

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

Committee Planning Session Outline

I. Statutory Tasking

The Committee was established by the Secretary of Defense in February 2016 as required by section 546 of the National Defense Authorization Act for Fiscal Year 2015 and section 537 of the National Defense Authorization Act for Fiscal Year 2016. There are three statutory requirements for the Committee:

- A. 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;
- B. To review, on an ongoing basis, cases involving allegations of sexual misconduct (as described above), for purposes of advising the Secretary of Defense; and
- C. To submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives an annual report of the activities of the Committee during the preceding year. The annual reports are due by March 30th of each year.

II. Logistics and Administrative Questions

An important question to reach consensus on and one that the Committee is provided minimal statutory guidance to follow is how, administratively, we wish to operate. The Committee's charter requires that it meet at least once per year. It does not address whether the required meeting must be public or whether it may be administrative (and therefore not required by the Federal Advisory Committee Act to be open to the public).

Knowing that the Committee members all have busy schedules and that participation on the Committee is a valuable, but uncompensated commitment, it is important to discuss the frequency and type of meetings we would like to hold so we all have a clear understanding of, and agreement on, the time and workload that participation on this Committee will entail.

Here are a couple of key administrative questions suggested for the Committee to consider:

- A. The availability and preference of Committee members regarding the frequency, location, and duration of meetings
 - 1. Should Committee meetings be held quarterly, semi-annually, or annually?
 - 2. Should meetings be held in the Washington, D.C. area, or other locations?
 - 3. Are meetings shorter than a full business day desired or acceptable? Multi-day meetings?
 - 4. Should meetings always be in person?
 - 5. Are regular or as-needed conference calls desired?

- B. The availability and interest of members to serve on a subcommittee or working group that may review records and potentially require a more considerable time and travel commitment

- 1. See section IV for further discussion of subcommittees

III. Substantive Duties and Strategic Plan

Each of the Committee members has been selected by the Secretary of Defense to become a member of the Committee based on the member's specific expertise in an area related to the investigation, prosecution, and/or defense of sexual assault. For the Committee members to become acquainted with one another and to learn about the perspectives and priorities each member brings to this Committee, responses to the following introductory questions may be helpful to start the discussion:

- A. What is your area of expertise and what issue or issues is/are of greatest interest or concern to you with respect to sexual assault in the military?
- B. How do you interpret the statutory language establishing the Committee and its purpose?
 - 1. Does the Panel feel they need to hear from the sponsor of the bill, the sponsoring agency, or any other stakeholders to better understand the legislative mandate?
 - 2. Who would the Committee like to hear from to better understand its purpose?
- C. What knowledge or information do you believe you need, that you do not currently have, to best fulfill your responsibilities as a Committee member?
- D. Based on the authorizing statute, what first steps would you recommend the Committee take to execute its responsibilities?
- E. What goal or goals would you would like to see achieved by the work of this Committee?

A statutory mandate as broad as this Committee's allows for a wide range of ideas and decisions about how to best execute our mission. As a first step, we will need to interpret the statutory language and define the framework for carrying out the Committee's statutory tasks.

A. Defining the Terms

- 1. What constitutes a "case" for purposes of our statutorily directed review?
 - a. Unrestricted sexual assault report filed (*i.e.*, allegation made)
 - i. Should this include sexual harassment complaints?
 - b. Investigation opened for sexual misconduct
 - c. Sexual misconduct charge preferred
 - d. Sexual misconduct charge referred
 - e. Sexual misconduct allegation that goes to a court-martial (*e.g.*, contested trial, full plea, mixed plea)

- f. Sexual misconduct allegation that receives alternate disposition (*e.g.*, not pursued, nonjudicial punishment, administrative separation, withdrawn, dismissed)
2. What does it mean to “review” a case?
 - a. Review records and case files in their entirety
 - b. Request specific case documents be provided to the Committee for review
 - c. Designate other persons/groups to gather information from records and case files and prepare summaries or collect specified information for review by the Committee
 - d. Attend courts-martial/article 32 preliminary hearings/appellate arguments in person
 3. How should we “advise” the Secretary of Defense?
 - a. Annual reports (annual reports on activities of Committee are required by statute, but are not necessarily the same as the advice provided by the Committee to the Secretary of Defense)
 - b. Information papers
 - c. Policy proposals
 - d. Legislative proposals
 - e. Memorandums
 - f. Meetings
 - g. Presentations

B. Framing the Mission

1. What types of cases should we seek to review?
 - a. Cases with convictions/acquittals/nonjudicial punishment/other disposition
 - b. Cases where Article 32 preliminary hearing officer recommended not to refer to court-martial
 - c. Cases with specific types of information/offenses/other criteria involved
 - d. Cases involving children/adults/dependents/intimate partners/same gender
2. How many cases should we review?
 - a. Representative samples (by offense, by Service, by region, by installation)
 - b. All cases in a given period

- c. Random selection of cases
3. What types of records should we review?
 - a. Sexual assault/sexual harassment/retaliation reports
 - b. Investigation records
 - c. Article 32 preliminary hearing reports
 - d. Other information from prosecutor files
 - e. Records of trial
 4. At what point in a case should we review a record?
 - a. While the case is ongoing
 - b. After dismissal, acquittal, conviction, or authentication
 - c. Before appeal
 - d. After appeal is exhausted
 5. By what mechanism should we review cases?
 - a. Reviewing records in-person at the locations where they are maintained
 - b. Setting up a secure Sharepoint system to allow Committee or subcommittee members remote access
 - c. Requesting Services to provide records to the Committee office

To determine the best methods for review, the Committee may want to look to conviction integrity programs and other case-review entities established throughout the country.
 6. What specific issues or data should we seek to identify in cases?
 - a. Relationship of accused and victim
 - b. Military or civilian status of accused and victim
 - c. Length of investigation/trial/appellate process
 - d. Admission of mental health records/rape shield evidence
 - e. Improper sealing of case files
 7. How should the information collected from cases be used?
 - a. Develop a database or other system for statistical analysis of information (or build on the Judicial Proceedings Panel database)
 - b. Create case studies for individual analysis
 - c. Review and assess specific actions such as charging decisions
 8. What other types of information should we look at in conjunction with case reviews to develop the Committee's advice to the Secretary of Defense?

- a. Sexual Assault Prevention and Response Office (SAPRO) reports and data
- b. RAND Corp. sexual assault reports and data
- c. U.S. Government Accountability Office (GAO) and DoD Inspector General (DoD IG) reports
- d. Military Service and DoD policies
- e. Previous advisory committee reports
- f. Congressional and advocacy organization reports
- g. News articles
- h. Law review articles and case law
- i. Surveys, requests for information, or interviews conducted by Committee

IV. Subcommittees

Because of the size and logistics of the Committee, it may be most helpful for execution of the Committee's tasks to form subcommittees. The Committee may want to discuss whether it prefers to establish subcommittees or working groups composed of Committee members only or whether it would like to have additional individuals appointed to serve as subcommittee members.

A. Subcommittee Options

1. Investigation Subcommittee
 - a. Task: To review Military Criminal Investigation Organization (MCIO) investigative files involving sexual misconduct allegations
 - b. Recommended members: Former military prosecutors, civilian prosecutors, defense counsel, civilian police investigators from departments with identified best practices, and criminologists
2. Litigation Subcommittee (or possibly separate subcommittees for prosecution and defense)
 - a. Task: To review case files involving sexual misconduct allegations
 - b. Recommended members: Former military prosecutors, civilian prosecutors, defense counsel, victims' counsel, and criminologists
3. Data and Statistics Subcommittee
 - a. Task: To compile and analyze data obtained from case files or elsewhere and to develop a database or continue to improve upon the document-based database developed by the Judicial Proceedings Panel
 - b. Recommended members: criminologists, other data experts, and interested Committee members

B. Subcommittee Meeting Options

1. Monthly for one business day to review documents
2. Every-other-month or quarterly for more than one day to review documents
3. Meet via recurring conference calls in conjunction with in-person meetings