0%
W-1	1	1.7%
W-2	1	1.7%
W-3	2	3.3%
W-4	0	0.0%
W-5	1	1.7%
O-1	3	5.0%
O-2	12	20.0%
O-3	20	33.3%
O-4	12	20.0%
O-5	3	5.0%
O-6	2	3.3%
O-7	0	0.0%
O-8	0	0.0%
O-9	0	0.0%

O-10	0	0.0%
Sex of Accused		
Male	775	99.2%
Female	6	0.8%
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	532	68.1%
OCONUS	199	25.5%
Vessel	50	6.4%
Sex of Victim(s)		
All Female	709	90.8%
All Male	68	8.7%
Female and Male	4	0.5%
Status of Victim(s)		
All Military	523	67.0%
All Civilian	228	29.2%
Military and Civilian	30	3.8%
Accused Charged with Penetrative Offense		
Yes	556	71.2%
No	225	28.8%
Accused Convicted of Penetrative Offense		
Yes	146	26.3%
No	410	73.7%
Accused Charged with Contact Offense		
Yes	225	28.8%
No	556	71.2%
Accused Convicted of Contact Offense		
Yes	45	20.0%
No	180	80.0%

TABLE 1E.
CASE CHARACTERISTICS (FY 2016)

	N	%
FY 2016 Total Cases	738	
Military Service of the Accused		
Army	260	35.2%
Marine Corps	117	15.9%
Navy	123	16.7%
Air Force	216	29.3%
Coast Guard	22	3.0%

Rank of Accused		
Enlisted	696	94.3%
Officer	42	5.7%
Pay Grade of Accused		
Enlisted	696	
E-1	21	3.0%
E-2	47	6.8%
E-3	145	20.8%
E-4	193	27.7%
E-5	136	19.5%
E-6	86	12.4%
E-7	46	6.6%
E-8	16	2.3%
E-9	6	0.9%
Officer	42	
Cadet/Midshipman	5	11.9%
W-1	1	2.4%
W-2	5	11.9%
W-3	0	0.0%
W-4	0	0.0%
W-5	0	0.0%
O-1	1	2.4%
O-2	2	4.8%
O-3	15	35.7%
O-4	6	14.3%
O-5	4	9.5%
O-6	3	7.1%
O-7	0	0.0%
O-8	0	0.0%
O-9	0	0.0%
O-10	0	0.0%
Sex of Accused		
Male	734	99.5%
Female	4	0.5%
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	524	71.0%
OCONUS	162	22.0%
Vessel	52	7.0%
Sex of Victim(s)		
All Female	693	93.9%
All Male	42	5.7%

Female and Male	3	0.4%
Status of Victim(s)		
All Military	450	61.0%
All Civilian	257	34.8%
Military and Civilian	31	4.2%
Accused Charged with Penetrative Offense		
Yes	559	75.7%
No	179	24.3%
Accused Convicted of Penetrative Offense		
Yes	101	18.1%
No	458	81.9%
Accused Charged with Contact Offense		
Yes	179	24.3%
No	559	75.7%
Accused Convicted of Contact Offense		
Yes	23	12.8%
No	156	87.2%

TABLE 2A.
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2012)

	N	%
FY 2012 Total Cases	301	

Type of Court-Martial		
General Court-Martial	185	83.3%
Special Court-Martial	20	9.0%
Summary Court-Martial	17	7.7%
Not Applicable	79	
Type of Trial Forum		
Military Judge	68	34.0%
Panel of Military Members	115	57.5%
Summary Court-Martial Officer	17	8.5%
Not Applicable/Unknown	101	
Article 32 Hearing Held		
Waived	14	4.7%
Yes	216	71.8%
No/Not Applicable	71	23.6%
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	59	26.7%
Convicted of Sexual Contact Offense	22	10.0%

Convicted of Non-Sex Offense	42	19.0%
Alternative Disposition	17	7.7%
Acquitted of All Charges	47	21.3%
All Charges Dismissed Without Further Action	34	15.4%
<i>(After Article 32 Hearing)</i>	24	70.6%
Accused Charged with Sexual Contact Offense	80	
Convicted of Sexual Contact Offense	28	35.0%
Convicted of Non-Sex Offense	15	18.8%
Alternative Disposition	18	22.5%
Acquitted of All Charges	9	11.3%
All Charges Dismissed Without Further Action	10	12.5%
<i>(After Article 32 Hearing)</i>	5	50.0%
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense	170	
Convicted of Penetrative Offense	59	34.7%
Convicted of Sexual Contact Offense	22	12.9%
Convicted of Non-Sex Offense	42	24.7%
Acquitted of All Charges	47	27.6%
Accused Charged with Sexual Contact Offense	52	
Convicted of Sexual Contact Offense	28	53.8%
Convicted of Non-Sex Offense	15	28.8%
Acquitted of All Charges	9	17.3%
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	161	
Convicted of Penetrative Offense	52	32.3%
Convicted of Sexual Contact Offense	22	13.7%
Convicted of Non-Sex Offense	40	24.8%
Acquitted of All Charges	47	29.2%
Accused Charged with Sexual Contact Offense	42	
Convicted of Sexual Contact Offense	20	47.6%
Convicted of Non-Sex Offense	13	31.0%
Acquitted of All Charges	9	21.4%

TABLE 2B.
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2013)

	N	%
FY 2013 Total Cases	587	
Type of Court-Martial		
General Court-Martial	343	79.8%
Special Court-Martial	55	12.8%
Summary Court-Martial	32	7.4%
Not Applicable	157	
Type of Trial Forum		
Military Judge	145	37.2%
Panel of Military Members	213	54.6%
Summary Court-Martial Officer	32	8.2%
Not Applicable/Unknown	197	
Article 32 Hearing Held		
Waived	38	6.5%
Yes	422	71.9%
No/Not Applicable	127	21.6%
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	126	28.4%
Convicted of Sexual Contact Offense	24	5.4%
Convicted of Non-Sex Offense	82	18.5%
Alternative Disposition	44	9.9%
Acquitted of All Charges	88	19.9%
All Charges Dismissed Without Further Action	79	17.8%
(After Article 32 Hearing)	67	84.8%
Accused Charged with Sexual Contact Offense		
Convicted of Sexual Contact Offense	41	28.5%
Convicted of Non-Sex Offense	47	32.6%
Alternative Disposition	21	14.6%
Acquitted of All Charges	22	15.3%
All Charges Dismissed Without Further Action	13	9.0%
(After Article 32 Hearing)	6	46.2%
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	126	39.4%
Convicted of Sexual Contact Offense	24	7.5%
Convicted of Non-Sex Offense	82	25.6%
Acquitted of All Charges	88	27.5%
Accused Charged with Sexual Contact Offense		
	110	

Convicted of Sexual Contact Offense	41	37.3%
Convicted of Non-Sex Offense	47	42.7%
Acquitted of All Charges	22	20.0%
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	307	
Convicted of Penetrative Offense	118	38.4%
Convicted of Sexual Contact Offense	23	7.5%
Convicted of Non-Sex Offense	78	25.4%
Acquitted of All Charges	88	28.7%
Accused Charged with Sexual Contact Offense	97	
Convicted of Sexual Contact Offense	32	33.0%
Convicted of Non-Sex Offense	43	44.3%
Acquitted of All Charges	22	22.7%

TABLE 2C.
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2014)

	N	%
FY 2014 Total Cases	738	

Type of Court-Martial		
General Court-Martial	387	73.9%
Special Court-Martial	87	16.6%
Summary Court-Martial	50	9.5%
Not Applicable	214	
Type of Trial Forum		
Military Judge	248	47.9%
Panel of Military Members	220	42.5%
Summary Court-Martial Officer	50	9.7%
Not Applicable/Unknown	220	
Article 32 Hearing Held		
Waived	29	3.9%
Yes	513	69.5%
No/Not Applicable	196	26.6%
Accused Charged with Penetrative Offense	506	
Convicted of Penetrative Offense	106	20.9%
Convicted of Sexual Contact Offense	29	5.7%
Convicted of Non-Sex Offense	106	20.9%
Alternative Disposition	68	13.4%
Acquitted of All Charges	105	20.8%
All Charges Dismissed Without Further Action	92	18.2%

APPENDIX E. DEMOGRAPHICS AND ADJUDICATION OF SEXUAL ASSAULT
OFFENSES RECORDED IN THE DAC-IPAD DATABASE

(After Article 32 Hearing)	75	81.5%
Accused Charged with Sexual Contact Offense	232	
Convicted of Sexual Contact Offense	56	24.1%
Convicted of Non-Sex Offense	89	38.4%
Alternative Disposition	32	13.8%
Acquitted of All Charges	33	14.2%
All Charges Dismissed Without Further Action	22	9.5%
(After Article 32 Hearing)	7	31.8%
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense	346	
Convicted of Penetrative Offense	106	30.6%
Convicted of Sexual Contact Offense	29	8.4%
Convicted of Non-Sex Offense	106	30.6%
Acquitted of All Charges	105	30.3%
Accused Charged with Sexual Contact Offense	178	
Convicted of Sexual Contact Offense	56	31.5%
Convicted of Non-Sex Offense	89	50.0%
Acquitted of All Charges	33	18.5%
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	319	
Convicted of Penetrative Offense	92	28.8%
Convicted of Sexual Contact Offense	28	8.8%
Convicted of Non-Sex Offense	94	29.5%
Acquitted of All Charges	105	32.9%
Accused Charged with Sexual Contact Offense	148	
Convicted of Sexual Contact Offense	44	29.7%
Convicted of Non-Sex Offense	71	48.0%
Acquitted of All Charges	33	22.3%

TABLE 2D.
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2015)

	N	%
FY 2015 Total Cases	781	
Type of Court-Martial		
General Court-Martial	438	78.6%
Special Court-Martial	77	13.8%
Summary Court-Martial	42	7.5%
Not Applicable	224	
Type of Trial Forum		
Military Judge	294	53.0%
Panel of Military Members	219	39.5%
Summary Court-Martial Officer	42	7.6%
Not Applicable/Unknown	226	
Article 32 Hearing Held		
Waived	59	7.6%
Yes	538	68.9%
No/Not Applicable	184	23.6%
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	146	26.3%
Convicted of Sexual Contact Offense	14	2.5%
Convicted of Non-Sex Offense	120	21.6%
Alternative Disposition	79	14.2%
Acquitted of All Charges	117	21.0%
All Charges Dismissed Without Further Action	80	14.4%
(After Article 32 Hearing)	64	80.0%
Accused Charged with Sexual Contact Offense		
Convicted of Sexual Contact Offense	45	20.0%
Convicted of Non-Sex Offense	89	39.6%
Alternative Disposition	52	23.1%
Acquitted of All Charges	26	11.6%
All Charges Dismissed Without Further Action	13	5.8%
(After Article 32 Hearing)	8	61.5%
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	146	36.8%
Convicted of Sexual Contact Offense	14	3.5%
Convicted of Non-Sex Offense	120	30.2%
Acquitted of All Charges	117	29.5%
Accused Charged with Sexual Contact Offense		
	160	

Convicted of Sexual Contact Offense	45	28.1%
Convicted of Non-Sex Offense	89	55.6%
Acquitted of All Charges	26	16.3%
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	376	
Convicted of Penetrative Offense	135	35.9%
Convicted of Sexual Contact Offense	13	3.5%
Convicted of Non-Sex Offense	111	29.5%
Acquitted of All Charges	117	31.1%
Accused Charged with Sexual Contact Offense	140	
Convicted of Sexual Contact Offense	36	25.7%
Convicted of Non-Sex Offense	78	55.7%
Acquitted of All Charges	26	18.6%

TABLE 2E.
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2016)

	N	%
FY 2016 Total Cases	738	

Type of Court-Martial		
General Court-Martial	387	81.1%
Special Court-Martial	66	13.8%
Summary Court-Martial	24	5.0%
Not Applicable	261	
Type of Trial Forum		
Military Judge	242	50.7%
Panel of Military Members	211	44.2%
Summary Court-Martial Officer	24	5.0%
Not Applicable/Unknown	261	
Article 32 Hearing Held		
Waived	127	17.2%
Yes	487	66.0%
No/Not Applicable	124	16.8%
Accused Charged with Penetrative Offense	559	
Convicted of Penetrative Offense	101	18.1%
Convicted of Sexual Contact Offense	22	3.9%
Convicted of Non-Sex Offense	100	17.9%
Alternative Disposition	95	17.0%
Acquitted of All Charges	144	25.8%
All Charges Dismissed Without Further Action	97	17.4%

(After Article 32 Hearing)	72	74.2%
Accused Charged with Sexual Contact Offense	179	
Convicted of Sexual Contact Offense	23	12.8%
Convicted of Non-Sex Offense	70	39.1%
Alternative Disposition	47	26.3%
Acquitted of All Charges	17	9.5%
All Charges Dismissed Without Further Action	22	12.3%
(After Article 32 Hearing)	8	36.4%
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense	367	
Convicted of Penetrative Offense	101	27.5%
Convicted of Sexual Contact Offense	22	6.0%
Convicted of Non-Sex Offense	100	27.2%
Acquitted of All Charges	144	39.2%
Accused Charged with Sexual Contact Offense	110	
Convicted of Sexual Contact Offense	23	20.9%
Convicted of Non-Sex Offense	70	63.6%
Acquitted of All Charges	17	15.5%
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	351	
Convicted of Penetrative Offense	98	27.9%
Convicted of Sexual Contact Offense	21	6.0%
Convicted of Non-Sex Offense	88	25.1%
Acquitted of All Charges	144	41.0%
Accused Charged with Sexual Contact Offense	89	
Convicted of Sexual Contact Offense	19	21.3%
Convicted of Non-Sex Offense	53	59.6%
Acquitted of All Charges	17	19.1%

TABLE 3A.
CASE DISPOSITIONS: INDIVIDUALS REFERRED TO TRIAL AND CONVICTED (FY 2012)

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count	59	
Guilty Plea	7	11.9%
Not Guilty Plea but Found Guilty at Trial	38	64.4%
Pled to Some Counts, Found Guilty at Trial on Others	14	23.7%
Charged with Contact Offense and Convicted of At Least One Count	28	
Guilty Plea	8	28.6%
Not Guilty Plea but Found Guilty at Trial	15	53.6%
Pled to Some Counts, Found Guilty at Trial on Others	5	17.9%

TABLE 3B.
CASE DISPOSITIONS: INDIVIDUALS REFERRED TO TRIAL AND CONVICTED (FY 2013)

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count	126	
Guilty Plea	10	7.9%
Not Guilty Plea but Found Guilty at Trial	90	71.4%
Pled to Some Counts, Found Guilty at Trial on Others	26	20.6%
Charged with Contact Offense and Convicted of At Least One Count	41	
Guilty Plea	9	22.0%
Not Guilty Plea but Found Guilty at Trial	21	51.2%
Pled to Some Counts, Found Guilty at Trial on Others	11	26.8%

TABLE 3C.
CASE DISPOSITIONS: INDIVIDUALS REFERRED TO TRIAL AND CONVICTED (FY 2014)

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count	106	
Guilty Plea	14	13.2%
Not Guilty Plea but Found Guilty at Trial	67	63.2%
Pled to Some Counts, Found Guilty at Trial on Others	25	23.6%
Charged with Contact Offense and Convicted of At Least One Count	56	
Guilty Plea	12	21.4%
Not Guilty Plea but Found Guilty at Trial	23	41.1%
Pled to Some Counts, Found Guilty at Trial on Others	21	37.5%

TABLE 3D.
CASE DISPOSITIONS: INDIVIDUALS REFERRED TO TRIAL AND CONVICTED (FY 2015)

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count	146	
Guilty Plea	11	7.5%
Not Guilty Plea but Found Guilty at Trial	87	59.6%
Pled to Some Counts, Found Guilty at Trial on Others	48	32.9%
Charged with Contact Offense and Convicted of At Least One Count	45	
Guilty Plea	9	20.0%
Not Guilty Plea but Found Guilty at Trial	24	53.3%
Pled to Some Counts, Found Guilty at Trial on Others	12	26.7%

TABLE 3E.
CASE DISPOSITIONS: INDIVIDUALS REFERRED TO TRIAL AND CONVICTED (FY 2016)

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count	101	
Guilty Plea	3	3.0%
Not Guilty Plea but Found Guilty at Trial	69	68.3%
Pled to Some Counts, Found Guilty at Trial on Others	29	28.7%
Charged with Contact Offense and Convicted of At Least One Count	23	
Guilty Plea	4	17.4%
Not Guilty Plea but Found Guilty at Trial	13	56.5%
Pled to Some Counts, Found Guilty at Trial on Others	6	26.1%

TABLE 4A.
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED (FY 2012)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	N	%	N	%	N	%
Most Serious Type of Offense Charged						
Accused Charged with Penetrative Offense	161	94.7%	4	2.4%	5	2.9%
Accused Charged with Contact Offense	24	46.2%	16	30.8%	12	23.1%
Military Service						
Army	89	84.8%	6	5.7%	10	9.5%
Marine Corps	14	73.7%	3	15.8%	2	10.5%
Navy	39	84.8%	6	13.0%	1	2.2%
Air Force	42	85.7%	5	10.2%	2	4.1%
Coast Guard	1	33.3%	0	0.0%	2	66.7%
Rank of Accused						
Officer	16	100.0%	0	0.0%	0	0.0%
Enlisted	169	82.0%	20	9.7%	17	8.3%

TABLE 4B.
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED (FY 2013)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	N	%	N	%	N	%
Most Serious Type of Offense Charged						
Accused Charged with Penetrative Offense	300	93.8%	16	5.0%	4	1.3%
Accused Charged with Contact Offense	43	39.1%	39	35.5%	28	25.5%

Military Service						
Army	183	84.7%	13	6.0%	20	9.3%
Marine Corps	18	64.3%	6	21.4%	4	14.3%
Navy	40	67.8%	15	25.4%	4	6.8%
Air Force	100	82.6%	17	14.0%	4	3.3%
Coast Guard	2	33.3%	4	66.7%	0	0.0%
Rank of Accused						
Officer	31	100.0%	0	0.0%	0	0.0%
Enlisted	312	78.2%	55	13.8%	32	8.0%

TABLE 4C.
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED (FY 2014)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	N	%	N	%	N	%
Most Serious Type of Offense Charged						
Accused Charged with Penetrative Offense	315	91.0%	23	6.6%	8	2.3%
Accused Charged with Contact Offense	72	40.4%	64	36.0%	42	23.6%
Military Service						
Army	189	79.7%	21	8.9%	27	11.4%
Marine Corps	54	60.7%	18	20.2%	17	19.1%
Navy	73	69.5%	31	29.5%	1	1.0%
Air Force	53	86.9%	7	11.5%	1	1.6%
Coast Guard	18	56.3%	10	31.3%	4	12.5%
Rank of Accused						
Officer	33	97.1%	1	2.9%	0	0.0%
Enlisted	354	72.2%	86	17.6%	50	10.2%

TABLE 4D.
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED (FY 2015)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	N	%	N	%	N	%
Most Serious Type of Offense Charged						
Accused Charged with Penetrative Offense	375	94.5%	13	3.3%	9	2.3%
Accused Charged with Contact Offense	63	39.4%	64	40.0%	33	20.6%
Military Service						
Army	219	88.3%	17	6.9%	12	4.8%

Marine Corps	50	66.7%	13	17.3%	12	16.0%
Navy	58	62.4%	27	29.0%	8	8.6%
Air Force	100	87.0%	13	11.3%	2	1.7%
Coast Guard	11	42.3%	7	26.9%	8	30.8%
Rank of Accused						
Officer	46	100.0%	0	0.0%	0	0.0%
Enlisted	392	76.7%	77	15.1%	42	8.2%

TABLE 4E.
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED (FY 2016)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	N	%	N	%	N	%
Most Serious Type of Offense Charged						
Accused Charged with Penetrative Offense	341	92.9%	16	4.4%	10	2.7%
Accused Charged with Contact Offense	46	41.8%	50	45.5%	14	12.7%
Military Service						
Army	177	93.2%	11	5.8%	2	1.1%
Marine Corps	49	60.5%	23	28.4%	9	11.1%
Navy	51	62.2%	23	28.0%	8	9.8%
Air Force	99	93.4%	6	5.7%	1	0.9%
Coast Guard	11	61.1%	3	16.7%	4	22.2%
Rank of Accused						
Officer	30	96.8%	1	3.2%	0	0.0%
Enlisted	357	80.0%	65	14.6%	24	5.4%

TABLE 5A.
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 221)												
Army N = 104	31	29.8%	6	5.8%	22	21.2%	22	21.2%	11	10.6%	12	11.5%
Marine Corps N = 16	3	18.8%	5	31.3%	3	18.8%	4	25.0%	0	0.0%	1	6.3%
Navy N = 55	11	20.0%	8	14.5%	6	10.9%	10	18.2%	6	10.9%	14	25.5%

APPENDIX E. DEMOGRAPHICS AND ADJUDICATION OF SEXUAL ASSAULT
OFFENSES RECORDED IN THE DAC-IPAD DATABASE

Air Force N = 44	14	31.8%	3	6.8%	10	22.7%	10	22.7%	0	0.0%	7	15.9%
Coast Guard N = 2	0	0.0%	0	0.0%	1	50.0%	1	50.0%	0	0.0%	0	0.0%

Accused Charged with Contact Offense(s) (N = 80)												
Army N = 38			10	26.3%	11	28.9%	3	7.9%	13	34.2%	1	2.6%
Marine Corps N = 7			2	28.6%	2	28.6%	0	0.0%	1	14.3%	2	28.6%
Navy N = 22			5	22.7%	1	4.5%	5	22.7%	4	18.2%	7	31.8%
Air Force N = 12			10	83.3%	1	8.3%	1	8.3%	0	0.0%	0	0.0%
Coast Guard N = 1			1	100.0%	-	-	-	-	-	-	-	-

TABLE 5B.
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 443)												
Army N = 224	69	30.8%	9	4.0%	50	22.3%	43	19.2%	31	13.8%	22	9.8%
Marine Corps N = 25	7	28.0%	3	12.0%	8	32.0%	2	8.0%	0	0.0%	5	20.0%
Navy N = 60	17	28.3%	2	3.3%	11	18.3%	10	16.7%	1	1.7%	19	31.7%
Air Force N = 125	32	25.6%	9	7.2%	12	9.6%	33	26.4%	12	9.6%	27	21.6%
Coast Guard N = 9	0	0.0%	1	11.1%	2	22.2%	0	0.0%	0	0.0%	6	66.7%

Accused Charged with Contact Offense(s) (N = 144)												
Army N = 63			20	31.7%	18	28.6%	7	11.1%	14	22.2%	4	6.3%
Marine Corps N = 9			0	0.0%	8	88.9%	0	0.0%	0	0.0%	1	11.1%
Navy N = 28			11	39.3%	7	25.0%	1	3.6%	4	14.3%	5	17.9%
Air Force N = 40			10	25.0%	11	27.5%	14	35.0%	3	7.5%	2	5.0%
Coast Guard N = 4			0	0.0%	3	75.0%	0	0.0%	0	0.0%	1	25.0%

TABLE 5C.
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 506)												
Army N = 220	55	25.0%	13	5.9%	49	22.3%	39	17.7%	43	19.5%	21	9.5%
Marine Corps N = 91	10	11.0%	2	2.2%	28	30.8%	19	20.9%	9	9.9%	23	25.3%
Navy N = 86	17	19.8%	6	7.0%	15	17.4%	26	30.2%	2	2.3%	20	23.3%
Air Force N = 86	18	20.9%	6	7.0%	5	5.8%	19	22.1%	13	15.1%	25	29.1%
Coast Guard N = 23	6	26.1%	2	8.7%	9	39.1%	2	8.7%	1	4.3%	3	13.0%
Accused Charged with Contact Offense(s) (N = 232)												
Army N = 106			34	32.1%	36	34.0%	11	10.4%	19	17.9%	6	5.7%
Marine Corps N = 41			7	17.1%	16	39.0%	7	17.1%	4	9.8%	7	17.1%
Navy N = 53			10	18.9%	22	41.5%	9	17.0%	7	13.2%	5	9.4%
Air Force N = 17			1	5.9%	6	35.3%	6	35.3%	2	11.8%	2	11.8%
Coast Guard N = 15			4	26.7%	9	60.0%	0	0.0%	0	0.0%	2	13.3%

TABLE 5D.
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 556)												
Army N = 261	87	33.3%	4	1.5%	58	22.2%	45	17.2%	48	18.4%	19	7.3%
Marine Corps N = 71	11	15.5%	5	7.0%	20	28.2%	15	21.1%	4	5.6%	16	22.5%
Navy N = 70	18	25.7%	2	2.9%	14	20.0%	17	24.3%	3	4.3%	16	22.9%

Air Force N = 135	26	19.3%	3	2.2%	18	13.3%	39	28.9%	22	16.3%	27	20.0%
Coast Guard N = 19	4	21.1%	0	0.0%	10	52.6%	1	5.3%	2	10.5%	2	10.5%

Accused Charged with Contact Offense(s) (N = 225)												
Army N = 85			22	25.9%	24	28.2%	8	9.4%	27	31.8%	4	4.7%
Marine Corps N = 33			2	6.1%	22	66.7%	0	0.0%	5	15.2%	4	12.1%
Navy N = 55			11	20.0%	21	38.2%	10	18.2%	9	16.4%	4	7.3%
Air Force N = 38			9	23.7%	12	31.6%	8	21.1%	8	21.1%	1	2.6%
Coast Guard N = 14			1	7.1%	10	71.4%	0	0.0%	3	21.4%	0	0.0%

TABLE 5E.
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 559)												
Army N = 210	54	25.7%	13	6.2%	40	19.0%	53	25.2%	25	11.9%	25	11.9%
Marine Corps N = 80	12	15.0%	4	5.0%	22	27.5%	14	17.5%	14	17.5%	14	17.5%
Navy N = 77	15	19.5%	2	2.6%	18	23.4%	18	23.4%	12	15.6%	12	15.6%
Air Force N = 178	17	9.6%	3	1.7%	13	7.3%	57	32.0%	43	24.2%	45	25.3%
Coast Guard N = 14	3	21.4%	0	0.0%	7	50.0%	2	14.3%	1	7.1%	1	7.1%

Accused Charged with Contact Offense(s) (N = 179)												
Army N = 50			8	16.0%	16	32.0%	6	12.0%	14	28.0%	6	12.0%
Marine Corps N = 37			3	8.1%	24	64.9%	2	5.4%	4	10.8%	4	10.8%
Navy N = 46			7	15.2%	17	37.0%	5	10.9%	9	19.6%	8	17.4%
Air Force N = 38			3	7.9%	9	23.7%	4	10.5%	18	47.4%	4	10.5%
Coast Guard N = 8			2	25.0%	4	50.0%	0	0.0%	2	25.0%	0	0.0%

TABLE 6A
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 219)												
Officer N = 12	4	33.3%	2	16.7%	3	25.0%	0	0.0%	2	16.7%	1	8.3%
Enlisted N = 207	55	26.6%	20	9.7%	38	18.4%	46	22.2%	15	7.2%	33	15.9%
Accused Charged with Contact Offense(s) (N = 79)												
Officer N = 11			3	27.3%	3	27.3%	1	9.1%	3	27.3%	1	9.1%
Enlisted N = 68			24	35.3%	12	17.6%	8	11.8%	15	22.1%	9	13.2%

TABLE 6B.
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 443)												
Officer N = 28	7	25.0%	1	3.6%	7	25.0%	9	32.1%	2	7.1%	2	7.1%
Enlisted N = 415	119	28.7%	23	5.5%	75	18.1%	79	19.0%	42	10.1%	77	18.6%
Accused Charged with Contact Offense(s) (N = 144)												
Officer N = 11			3	27.3%	4	36.4%	0	0.0%	3	27.3%	1	9.1%
Enlisted N = 133			38	28.6%	43	32.3%	22	16.5%	18	13.5%	12	9.0%

TABLE 6C.
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 506)												
Officer N = 27	1	3.7%	3	11.1%	3	11.1%	11	40.7%	1	3.7%	8	29.6%
Enlisted N = 479	105	21.9%	26	5.4%	103	21.5%	94	19.6%	67	14.0%	84	17.5%
Accused Charged with Contact Offense(s) (N = 232)												
Officer N = 20			4	20.0%	6	30.0%	6	30.0%	3	15.0%	1	5.0%
Enlisted N = 212			52	24.5%	83	39.2%	27	12.7%	29	13.7%	21	9.9%

TABLE 6D.
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 555)												
Officer N = 41	12	29.3%	2	4.9%	13	31.7%	6	14.6%	1	2.4%	7	17.1%
Enlisted N = 514	133	25.9%	12	2.3%	107	20.8%	111	21.6%	78	15.2%	73	14.2%
Accused Charged with Contact Offense(s) (N = 224)												
Officer N = 18			6	33.3%	5	27.8%	1	5.6%	4	22.2%	2	11.1%
Enlisted N = 206			39	18.9%	83	40.3%	25	12.1%	48	23.3%	11	5.3%

TABLE 6E.
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 559)												
Officer N = 33	5	15.2%	0	0.0%	11	33.3%	11	33.3%	2	6.1%	4	12.1%
Enlisted N = 526	96	18.3%	22	4.2%	89	16.9%	133	25.3%	93	17.7%	93	17.7%
Accused Charged with Contact Offense(s) (N = 179)												
Officer N = 9			1	11.1%	2	22.2%	1	11.1%	3	33.3%	2	22.2%
Enlisted N = 170			22	12.9%	68	40.0%	16	9.4%	44	25.9%	20	11.8%

TABLE 7A.
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF VICTIM (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 221)												
Victim Gender												
All Females N = 213	57	26.8%	21	9.9%	41	19.2%	46	21.6%	16	7.5%	32	15.0%
All Males N = 8	2	25.0%	1	12.5%	1	12.5%	1	12.5%	1	12.5%	2	25.0%
Females & Males N = 0	-	-	-	-	-	-	-	-	-	-	-	-
Victim Status												
All Military N = 151	38	25.2%	13	8.6%	29	19.2%	31	20.5%	14	9.3%	26	17.2%
All Civilian N = 62	18	29.0%	7	11.3%	12	19.4%	15	24.2%	3	4.8%	7	11.3%
Military & Civilian N = 8	3	37.5%	2	25.0%	1	12.5%	1	12.5%	0	0.0%	1	12.5%
Accused Charged with Contact Offense(s) (N = 80)												
Victim Gender												
All Females N = 66			21	31.8%	14	21.2%	7	10.6%	14	21.2%	10	15.2%
All Males N = 14			7	50.0%	1	7.1%	2	14.3%	4	28.6%	0	0.0%
Females & Males N = 0			-	-	-	-	-	-	-	-	-	-
Victim Status												
All Military N = 65			23	35.4%	13	20.0%	5	7.7%	14	21.5%	10	15.4%
All Civilian N = 14			4	28.6%	2	14.3%	4	28.6%	4	28.6%	0	0.0%
Military & Civilian N = 1			1	100%	0	0%	0	0%	0	0%	0	0%

TABLE 7B.
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF ACCUSED (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 443)												
Victim Gender												
All Females N = 427	123	28.8%	22	5.2%	79	18.5%	84	19.7%	42	9.8%	77	18.0%
All Males N = 14	3	21.4%	2	14.3%	1	7.1%	4	28.6%	2	14.3%	2	14.3%
Females & Males N = 2	0	0.0%	0	0.0%	2	100%	0	0.0%	0	0.0%	0	0.0%
Victim Status												
All Military N = 302	79	26.2%	18	6.0%	55	18.2%	61	20.2%	35	11.6%	54	17.9%
All Civilian N = 124	37	29.8%	4	3.2%	24	19.4%	25	20.2%	9	7.3%	25	20.2%
Military & Civilian N = 17	10	58.8%	2	11.8%	3	17.6%	2	11.8%	0	0.0%	0	0.0%

Accused Charged with Contact Offense(s) (N = 144)												
Victim Gender												
All Females N = 116			30	25.9%	39	33.6%	20	17.2%	17	14.7%	10	8.6%
All Males N = 26			10	38.5%	8	30.8%	2	7.7%	4	15.4%	2	7.7%
Females & Males N = 2			1	50%	0	0%	0	0%	0	0%	1	50%
Victim Status												
All Military N = 120			35	29.2%	38	31.7%	16	13.3%	19	15.8%	12	10.0%
All Civilian N = 23			6	26.1%	8	34.8%	6	26.1%	2	8.7%	1	4.3%
Military & Civilian N = 1			0	0%	1	100%	0	0%	0	0%	0	0%

TABLE 7C.
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF ACCUSED (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N =506)												
Victim Gender												
All Females N = 478	99	20.7%	25	5.2%	102	21.3%	99	20.7%	65	13.6%	88	18.4%
All Males N = 25	6	24.0%	4	16.0%	3	12.0%	5	20.0%	3	12.0%	4	16.0%
Females & Males N = 3	1	33.3%	0	0.0%	1	33.3%	1	33.3%	0	0.0%	0	0.0%
Victim Status												
All Military N = 344	66	19.2%	19	5.5%	68	19.8%	82	23.8%	45	13.1%	64	18.6%
All Civilian N = 146	34	23.3%	7	4.8%	34	23.3%	23	15.8%	22	15.1%	26	17.8%
Military & Civilian N = 16	6	37.5%	3	18.8%	4	25.0%	0	0.0%	1	6.3%	2	12.5%
Accused Charged with Contact Offense(s) (N = 232)												
Victim Gender												
All Females N = 187			39	20.9%	69	36.9%	32	17.1%	26	13.9%	21	11.2%
All Males N = 42			16	38.1%	19	45.2%	1	2.4%	5	11.9%	1	2.4%
Females & Males N = 3			1	33.3%	1	33.3%	0	0%	1	33.3%	0	0%
Victim Status												
All Military N = 196			45	23.0%	77	39.3%	30	15.3%	26	13.3%	18	9.2%
All Civilian N = 34			9	26.5%	12	35.3%	3	8.8%	6	17.6%	4	11.8%
Military & Civilian N = 2			2	100%	0	0%	0	0%	0	0%	0	0%

TABLE 7D.
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF ACCUSED (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 556)												
Victim Gender												
All Females N = 518	132	25.5%	12	2.3%	113	21.8%	109	21.0%	74	14.3%	78	15.1%
All Males N = 36	14	38.9%	2	5.6%	5	13.9%	8	22.2%	5	13.9%	2	5.6%
Females & Males N = 2	0	0.0%	0	0.0%	2	100.0%	0	0.0%	0	0.0%	0	0.0%
Victim Status												
All Military N = 346	78	22.5%	6	1.7%	72	20.8%	81	23.4%	55	15.9%	54	15.6%
All Civilian N = 188	57	30.3%	7	3.7%	42	22.3%	34	18.1%	22	11.7%	26	13.8%
Military & Civilian N = 22	11	50.0%	1	4.5%	6	27.3%	2	9.1%	2	9.1%	0	0.0%

Accused Charged with Contact Offense(s) (N = 225)												
Victim Gender												
All Females N = 191			38	19.9%	73	38.2%	22	11.5%	46	24.1%	12	6.3%
All Males N = 32			7	21.9%	15	46.9%	3	9.4%	6	18.8%	1	3.1%
Females & Males N = 2			0	0%	1	50%	1	50%	0	0%	0	0%
Victim Status												
All Military N = 177			33	18.6%	70	39.5%	24	13.6%	44	24.9%	6	3.4%
All Civilian N = 40			9	22.5%	14	35.0%	2	5.0%	8	20.0%	7	17.5%
Military & Civilian N = 8			3	38%	5	63%	0	0%	0	0%	0	0%

TABLE 7E.
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF ACCUSED (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 559)												
Victim Gender												
All Females N = 540	95	17.6%	17	3.1%	98	18.1%	141	26.1%	94	17.4%	95	17.6%
All Males N = 19	6	31.6%	5	26.3%	2	10.5%	3	15.8%	1	5.3%	2	10.5%
Females & Males N = 0	-	-	-	-	-	-	-	-	-	-	-	-
Victim Status												
All Military N = 314	54	17.2%	15	4.8%	46	14.6%	84	26.8%	61	19.4%	54	17.2%
All Civilian N = 220	42	19.1%	5	2.3%	49	22.3%	52	23.6%	31	14.1%	41	18.6%
Military & Civilian N = 25	5	20.0%	2	8.0%	5	20.0%	8	32.0%	3	12.0%	2	8.0%

Accused Charged with Contact Offense(s) (N = 179)												
Victim Gender												
All Females N = 153			19	12.4%	65	42.5%	12	7.8%	37	24.2%	20	13.1%
All Males N = 23			3	13.0%	5	21.7%	5	21.7%	8	34.8%	2	8.7%
Females & Males N = 3			1	33%	0	0%	0	0%	2	67%	0	0%
Victim Status												
All Military N = 136			18	13.2%	53	39.0%	13	9.6%	34	25.0%	18	13.2%
All Civilian N = 37			4	10.8%	15	40.5%	4	10.8%	10	27.0%	4	10.8%
Military & Civilian N = 6			1	17%	2	33%	0	0%	3	50%	0	0%

TABLE 8A.
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 221)												
CONUS N = 150	37	24.7%	16	10.7%	34	22.7%	28	18.7%	15	10.0%	20	13.3%
OCONUS N = 51	16	31.4%	5	9.8%	6	11.8%	13	25.5%	0	0.0%	11	21.6%
Vessel N = 20	6	30.0%	1	5.0%	2	10.0%	6	30.0%	2	10.0%	3	15.0%
Accused Charged with Contact Offense(s) (N = 80)												
CONUS N = 57			22	38.6%	11	19.3%	6	10.5%	13	22.8%	5	8.8%
OCONUS N = 13			5	38.5%	3	23.1%	0	0.0%	3	23.1%	2	15.4%
Vessel N = 10			1	10.0%	1	10.0%	3	30.0%	2	20.0%	3	30.0%

TABLE 8B.
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 443)												
CONUS N = 320	89	27.8%	22	6.9%	64	20.0%	68	21.3%	26	8.1%	51	15.9%
OCONUS N = 97	29	29.9%	2	2.1%	15	15.5%	18	18.6%	18	18.6%	15	15.5%
Vessel N = 26	7	26.9%	0	0.0%	4	15.4%	2	7.7%	0	0.0%	13	50.0%
Accused Charged with Contact Offense(s) (N = 144)												
CONUS N = 86			22	25.6%	33	38.4%	15	17.4%	9	10.5%	7	8.1%
OCONUS N = 43			13	30.2%	10	23.3%	6	14.0%	10	23.3%	4	9.3%
Vessel N = 15			6	40.0%	4	26.7%	1	6.7%	2	13.3%	2	13.3%

TABLE 8C.
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 506)												
CONUS N = 354	76	21.5%	16	4.5%	72	20.3%	73	20.6%	50	14.1%	67	18.9%
OCONUS N = 118	25	21.2%	10	8.5%	26	22.0%	23	19.5%	16	13.6%	18	15.3%
Vessel N = 34	5	14.7%	3	8.8%	8	23.5%	9	26.5%	2	5.9%	7	20.6%
Accused Charged with Contact Offense(s) (N = 232)												
CONUS N = 149			36	24.2%	55	36.9%	22	14.8%	21	14.1%	15	10.1%
OCONUS N = 62			17	27.4%	22	35.5%	8	12.9%	10	16.1%	5	8.1%
Vessel N = 21			3	14.3%	12	57.1%	3	14.3%	1	4.8%	2	9.5%

TABLE 8D.
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 556)												
CONUS N = 386	101	26.2%	9	2.3%	73	18.9%	92	23.8%	53	13.7%	58	15.0%
OCONUS N = 142	38	26.8%	5	3.5%	36	25.4%	20	14.1%	26	18.3%	17	12.0%
Vessel N = 28	7	25.0%	0	0.0%	11	39.3%	5	17.9%	0	0.0%	5	17.9%
Accused Charged with Contact Offense(s) (N = 225)												
CONUS N = 146			29	19.9%	55	37.7%	22	15.1%	32	21.9%	8	5.5%
OCONUS N = 57			12	21.1%	20	35.1%	2	3.5%	18	31.6%	5	8.8%
Vessel N = 22			4	18.2%	14	63.6%	2	9.1%	2	9.1%	0	0.0%

TABLE 8E.
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Case Dismissed Without Further Action	
	N	%	N	%	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) (N = 559)												
CONUS N = 409	74	18.1%	16	3.9%	68	16.6%	106	25.9%	69	16.9%	76	18.6%
OCONUS N = 119	23	19.3%	4	3.4%	24	20.2%	31	26.1%	20	16.8%	17	14.3%
Vessel N = 31	4	12.9%	2	6.5%	8	25.8%	7	22.6%	6	19.4%	4	12.9%
Accused Charged with Contact Offense(s) (N = 179)												
CONUS N = 115			17	14.8%	46	40.0%	10	8.7%	29	25.2%	13	11.3%
OCONUS N = 43			1	2.3%	15	34.9%	5	11.6%	15	34.9%	7	16.3%
Vessel N = 21			5	23.8%	9	42.9%	2	9.5%	3	14.3%	2	9.5%

TABLE 9A.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 144)								
Case Adjudicated by Military Judge N = 51	21	41.2%	10	19.6%	16	31.4%	4	7.8%
Case Adjudicated by Panel of Members N = 93	37	39.8%	10	10.8%	19	20.4%	27	29.0%
Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 39)								
Case Adjudicated by Military Judge N = 17			6	35.3%	10	58.8%	1	5.9%
Case Adjudicated by Panel of Members N = 22			12	54.5%	3	13.6%	7	31.8%

TABLE 9B.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 284)								
Case Adjudicated by Military Judge N = 115	47	40.9%	14	12.2%	42	36.5%	12	10.4%
Case Adjudicated by Panel of Members N = 169	77	45.6%	10	5.9%	32	18.9%	50	29.6%
Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 74)								
Case Adjudicated by Military Judge N = 30			10	33.3%	20	66.7%	0	0.0%
Case Adjudicated by Panel of Members N = 44			17	38.6%	13	29.5%	14	31.8%

TABLE 9C.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 334)								
Case Adjudicated by Military Judge N = 162	57	35.2%	15	9.3%	63	38.9%	27	16.7%
Case Adjudicated by Panel of Members N = 172	49	28.5%	14	8.1%	35	20.3%	74	43.0%
Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 134)								
Case Adjudicated by Military Judge N = 86			26	30.2%	53	61.6%	7	8.1%
Case Adjudicated by Panel of Members N = 48			15	31.3%	10	20.8%	23	47.9%

TABLE 9D.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 385)								
Case Adjudicated by Military Judge N = 215	83	38.6%	10	4.7%	72	33.5%	50	23.3%
Case Adjudicated by Panel of Members N = 170	60	35.3%	4	2.4%	40	23.5%	66	38.8%
Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 127)								
Case Adjudicated by Military Judge N = 79			20	25.3%	52	65.8%	7	8.9%
Case Adjudicated by Panel of Members N = 48			15	31.3%	15	31.3%	18	37.5%

TABLE 9E.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 357)								
Case Adjudicated by Military Judge N = 176	50	28.4%	14	8.0%	68	38.6%	44	25.0%
Case Adjudicated by Panel of Members N = 181	51	28.2%	6	3.3%	24	13.3%	100	55.2%
Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 96)								
Case Adjudicated by Military Judge N = 66			11	16.7%	51	77.3%	4	6.1%
Case Adjudicated by Panel of Members N = 30			9	30.0%	8	26.7%	13	43.3%

TABLE 10A.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2012)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 136)								
Case Adjudicated by Military Judge N = 44	16	36.4%	10	22.7%	14	31.8%	4	9.1%
Case Adjudicated by Panel of Members N = 92	36	39.1%	10	10.9%	19	20.7%	27	29.3%
Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 33)								
Case Adjudicated by Military Judge N = 12			3	25.0%	8	66.7%	1	8.3%
Case Adjudicated by Panel of Members N = 21			11	52.4%	3	14.3%	7	33.3%

TABLE 10B.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2013)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 273)								
Case Adjudicated by Military Judge N = 104	39	37.5%	13	12.5%	40	38.5%	12	11.5%
Case Adjudicated by Panel of Members N = 169	77	45.6%	10	5.9%	32	18.9%	50	29.6%
Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 72)								
Case Adjudicated by Military Judge N = 28			8	28.6%	20	71.4%	0	0.0%
Case Adjudicated by Panel of Members N = 44			17	38.6%	13	29.5%	14	31.8%

TABLE 10C.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2014)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 315)								
Case Adjudicated by Military Judge N = 143	43	30.1%	14	9.8%	59	41.3%	27	18.9%
Case Adjudicated by Panel of Members N = 172	49	28.5%	14	8.1%	35	20.3%	74	43.0%
Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 122)								
Case Adjudicated by Military Judge N = 74			22	29.7%	45	60.8%	7	9.5%
Case Adjudicated by Panel of Members N = 48			15	31.3%	10	20.8%	23	47.9%

TABLE 10D.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2015)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 369)								
Case Adjudicated by Military Judge N = 198	73	36.9%	9	4.5%	66	33.3%	50	25.3%
Case Adjudicated by Panel of Members N = 171	61	35.7%	4	2.3%	40	23.4%	66	38.6%
Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 118)								
Case Adjudicated by Military Judge N = 70			18	25.7%	45	64.3%	7	10.0%
Case Adjudicated by Panel of Members N = 48			15	31.3%	15	31.3%	18	37.5%

TABLE 10E.
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2016)

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	N	%	N	%	N	%	N	%
Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 348)								
Case Adjudicated by Military Judge N = 167	47	28.1%	14	8.4%	62	37.1%	44	26.3%
Case Adjudicated by Panel of Members N = 181	51	28.2%	6	3.3%	24	13.3%	100	55.2%
Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (N = 80)								
Case Adjudicated by Military Judge N = 50			9	18.0%	37	74.0%	4	8.0%
Case Adjudicated by Panel of Members N = 30			9	30.0%	8	26.7%	13	43.3%

TABLE 11A.
ARTICLE 32 WAIVER (FY 2012)

	N	%
FY 2012 Total Cases	301	
Art. 32 Waived	14	6.1%
Art. 32 Held	216	93.9%
Art. 32 Not Applicable	71	
Waived Without Pretrial Agreement	4	28.6%
Waived When Contact Offense Charged	5	35.7%
Waived When Penetrative Offense Charged	9	64.3%
Conviction Rate When Art. 32 Waived	11	78.6%

TABLE 11B.
ARTICLE 32 WAIVER (FY 2013)

	N	%
FY 2013 Total Cases	587	
Art. 32 Waived	38	8.3%
Art. 32 Held	422	91.7%
Art. 32 Not Applicable	127	
Waived Without Pretrial Agreement	11	28.9%
Waived When Contact Offense Charged	7	18.4%
Waived When Penetrative Offense Charged	31	81.6%
Conviction Rate When Art. 32 Waived	35	92.1%

TABLE 11C.
ARTICLE 32 WAIVER (FY 2014)

	N	%
FY 2014 Total Cases	738	
Art. 32 Waived	29	5.4%
Art. 32 Held	513	94.6%
Art. 32 Not Applicable	196	
Waived Without Pretrial Agreement	7	24.1%
Waived When Contact Offense Charged	10	34.5%
Waived When Penetrative Offense Charged	19	65.5%
Conviction Rate When Art. 32 Waived	26	89.7%

TABLE 11D.
ARTICLE 32 WAIVER (FY 2015)

	N	%
FY 2015 Total Cases	781	
Art. 32 Waived	59	9.9%
Art. 32 Held	538	90.1%
Art. 32 Not Applicable	184	
Waived Without Pretrial Agreement	30	50.8%
Waived When Contact Offense Charged	12	20.3%
Waived When Penetrative Offense Charged	47	79.7%
Conviction Rate When Art. 32 Waived	46	78.0%

TABLE 11E.
ARTICLE 32 WAIVER (FY 2016)

	N	%
FY 2016 Total Cases	738	
Art. 32 Waived	127	20.7%
Art. 32 Held	487	79.3%
Art. 32 Not Applicable	124	
Waived Without Pretrial Agreement	90	70.9%
Waived When Contact Offense Charged	20	15.7%
Waived When Penetrative Offense Charged	107	84.3%
Conviction Rate When Art. 32 Waived	66	52.0%

APPENDIX F. MEETINGS AND PRESENTERS

MEETING	PRESENTERS
January 19, 2017 Holiday Inn Arlington at Ballston Arlington, Virginia	<ul style="list-style-type: none"> • The Honorable Jennifer M. O'Connor, General Counsel, Department of Defense • Mr. Dwight Sullivan, Office of the General Counsel, Department of Defense • Captain Warren Record, JAGC, U.S. Navy, Chair, Joint Service Committee on Military Justice • Ms. Maria Fried, Office of the General Counsel, Department of Defense
April 28, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Colonel Christopher Kennebeck, U.S. Army, Chair, Criminal Law Department, The Judge Advocate General's Legal Center and School • Ms. Patricia Sudendorf, Professor and Special Victims' Litigation Expert, Criminal Law Department, The Judge Advocate General's Legal Center and School • Major Kristen Fricchione, U.S. Army, Associate Professor and Special Victims' Counsel Course Manager, Criminal Law Department, The Judge Advocate General's Legal Center and School • Major Iain Pedden, U.S. Marine Corps, Associate Professor, Criminal Law Department, The Judge Advocate General's Legal Center and School • Dr. Cassia Spohn, Professor and Director, School of Criminology and Criminal Justice, Arizona State University • Ms. Meghan Peters, Attorney, DAC-IPAD Staff • Dr. Nathan Galbreath, Deputy Director, Department of Defense Sexual Assault Prevention and Response Office
July 21, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Ms. T. L. Williams, Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command • Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations • Mr. Michael J. Defamio, Division Chief for Family and Sexual Violence, U.S. Naval Criminal Investigative Service • Ms. Beverly A. Vogel, Senior Special Agent, U.S. Coast Guard Criminal Investigative Services

MEETING	PRESENTERS
<p>October 19, 2017</p> <p>One Liberty Center Arlington, Virginia</p>	<ul style="list-style-type: none"> • Senior Airman Hannah Stolberg, U.S. Air Force, Retired • Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense • Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense • Mr. Paul Rosen, Director, U.S. Navy Sexual Assault Prevention and Response Branch • Ms. Gail Reed, Policy and Plans Program Specialist, U.S. Marine Corps Sexual Assault Prevention and Response • Colonel Melanie A. Prince, U.S. Air Force, Division Chief, Interpersonal Self-Directed Violence Response Division • Lieutenant Amanda Styles, U.S. Coast Guard, Central Assignment Coordinator, Personnel Service Center, Enlisted Personnel Management Division • Ms. Laura Massey, Policy Branch Chief for the Department of Army Sexual Harassment / Assault Response and Prevention Office • Major Simone Jack, U.S. Army, former Special Victims' Counsel • Lieutenant Commander Clair Huffstetler, U.S. Navy, Victims' Legal Counsel • Major Jessica Martz, U.S. Marine Corps, Deputy Officer-in-Charge, Victims' Legal Counsel Organization • Captain Brittany Tedford, U.S. Air Force, Special Victims' Counsel • Commander Paul Markland, U.S. Coast Guard, Special Victims' Counsel

MEETING	PRESENTERS
<p>October 20, 2017 One Liberty Center Arlington, Virginia</p>	<ul style="list-style-type: none"> • Lieutenant Colonel Erin Miller, U.S. Army, Assistant Chief of Staff, G4, Chief of Sustainment, 101st Airborne Division • Commander Chad Livingston, U.S. Navy, Deputy Director Financial Policy and Systems, Office of the Assistant Secretary of the Navy, Financial Management and Comptroller • Lieutenant Colonel Jennifer Nash, U.S. Marine Corps, Commanding Officer, 7th Engineer Support Battalion • Sergeant Major Stennent Rey, U.S. Marine Corps, Senior Enlisted Advisor, 7th Engineer Support Battalion • Major Christopher Seamans, U.S. Air Force, Commander, 69th Maintenance Squadron • Senior Master Sergeant Terry Zannella, U.S. Air Force, First Sergeant, 69th Maintenance Squadron • Commander Jonathan Carter, U.S. Coast Guard, Commanding Officer, U.S. Coast Guard Cutter <i>Legare</i> • Chief Petty Officer Matthew Lee, U.S. Coast Guard, Command Chief, U.S. Coast Guard Cutter <i>Legare</i> • Colonel Erik Gilbert, U.S. Army, Chief of Staff to the Director, Joint Future Force Development, Joint Staff • Captain John Bushey, U.S. Navy, Commander, Navy Installations Command, Director of Public Safety • Colonel Kevin Stewart, U.S. Marine Corps, Executive Assistant to the Deputy Commandant, Installation and Logistics • Colonel Ty Neuman, U.S. Air Force, Commander, 2nd Bomb Wing, Barksdale Air Force Base • Captain Brett Millican, U.S. Coast Guard, Commanding Officer, U.S. Coast Guard Base Boston
<p>January 19, 2018 One Liberty Center Arlington, Virginia</p>	<ul style="list-style-type: none"> • Dr. Nathan Galbreath, Deputy Director, Department of Defense Sexual Assault Prevention and Response Office
<p>March 9, 2018 One Liberty Center Arlington, Virginia</p>	<ul style="list-style-type: none"> • Deliberations

CASE REVIEW WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
July 21, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Planning meeting
September 12, 2017 Headquarters, U.S. Army Criminal Investigation Command Quantico, Virginia	<ul style="list-style-type: none"> • U.S. Army Criminal Investigation Command case orientation and review of selected files
September 21–22, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Military criminal investigative organization case file orientation and review of selected files and judicial documents
September 25–26, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Military criminal investigative organization case file orientation and review of selected files and judicial documents
October 19, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Military criminal investigative organization case file orientation and review of selected files and judicial documents • Discussion of findings based on preliminary case reviews
December 12, 2017 Telephonic	<ul style="list-style-type: none"> • Deliberations and discussion of case review protocols
January 4, 2018 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Review of Air Force Office of Special Investigations case files
January 10, 2018 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Review of Air Force Office of Special Investigations case files

CASE REVIEW WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
January 17–18, 2018 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none">• Review of Air Force Office of Special Investigations case files
January 18, 2018 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none">• Deliberations

POLICY WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
October 19, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none">• Planning meeting

POLICY WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
<p>December 1, 2017 One Liberty Center Arlington, Virginia</p>	<ul style="list-style-type: none"> • Ms. Kathy Robertson, Associate Director/Family Advocacy Program Manager, Office of Military Family Readiness Policy, U.S. Department of Defense • Ms. Jackie Richardson, U.S. Army Family Advocacy Program • Ms. Sonia Smith, U.S. Navy Family Advocacy Program Senior, Analyst and Director of Prevention of Destructive Behaviors • Major Tyler Brummond, U.S. Marine Corps, Deputy Branch Head, Military Personnel Law, Judge Advocate Division • Colonel Andrew Cruz, U.S. Air Force, Chief, Family Advocacy Program, Air Force Medical Operations Agency • Ms. Adrienne Wright-Williams, U.S. Coast Guard Employee Assistance Program Manager and Acting Family Advocacy Program Manager • Major Jennifer Venghaus, U.S. Army, Plans Officer, Personnel, Plans, and Training Office, Office of the Judge Advocate General • Lieutenant Commander Katherine Shovlin, U.S. Navy, Senior Trial Counsel, Region Legal Service Office Naval District Washington • Captain Brandon K. Regan, U.S. Marine Corps, Complex Trial Team, Legal Services Support Section–East • Major Pete Havern, U.S. Air Force, Senior Trial Counsel • Lieutenant Commander Amanda Lee, U.S. Coast Guard, Legal Service Command • Specialist, U.S. Army • Captain Alana Hines, U.S. Army, Special Victims’ Counsel, 3rd Infantry Division, Fort Stewart • Petty Officer Third Class, U.S. Navy • Lieutenant Kevin Larson, U.S. Navy, Victims’ Legal Counsel, Naval Station Norfolk • Airman First Class, U.S. Air Force • Captain Matt Blyth, U.S. Air Force, Special Victims’ Counsel, Joint Base San Antonio–Fort Sam Houston • Petty Officer Third Class, U.S. Coast Guard (via telephone) • Lieutenant Nathaniel Eichler, U.S. Coast Guard, Special Victims’ Counsel • Ms. Amanda Hagy, DAC-IPAD Paralegal • Captain Eliot V. Rasmussen, U.S. Marine Corps, Victims’ Legal Counsel, Marine Corps Air Station Iwakuni

POLICY WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
January 4, 2018 One Liberty Center Arlington, VA	<ul style="list-style-type: none"> • Deliberations
January 18, 2018 One Liberty Center Arlington, VA	<ul style="list-style-type: none"> • Deliberations

DATA WORKING GROUP PREPARATORY SESSIONS	PRESENTERS
October 19, 2017 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Planning meeting
January 18, 2018 One Liberty Center Arlington, Virginia	<ul style="list-style-type: none"> • Deliberations

APPENDIX G. ACRONYMS AND ABBREVIATIONS

A1/CC	Deputy Chief of Staff for Manpower, Personnel, and Services
AFOSI	Air Force Office of Special Investigations
CGIS	Coast Guard Investigative Service
CID	Army Criminal Investigation Command
CO	commanding officer
CONUS	continental United States
CRWG	Case Review Working Group
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DIBRS	Defense Incident-Based Reporting Systems
DoD	Department of Defense
DoDI	Department of Defense Instruction
DoDM	Department of Defense Manual
DSAID	Defense Sexual Assault Incident Database
DTF-SAMS	Defense Task Force on Sexual Assault in the Military Services
DWG	Data Working Group
FACA	Federal Advisory Committee Act of 1972
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
FY	fiscal year
GCMCA	general court-martial convening authority
JAG	judge advocate general
JAGC	Judge Advocate General's Corps
JPP	Judicial Proceedings Panel
LDC	Leadership Development Center

MCIO	military criminal investigative organization
MIJES	Military Investigation and Justice Experience Survey
NCIS	Naval Criminal Investigative Service
NCO	noncommissioned officer
NDAA	National Defense Authorization Act
OCONUS	outside the continental United States
OPA	Office of People Analytics
PWG	Policy Working Group
R.C.M.	Rule for Courts-Martial
RFI	request for information
RSP	Response Systems to Adult Sexual Assault Crimes Panel
SAIRO	sexual assault incident response oversight
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
SARC	sexual assault response coordinator
SJA	staff judge advocate
SOLO	Senior Officer Legal Orientation
SPCMCA	special court-martial convening authority
SSLC	Senior Shore Leadership Course
SVC	special victims' counsel
TJAGLCS	The Judge Advocate General's Legal Center and School
UCMJ	Uniform Code of Military Justice
UCR	Uniform Crime Reporting
U.S.C.	United States Code
USMC	United States Marine Corps
VA	victim advocate
VLC	victims' legal counsel
WGRA	Workplace and Gender Relations Survey of Active Duty Members

APPENDIX H. SOURCES CONSULTED

1. U.S. Constitution

2. Legislative Sources

a. Enacted Statutes

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

10 U.S.C. § 673 (Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense)

10 U.S.C. §§ 801–946 (Uniform Code of Military Justice)

National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, 122 Stat. 4356 (2009)

National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298 (2011)

National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2012)

National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013)

National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, 129 Stat. 726 (2015)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)

3. Rules and Regulations

a. Executive Orders

Manual for Courts-Martial, United States (2016)

b. Rules

Federal Rules of Criminal Procedure

c. Department of Defense Instructions and Manuals

DEP'T. OF DEF. INSTRUCTION 1315.18, PROCEDURES FOR MILITARY PERSONNEL ASSIGNMENTS (October 28, 2015) (Incorporating Change 1, April 14, 2017), *available at* <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131518p.pdf>

DEP'T. OF DEF. INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES (March 28, 2013) (Incorporating Change 3, Effective May 24, 2017), *available at* <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf>

DEP'T. OF DEF. MANUAL 7730.47-M, VOLUME 1, DEFENSE INCIDENT-BASED REPORTING SYSTEM (DIBRS):
DATA SEGMENTS AND ELEMENTS (December 7, 2010), *available at*
http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/773047m_vol1.pdf

4. Meetings and Hearings

a. Public Meetings of the DAC-IPAD

Transcript of DAC-IPAD Public Meeting (January 19, 2017)

Transcript of DAC-IPAD Public Meeting (April 28, 2017)

Transcript of DAC-IPAD Public Meeting (July 21, 2017)

Transcript of DAC-IPAD Public Meeting (October 19, 2017)

Transcript of DAC-IPAD Public Meeting (October 20, 2017)

Transcript of DAC-IPAD Public Meeting (January 19, 2018)

Transcript of DAC-IPAD Public Meeting (March 9, 2018)

b. Public Meetings of the Judicial Proceedings Panel

Transcript of Judicial Proceedings Panel Public Meeting (October 9, 2015)

Transcript of Judicial Proceedings Panel Public Meeting (April 7, 2017)

c. Preparatory Sessions

Transcript of Policy Working Group Preparatory Session (December 1, 2017) (on file with the DAC-IPAD)

5. Committee Member Submissions

Written Statement by Judge Leo Brisbois, Committee member (April 20, 2017), *available at*
https://dacipad.whs.mil/images/Public/10-Reading_Room/02_DACIPAD_Mtg_Materials/DACIPAD_Meeting_Materials_20170428.pdf

6. Military Policy and Guidance

a. Department of Defense

Dep't of Def. Directive-Type Memorandum 11-063, Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault (December 16, 2011)

Memorandum from Sec'y of Def. to Sec'ys of Military Dep'ts et al., subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012)

Memorandum from Sec'y of Def. to Sec'ys of Military Dep'ts et al., subject: Sexual Assault Prevention and Response (August 14, 2013)

Memorandum from Sec'y of Def. to Sec'ys of Military Dep'ts et al., subject: Department of Defense Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel (December 15, 2014)

b. Services

Commander's Legal Handbook, Misc. Pub. 27-8 (2015), The Judge Advocate General's Legal Center and School, United States Army, *available at* http://www.jag.navy.mil/distrib/instructions/Commanders_ARMY_Legal_HB_2015_C1.pdf

The Military Commander and the Law, Edition 13 (2016), The Judge Advocate General's School, United States Air Force, *available at* [www.holloman.af.mil/Portals/101/documents/JA Documents/References/MCL 2016 web.pdf?ver=2016-11-28-145828-903](http://www.holloman.af.mil/Portals/101/documents/JA%20Documents/References/MCL%202016%20web.pdf?ver=2016-11-28-145828-903)

USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN) (October 2017), Naval Justice School, United States Navy, *available at* http://www.jag.navy.mil/documents/NJS/QUICKMAN_October_2017.pdf

7. Official Reports

a. DoD and DoD Agencies

DEP'T OF DEF., OFFICE OF THE INSPECTOR GENERAL, EVALUATION OF SEXUAL ASSAULT, REPRISAL, AND RELATED LEADERSHIP CHALLENGES AT THE UNITED STATES AIR FORCE ACADEMY (2004), *available at* <https://media.defense.gov/2017/Jan/06/2001774407/-1/-1/1/IPO2004C003-report.pdf>

DEP'T OF DEF., SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2016 (May 1, 2017), *available at* http://sapr.mil/public/docs/reports/FY16_Annual/FY16_SAPRO_Annual_Report.pdf

OFFICE OF PEOPLE ANALYTICS, 2016 MILITARY INVESTIGATION AND JUSTICE EXPERIENCE SURVEY: OVERVIEW REPORT (March 2017), *available at* http://www.sapr.mil/public/docs/reports/FY16_Annual/Annex_2_2016_MIJES_Report.pdf

OFFICE OF PEOPLE ANALYTICS, 2016 WORKPLACE AND GENDER RELATIONS SURVEY OF ACTIVE DUTY MEMBERS: OVERVIEW REPORT (May 2017), *available at* http://www.sapr.mil/public/docs/reports/FY16_Annual/Annex_1_2016_WGRA_Report.pdf

REPORT OF THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES (December 2009), *available at* http://www.sapr.mil/public/docs/research/DTFSAMS-Rept_Dec09.pdf

REPORT OF THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE U.S. AIR FORCE ACADEMY (2003), *available at* <http://files.eric.ed.gov/fulltext/ED480473.pdf>

b. Response Systems Panel Report

REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014), *available at* http://responsesystemspanel.whs.mil/public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf

c. Judicial Proceedings Panel Reports

- INITIAL REPORT OF THE JUDICIAL PROCEEDINGS PANEL (February 2015), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/01_JPP_InitialReport_Final_20150204.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE (February 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/03_JPP_Art120_Report_Final_20160204.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES (February 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/02_JPP_Rest_Comp_Report_Final_20160201.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES (February 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/04_JPP_Retaliation_Report_Final_20160211.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON MILITARY DEFENSE COUNSEL RESOURCES AND EXPERIENCE IN SEXUAL ASSAULT CASES (April 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/06_JPP_Defense_Resources_Experience_Report_Final_20170424.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON VICTIMS' APPELLATE RIGHTS (June 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/07_JPP_VictimsAppRights_Report_Final_20170602.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY (September 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/08_JPP_Report_Investigations_Final_20170907.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES FOR FISCAL YEAR 2015 (September 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/09_JPP_CourtMartial_Data_Report_Final_20170915.pdf
- JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES (September 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/10_JPP_Concerns_Fair_MJ_Report_Final_20170915.pdf
- JUDICIAL PROCEEDINGS PANEL FINAL REPORT (October 2017), *available at* https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/11_JPP_FinalReport_Final_20171016.pdf

d. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces Initial Report (March 2017)

DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES INITIAL REPORT (March 2017), *available at* https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Initial_Report_20170330_Final_Web.pdf

8. Requests for Information and Responses

DAC-IPAD Request for Information Set 3 (June 29, 2017)

DAC-IPAD Request for Information Set 4 (September 11, 2017)

DAC-IPAD Request for Information Set 5 (October 30, 2017)

DoD Response to JPP Request for Information 164B (April 5, 2017)

Military Criminal Investigative Organizations Responses to DAC-IPAD Request for Information Set 3 (June 29, 2017), *available at* <https://dacipad.whs.mil/>

Service Responses to DAC-IPAD Request for Information Set 4 (September 11, 2017)

9. Academic Articles

Æquitas, Justice Management Institute, and Urban Institute, *Model Response to Sexual Violence for Prosecutors: An Invitation to Lead* (2017)

Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can Be Worse Than the Disease*, 14 DUKE J. OF GENDER L. & POL'Y 749 (2007)

Robert E. Murdough, *Barracks, Dormitories, and Capitol Hill: Finding Justice in the Divergent Politics of Military and College Sexual Assault*, 223 MIL. L. REV. 233 (2015)

Cassia Spohn & Katharine Tellis, *Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office* (February 2012)

Women's Law Project, *Recommendations for Annual Advocate Sex Crimes External Review Process Based on Philadelphia Practices* (May 2017)

10. News Articles

Michael Kilian, *New Sex Scandal Hits Army Ranks*, CHICAGO TRIBUNE (November 13, 1996), http://articles.chicagotribune.com/1996-11-13/news/9611130215_1_trainees-sexual-misconduct-sexual-harassment

Rowan Scarborough, *Army Trainees Accuse Instructors of Rape, Harassment*, WASH. TIMES (November 8, 1996)

Michael Winerip, *Revisiting the Military's Tailhook Scandal*, N.Y. TIMES (May 13, 2013), <http://www.nytimes.com/2013/05/13/booming/revisiting-the-militarys-tailhook-scandal-video.html>

11. Internet Resources

Judicial Proceedings Panel Website, *available at* <http://jpp.whs.mil/>

Military OneSource, Demographic Profile, *available at* <http://www.militaryonesource.mil/web/mos/reports-and-surveys>

NATIONAL INCIDENT-BASED REPORTING SYSTEM USER MANUAL, VERSION 2.2 (November 1, 2017), *available at* <https://ucr.fbi.gov/nibrs/nibrs-user-manual>

Todd Perkins, “*The Invisible War*” Filmmakers Respond to Secretary of Defense Leon Panetta’s “Rock Center with Brian Williams” Appearance on Rape in the Military, IndieWire (September 28, 2012), *available at* <http://www.indiewire.com/2012/09/the-invisible-war-filmmakers-respond-to-secretary-of-defense-leon-panettas-rock-center-with-brian-williams-appearance-on-rape-in-the-military-44577/>

