



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

September 6, 2018

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

Dear Mr. Secretary:

As the Chair of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (the Committee or DAC-IPAD), a federal advisory committee established by section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law No. 113-291), I respectfully submit the advice and recommendations of the DAC-IPAD regarding the implementation of section 5504 of the Military Justice Act of 2016 (Public Law No. 114-328) (Article 140a, Uniform Code of Military Justice (UCMJ), *Case management; data collection and accessibility*) (hereinafter “Article 140a”). Article 140a requires the development of uniform standards and criteria across the all Military Services, for the conduct of military justice activities at all stages of the military justice system, including the pretrial, trial, post-trial, and appellate stages of a case processes, using, insofar as practicable, the best practices of Federal and State courts.¹

Commented [P1]: BGen Schwenk suggested edit. This version incorporates language from the text of Article 140a.

The goals of Article 140a—to achieve greater efficiency and transparency in the processing of cases in the military justice system and facilitate periodic reviews of the UCMJ and Manual for Courts-Martial—touch on an issue of great importance to this Committee: the lack of comprehensive and meaningful information about the military justice response to sexual assault in the Armed Forces. This concern was previously highlighted by the Judicial Proceedings Panel (JPP) in three separate reports to the Secretary of Defense.² The JPP found that the Department of Defense (DoD) does not collect sufficient data to fully assess how adult sexual assault cases are resolved through the military justice system, and recommended that DoD adopt one uniform system for the collection and analysis of sexual assault case documents

Commented [P2]: BGen Schwenk's edit

¹ 10 U.S.C. § 940a (2016).

² The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“Judicial Proceedings Panel” or “JPP”) was established by the National Defense Authorization Act for Fiscal Year 2013, as amended, Pub. L. No. 112-239, § 576(a)(1), 126 Stat. 1632 (2013). JPP reports are available at <https://jpp.whs.mil>.

and data.³ The DAC-IPAD fully supports the JPP's assessment and believes that Such an understanding these cases, which are frequently complex in nature and have an enormous impact on both the victim and the accused, can shed light on the positive effects of numerous recent reforms in the military and can highlight areas for further study and improvement.

Commented [P3]: Chair Bashford suggested adding more discussion of the relevant JPP recommendations, and also suggested enclosing the JPP recommendations with this letter.

Commented [P4]: BGen Schwenk's edit.

As part of its mandate, the DAC-IPAD is currently reviewing thousands of case file documents spanning the investigation and prosecution of sexual assault offenses and are examining those case outcomes across a variety of factors.⁴ This review underscores the value necessity of accurate, thorough, and complete data to achieving a greater understanding of how sexual assault cases are handled in the military. Article 140a offers a similar opportunity to generate uniform, thorough, and reliable data, for sexual assault and all other UCMJ offenses, over the long term, thereby benefitting the military Services, DoD, and external stakeholders. Therefore, the DAC-IPAD members, on the basis of their collective experience and their ongoing review of sexual assault cases, offer the following recommendations to the Secretary of Defense about how to best implement Article 140a in the context of sexual assault crimes committed by military members.

Commented [P5]: BGen Schwenk's edit

Commented [P6]: BGen Schwenk's edit

Recommendation 1: The uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices for case data collection:

Commented [P7]: BGen Schwenk's edit

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

Commented [P8]: BGen Schwenk's edit

Commented [P9]: BGen Schwenk's edit

Commented [P10]: BGen Schwenk's edit

Commented [P11]: Ms. Long's comment: re-order paras. d and e.

Staff note: the Staff has flipped the order here, per Ms. Long's request, in order to arrange the best practices in a more logical order.

³ See Enclosure 1, Judicial Proceedings Panel Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses, and Enclosure 2, Department of Defense Response to Judicial Proceedings Panel Recommendations.

⁴ See Enclosure 3: Sexual Assault Case Documents and Data Elements Collected by the DAC-IPAD.

Recommendation 1a: Ensure that the source documents referenced in DAC-IPAD Recommendation 1 contain uniformly-defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

Commented [P12]: BGen Schwenk's suggested addition to the recommendations.

Recommendation 2: The data produced pursuant to Article 140a, UCMJ, should be sufficiently robust to serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and external entities.⁵

Commented [P13]: Ms. Long's question: Do you think we need to reference the DAC-IPAD factors again (fn 4 materials) to provide an example of "robust"?

Commented [P14]: BGen Schwenk's suggested addition to the recommendations

Recommendation 3: Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses assault, involving either a sexual act or sexual contact, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

Commented [P15]: Staff technical edit.

- a. The circumstances giving rise to a criminal investigation by a Military Criminal Investigation Organization concerning a military member who is subject to the UCMJ;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and gender;
- d. The relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process; and
- h. Whether a defense counsel requested expert assistance testifying or consulting experts on behalf of a military accused, and whether those requests were approved by a convening authority or military judge, noting instances in which and whether the government availed itself of the same type of expert assistance, that was not provided to the defense.

Commented [P16]: Ms. Long's question: Does this mean a summary of the initial complaint/report or how the report became known to the MCIIO?

Staff comment: this sentence was intended to refer both to a summary of the initial complaint and how the complaint became known to the MCIIO.

Commented [P17]: Dr. Spohn suggested adding this data element to the list.

Commented [P18]: BGen Schwenk edits

⁵10 U.S.C. § 946 (2016). Article 146 requires the Military Justice Review Panel to conduct an initial review and assessment of the implementation of recent amendments made to the UCMJ, and to gather and analyze sentencing data from general and special courts-martial.

i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

Commented [P19]: Chair Bashford's suggested addition to the list of data elements in Recommendation 3.

Recommendation 4: The military Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

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

Commented [P20]: BGen Schwenk's edit.

Rationale

Article 140a provides that the “collection and analysis of data concerning substantive offenses and procedural matters” shall be done “at all stages of the military justice system,” in a manner that “facilitates case management and decision making within the military justice system, and that enhances the *quality* of periodic reviews under section 946 of this title (article 146⁶)” (emphasis added).⁷ This statute was a product of the comprehensive review of the UCMJ and Manual for Courts-Martial conducted in 2015 by the Department of Defense Military Justice Review Group (MJRG), led by a former Chief Judge of the United States Court of Appeals for the Armed Forces, the Honorable Andrew S. Effron. The MJRG found that the separate data collection and case management practices currently in use by the Services make it difficult to collect and meaningfully analyze military justice data on a system-wide basis.⁸

The DAC-IPAD lauds the objectives of Article 140a, and believes that the quality of the information collected pursuant to this statute will ultimately determine the success of this UCMJ reform. While Article 140a data have great potential value for military practitioners and managers in the field seeking ways to improve their practice. Another important aim of this statute is to provide a foundation for future evaluations of military law and procedure.⁹ The data that undergird these policy decisions, particularly decisions that lead to Service members being deprived of their liberty following a court-martial, must be accurate and comprehensive. Therefore the Committee urges that quality assurance drive all aspects of the Article 140a's implementation.

Commented [P21]: Staff suggested edit to address Ms. Long's comment below about the need to explain the value of the data to practitioners (i.e., it's not all about oversight by outside groups).

Recommendation 1 is based principally on the quality assurance measures used by the United States Sentencing Commission to produce data concerning federal criminal sentencing practices. It also derives from the experiences of the JPP and DAC-IPAD in maintaining a document analysis system that provides consistent information about sexual assault cases across

⁶ 10 U.S.C. § 946 (2016).

⁷ 10 U.S.C. § 940a (2016).

⁸ REPORT OF THE MILITARY JUSTICE REVIEW GROUP PART I: UCMJ RECOMMENDATIONS at 1012-13 (Dec. 22, 2015), available at http://ogc.osd.mil/images/report_part1.pdf.

⁹ *Id.*

all five military Services. Standardized case documents are a reliable source of information because the documents are created to reflect, or effect, the very process that they describe—e.g., the initiation of a criminal investigation, the preferral of charges, or the outcome of a court-martial. Centralizing the document collection within a single organization, and placing one team of experts in charge of data entry and analysis, helps foster both accountability for producing documents and consistency in the interpretation of those documents. This arrangement is also intended to relieve military justice personnel of the responsibility for some routine and ad hoc data queries, as current practices entail. Producing analyses from case documents on a recurring basis throughout the year, relatively close in time to the completion of the cases analyzed, would serve two purposes: provide transparency to stakeholders and avoid the overly cumbersome and lengthy document or data searches often involved in annual and ad hoc reviews.

Commented [P22]: BGen Schwenk's edit

The Committee recognizes that there may be limitations to collecting data solely from select standard investigative and procedural case documents, which may not contain some information that is useful to know about a sexual assault case. However, it is possible to have accurate, verifiable data on many important aspects of the military justice system in a way that does not make excessive demands on military justice personnel. Relying on procedural case documents can effectively identify specific topic areas for further analysis, and a more targeted review of other documents or sources of information can follow, as needed.

As Recommendation 2 states, Article 140a should require information about every sexual assault allegation made against a Service member under the military's jurisdiction that is investigated by the MCIOs. For purposes of this statute, "sexual assault cases" should include offenses involving both adult and child victims, and should encompass unwanted sexual act and contact offenses so that DoD, lawmakers, and the public can better understand the nature of sexual violence occurring in the military. The DAC-IPAD's review of sexual assault cases indicates that annually, a majority of the cases involving allegations of penetrative sexual assault are not selected for prosecution.¹⁰ Therefore, any data collection efforts that do not include cases resolved outside the court-martial process would omit a significant amount of information about how cases progress through the military justice system and about the factors that influence those outcomes. Moreover, the Committee appreciates the significant impact of a criminal investigation on the lives and careers of both the victim and the accused, and having comprehensive data regarding the investigative process can contextualize those effects.

In addition to reviewing annually the results of sexual assault courts-martial, the DAC-IPAD is also currently reviewing the entire investigative case file associated with each of the penetrative sexual assault cases closed without action in fiscal year 2017. Collecting information about sexual assault cases that are investigated and closed without action may present more challenges than analyzing information in court-martial documents. However, those difficulties should not deter DoD from systemically collecting reliable information about cases that do not result in disciplinary action. Failing to do so would leave a substantial void in any analysis of the processing of all cases that include an MCIO investigation.

Commented [P23]: BGen Schwenk's edit

¹⁰ DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED SERVICES ANNUAL REPORT 23 (March 2018), available at https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_02_Final_20180330_Web_Amended.pdf.

Although there are differences among the Service MCIOs, each MCIO has a routine way of recording details about the initial complaint of sexual assault received by law enforcement and documenting the commander's decision as to the disposition of the sexual assault case. The Committee recognizes in these documents an opportunity for DoD to capture descriptive data useful for the purposes of Article 140a, and recommends that DoD explore ways to record such information consistently across all the military Services in order to streamline the documents needed to collect information under Article 140a.

The Military Justice Act of 2016 directs DoD and the military Services to develop a modern, unified system for collecting information about sexual assault and other criminal offenses. The Committee notes that the experience of the federal district courts and many other jurisdictions illustrates the benefits of operating a common data collection system, making it well worth overcoming the inherent challenges faced by an organization undertaking any large-scale transition. It also demonstrates the importance of committing the resources needed to accomplish the aims of Article 140a. The quality of the data produced by Article 140a will depend heavily on the amount of resources devoted to the effort. If the Military Services are required to implement this statute with existing resources alone, then future assessments of the military justice system ~~may will~~ lack an adequate foundation, and thus ~~will may~~ lack an adequate justification. Devoting even a few thousandths of one percent of the DoD annual budget to Article 140a's implementation would say in action, not merely in words, that military justice is essential to good order and discipline, and thus essential to military readiness. Moreover, committing appropriate resources to this effort would demonstrate that DoD is willing to commit the resources necessary to maintain a military justice system that is truly efficient and effective.

Finally, while the Committee's charter covers only sexual assault offenses and other sexual misconduct, we hope that our recommendations about when, in the military justice process, case data collection should start and end will be considered by those groups commenting on the other punitive articles of the UCMJ.

Sincerely,

Martha Bashford
Chair

Enclosures:

1. Sexual Assault Case Documents and Data Elements Collected by the DAC-IPAD
2. Findings and Recommendations of the Judicial Proceedings Panel Regarding Military Justice Case Data for Sexual Assault Offenses
3. Department of Defense Response to Recommendations of the Judicial Proceedings Panel

Commented [P24]: BGen Schwenk suggested the letter should further emphasize the need for DoD to commit sufficient resources to Art. 140a.

The staff has drafted a few sentences here that align with BGen Schwenk's comments.

Commented [P25]: Ms. Long's comment: Is it helpful/relevant to recommend that the services are involved in the data collection and use the collection and analysis to improve their own practices. I am thinking back to the testimony we received at the Spring meeting and I think it would be helpful for the services to understand that this data collection isn't just an exercise focused on having an independent committee assess and evaluate their work but rather the data will help them better understand their case outcomes so that they can improve practice.

Commented [P26]: These enclosures have been added per Chair Bashford's suggestion on page 1 of this draft letter

Enclosure 1

Judicial Proceedings Panel (JPP) Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses

*The following JPP Findings and Recommendations have been excerpted from three published reports of the JPP, available at <http://jpp.whs.mil>**

Recommendation 37 [April 2016]: The Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model, similar to systems used by the Judicial Proceedings Panel or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services.

- DoD does not collect sufficient adjudication data to fully assess how adult sexual assault cases are resolved through the military justice system.
- Other than case information entered by Service legal officers into DoD's database, DoD does not centrally collect and manage information about military justice processing in sexual assault cases. The military Services, however, have Service-specific systems, tailored to a decentralized, command-driven military justice system, to collect and manage information for cases that occur in their Service.
- The JPP developed an electronic database, modeled on the database used by the U.S. Sentencing Commission, for collecting and analyzing information from court-martial case documents. This system was used to accumulate procedural information from court-martial documents for the data analysis in this report.
- Collecting standard information from court-martial documents regarding dispositions, charges, outcomes, and punishments imposed in adult sexual assault cases could improve Service-level analysis and could be incorporated into DoD's reports to Congress.
- Because the Judge Advocate General's Corps administer military justice in each of the military Services, case adjudication data could be compiled and analyzed by the Services in a manner compatible with DoD's electronic database and congressional reporting requirements.
- At a minimum, analysis of how adult sexual assault cases are resolved through the military justice system would be improved by the collection of the following case information:
 - all sexual assault charges that were preferred and the outcome of each charge, including whether the charge was referred to court-martial, dismissed, or resolved by alternate means;
 - type of court-martial held;
 - pleas of the accused;
 - trial forum;
 - findings;

Enclosure 1

- sentence; and
- convening authority action on the findings and sentence.
- Because procedural data do not provide complete information about a case, they must be supplemented by potentially relevant case facts and evidentiary issues. Such information may include characteristics of the victim, the relationship between the accused and victim, whether the victim made a prompt report, whether the victim was willing to cooperate, whether the victim engaged in any risk-taking behavior around the time of the incident, and the presence of eyewitnesses or physical evidence.

Recommendation 38 [April 2016]: 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.

- DoD SAPRO annually provides Congress with a description of the resolution of each unrestricted report of sexual assault covered by DoD's sexual assault prevention and response policy; however, that policy precludes reporting on adult sexual assault cases involving victims who are Service members' spouses, intimate partners, or family members over the age of consent under the UCMJ (16 years of age), for whom the DoD Family Advocacy Program (FAP) provides victim advocacy services.
- FAP does not collect or report case adjudication data for the sexual assault reports it receives, even when FAP provides victim advocacy services through completion of a court-martial for a sexual assault crime. Because these cases are excluded from DoD's reports on the legal resolution of sexual assault cases, it is not possible to accurately determine how many sexual assault cases are handled through the military justice system.
- Requiring sexual assault case disposition and adjudication data from FAP to be reported by DoD in its annual report to Congress would ensure a complete accounting of all adult sexual assault cases involving a military member.
- The Response Systems to Adult Sexual Assault Crimes Panel, in its June 2014 report to the Secretary of Defense, examined this issue and similarly recommended it be corrected.

Recommendation 52 [April 2017]: The Secretary of Defense and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*)

- Document-based case adjudication data collection is a best practice utilized and recommended by the U.S. Sentencing Commission. The JPP's document-based approach to data collection involves obtaining relevant case documents from the

Enclosure 1

military Services (e.g. charge sheet, report of result of trial) and recording the relevant case history data into a centralized database for analysis.

- In its April 2016 report, the JPP recommended that the Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model similar to the systems used by the JPP or the U.S. Sentencing Commission.
- Article 140a, enacted in the National Defense Authorization Act for Fiscal Year 2017, requires the establishment within four years of uniform standards and criteria for collecting military justice data across all of the military Services.

Recommendation 53 [April 2017]: The new military justice data collection system required to be developed pursuant to Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*), should be designed so as to become the exclusive source of sexual assault case adjudication data for DoD's annual report to Congress on DoD's sexual assault prevention and response initiatives.

- DoD SAPRO's data collection and reporting on the legal disposition of adult-victim sexual assault cases do not describe the results of sexual assault reports made within DoD with sufficient clarity or thoroughness for Congress or DoD to understand how these cases are handled within the military justice system.
- Military justice personnel should be involved in providing the information collected pursuant to Article 140a, which would improve the accuracy and level of detail currently contained in DoD's reports on sexual assault cases.
- DOD SAPRO should rely solely on the Article 140a data for its sexual assault case adjudication data when developing the DoD SAPRO annual report to Congress.
- To the extent possible, DoD should avoid developing a source of data under Article 140a that does not communicate with other sources of data within DoD, such as DoD SAPRO's sexual assault incident database.

Recommendation 54 [April 2017]: The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, 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 less punitive outcomes than cases involving civilian victims;
- b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services; and

Enclosure 1

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%.

- Because the data required to meet the JPP's congressional tasks were not available or collected by any entity within DoD, including the annual DoD SAPRO report, the JPP independently collected the needed information directly from case files maintained by the military Services.
- The JPP heard testimony from civilian experts from the Bureau of Justice Statistics and the U.S. Sentencing Commission on best practices for collecting accurate and reliable information about case adjudication.
- In 2014, the JPP, in collaboration with the Washington Headquarters Service, developed a document-based database containing information on more than 2,500 military sexual assault cases adjudicated in fiscal years 2012 to 2015.
- In order to understand the data collected, the JPP retained a nationally recognized criminologist who was not affiliated with DoD or any military Service to perform an in-depth statistical analysis of the data.
- The JPP's charter ends on September 30, 2017, and no similar project or method currently exists to continue this in-depth study of sexual assault cases in the military justice system once the JPP concludes.

Recommendation 60 [September 2017]: 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.

- Counsel on site visits reported high acquittal rates in sexual assault cases due to a less robust Article 32 process, the standard of probable cause for referral of charges, and pressure on convening authorities to refer cases to trial even when based on weak evidence.
- Case documents provided by the Services for sexual assault cases tried by court-martial in fiscal year 2015 show that for cases in which the most serious offense tried was a penetrative offense, 39% resulted in convictions of a sexual assault offense, 31% resulted in convictions of a non-sex offense only, and 30% resulted in acquittal of all charges. For cases in which the most serious sex offense tried was a sexual contact offense, 25% resulted in convictions of a sexual contact offense, 57% resulted in convictions of a non-sex offense only, and 18% resulted in acquittal of all charges.

Enclosure 1

*The published reports of the JPP are as follows:

1. The Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses (April 2016)
2. The Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015 (September 2017)
3. The Judicial Proceedings Panel Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases (September 2017)

Enclosure 2



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

APR 5 2017

Elizabeth Holtzman, Chair
Judicial Proceedings Panel
One Liberty Center
875 North Randolph Street
Arlington, VA 22203-1995

Dear Chairperson Holtzman:

This letter is in response to your Request for Information, Set 11, dated March 6, 2017.

In Question 164A, you requested the status of implementation of Judicial Proceedings Panel (JPP) recommendations 37 and 38. **New requirements set forth in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 pertaining to the collection and analysis of military justice data will influence our way forward on these recommendations. As such, how we will implement the recommendations in light of the NDAA requirements remains pre-decisional.**

In Question 164B, you asked the following questions:

1. Will legal disposition information for cases reported by the Family Advocacy Program (FAP) be included in the next annual report from the Sexual Assault Prevention and Response Office (SAPRO)?

Answer: No. 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 cases 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.

2. Section 544 of the NDAA for FY 2017, Extension of the Requirement for Annual Report Regarding Sexual Assaults and Coordination with Release of FAP Report, provides that the SAPRO and FAP annual reports to Congress shall be issued simultaneously. How does Section 544 affect SAPRO's coordination with the FAP office regarding the inclusion of legal disposition data on FAP cases in the annual SAPRO report, if at all?

Answer: Section 544 of the NDAA for FY 2017 requires that the annual report regarding sexual assaults and the FAP report be submitted simultaneously. *The FY16 Annual Report on Sexual Assault in the Military* will include an appendix that summarizes the number of domestic abuse related sexual assault reports. In addition, the FAP will

Enclosure 2

release its annual report on the same day that SAPRO releases its annual report later this spring. However, FAP data in either report document will not include legal disposition of cases. The means for collecting and reporting legal disposition information pertaining to these allegations in the future remains pre-decisional.

In Question 165, Results of the DoD Sexual Assault Data Collection Initiative, you requested the information gathered as part of the “comprehensive discovery sprint” and the recommendations made to the Secretary of Defense in response to this partnership, to include subsequent actions, orders, or policies implemented.

Answer: The recommendations made by the Defense Digital Services to the Secretary of Defense reflect the internal deliberative process of the DoD and are exempt from disclosure in accordance with Exemption 5 of the Freedom of Information Act.

We continue to support and appreciate the work that the JPP is doing to improve military justice. Dr. Nate Galbreath, the Deputy Director of the DoD Sexual Assault Prevention and Response Office, and Ms. Kathy Robertson, Family Advocacy Program Director, will be my representatives at the meeting on April 7, 2017.



A. M. Kurta
Performing the Duties of the Under Secretary of
Defense for Personnel and Readiness

Enclosure 3

Sexual Assault Case Documents and Data Elements Collected by the DAC-IPAD

Case Documents collected:

- Charge Sheet
- Article 32 Report, or waiver of Article 32 preliminary hearing
- Pretrial Advice
- Pretrial Agreement (includes a stipulation of fact)
- Record of Trial cover sheet
- Dismissal Order (when charge(s) are withdrawn & dismissed)
- Request for trial by Judge Alone or Panel of Military Members
- Exhibit Index
- Report of Result of Trial (findings and sentence; terms of a pretrial agreement)
- SJA Post-trial Recommendation to Convening Authority
- Court-Martial Order (findings and sentence as approved by the Convening Authority)
- Resignation/Discharge Documents
- Victim Input on case disposition
- SVC/VLC Notice of Appearance
- Appellate opinions or summary disposition

Enclosure 3

Case Data Elements:

Administrative

- Military service of the accused
- Fiscal year of case disposition (one of the following):
 - Date of adjudged sentence or acquittal at court-martial
 - Date on which all court-martial charges were dismissed
 - Date on which the accused's request for administrative discharge or resignation in lieu of court-martial was approved
- Case Number: Unique DAC-IPAD case number assigned to each adult sexual assault case
- Location where the case was processed: Charge Sheet, Block 5 (Unit, Organization, or Ship Name)
 - Location is CONUS, OCONUS, or Vessel (Alaska, Hawaii, Guam are OCONUS)

Demographics

- Accused Rank
- Accused Gender
- Victim(s) Gender (one of the following):
 - All victims are females
 - All victims are males
 - Victims include females and males
- Victim(s) Military Status:
 - All victims are military members
 - All victims are civilians
 - Victims include military members and civilians

Pretrial

- Victim has Special Victims' Counsel or Victims' Legal Counsel: Yes or No
- Accused ordered into pretrial confinement: Yes or No

- All offenses listed on the charge sheet (sex offenses and non-sex offenses)
- The offense occurred after June 24, 2014 (mandatory minimum sentence in effect for penetrative offenses): Yes or No
- Most serious charged sex offense by type: Penetrative or Contact Offense

- Article 32 hearing (one of the following):
 - The hearing was held
 - The accused waived the hearing
 - Not applicable
- Article 32 hearing officer's recommended disposition for every offense charged
 - If the Article 32 hearing officer recommends dismissal of charges or alternate disposition, note the rationale if available
- Whether the victim appeared at the Article 32 hearing
- Article 32 hearing or waiver occurred after December 26, 2014 (effective date for current Article 32 preliminary hearing procedures)

- Staff Judge Advocate's (SJA) pretrial advice applicable in this case (required for general courts-martial): Yes or No

Enclosure 3

- SJA's advice as to the disposition of every offense charged
 - If SJA recommends dismissal or alternate disposition, note rationale if available
- Pretrial Agreement (PTA): Yes or No
 - Accused pleading guilty to one or more sex offenses: Yes or No
 - Other terms of the PTA (limits on confinement/punitive separation/referral to a specific forum for disposition/other)
- Disposition of all charges at the point of referral to court-martial or other decision on case disposition
 - Charges are referred to trial by court-martial (note type):
 - General court-martial
 - Special court-martial
 - Summary court-martial
 - Charges are dismissed (note whether before or after referral of charges to court-martial)
 - Reason for dismissal of charges, if known:
 - Victim does not wish to participate in the court-martial process
 - Other
 - Information not available
 - Charges are resolved by alternate disposition (i.e., nonjudicial punishment, administrative separation or other administrative action)

Trial

- Trial forum: Military Judge / Panel Members / Summary Court-martial Officer
- Accused's plea entered as to every offense referred to court-martial
 - Note guilty plea to any sex offense
 - If plea is guilty of a lesser included offense, choose from offense listing
- Court-Martial Outcome:
 - Findings as to every offense tried
 - Accused found guilty of any sex offense: Yes or No
 - Accused found guilty of a lesser included offense: Yes or No
 - Most serious sex offense for which the accused was found guilty: penetrative or contact offense
 - Accused acquitted of all charges: Yes or No
 - Any charges dismissed by the military judge
 - Any charges withdrawn by the government pursuant to a PTA

Sentence

- Sentenced adjudged (confinement and/or punitive separation/other type of punishment)
- Sentence approved by the convening authority pursuant to a PTA or clemency granted (ex: forfeitures of pay and allowances deferred or waived)

Appellate Review

- Automatic appellate review required by Service Court of Criminal Appeals (CCA): Yes or No
- Court-Martial findings/sentence affirmed

Enclosure 3

- Court-martial findings/sentence relief granted
- Rehearing ordered/authorized
- Fiscal year of appellate decision
- Appellate issue(s) related to a sex offense

Dates

- Dates for the following:
 - Preferral of charges
 - Article 32 preliminary hearing
 - Referral of charges
 - Findings or sentence adjudged
 - Convening Authority action on the court-martial
 - CCA decision
 - Court of Appeals for the Armed Forces (CAAF) decision
 - U.S. Supreme Court decision