

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



MEETING AND REFERENCE MATERIALS

PUBLIC MEETING
February 14, 2020
ARLINGTON, VIRGINIA

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

16th PUBLIC MEETING AGENDA

February 14, 2020

**The Westin Arlington Gateway Hotel
801 N. Glebe Road, Arlington, VA 22203 Arlington, Virginia**

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| 9:00 a.m. – 9:05 a.m. | Public Meeting Begins – Welcome and Introduction

<i>– Designated Federal Officer Opens Meeting</i>
<i>– Remarks of the Chair</i> |
| 9:05 a.m. – 11:00 a.m. | Military Judges’ Perspectives Regarding the Military Justice System and Military Sexual Assault Cases—including Conviction and Acquittal Rates
<i>(2 hours)</i>

<i>– U.S. Army</i>
<i>– U.S. Navy</i>
<i>– U.S. Marine Corps</i>
<i>– U.S. Air Force</i> |
| 11:00 a.m. – 11:15 a.m. | Break
<i>(15 minutes)</i> |
| 11:15 a.m. – 12:00 p.m. | Committee Deliberations on the Military Judges’ Testimony
<i>(45 minutes)</i> |
| 12:00 p.m. – 1:00 p.m. | Lunch
<i>(1 hour)</i> |
| 1:00 p.m. – 1:30 p.m. | Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 1 – Sexual Assault Case Review Project Observations; and Case Review Working Group Update
<i>(30 minutes)</i>

<i>– Ms. Theresa Gallagher, DAC-IPAD Attorney Advisor</i>
<i>– Ms. Kate Tagert, DAC-IPAD Attorney Advisor</i>
<i>– Mr. Glen Hines DAC-IPAD Attorney Advisor</i> |

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

- 1:30 p.m. – 2:00 p.m.** **Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 2 – Article 32, UCMJ, Preliminary Hearings and the Convening Authority’s Disposition Decision; and Policy Working Group Update**
(30 minutes)
- *Ms. Meghan Peters, DAC-IPAD Attorney Advisor*
 - *Ms. Terri Saunders, DAC-IPAD Attorney Advisor*
- 2:00 p.m. – 2:30 p.m.** **Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 3 – Case Adjudication Data; Chapter 4 – Collateral Misconduct; and Committee Vote on Complete Report**
(30 minutes)
- *Colonel Steve Weir, USA, DAC-IPAD Staff Director*
 - *Ms. Julie Carson, DAC-IPAD Deputy Staff Director*
 - *Mr. Chuck Mason, DAC-IPAD Attorney Advisor*
- 2:30 p.m. – 2:45 p.m.** **Break**
(15 minutes)
- 2:45 p.m. – 2:55 p.m.** **2020 Military Installation Site Visit and Members Attending Sexual Assault Courts-Martial Update**
(10 minutes)
- *Mr. Glen Hines, DAC-IPAD Attorney Advisor*
 - *Ms. Theresa Gallagher, DAC-IPAD Attorney Advisor*
- 2:55 p.m. – 3:30 p.m.** **2020 National Defense Authorization Act Presentation and Discussion**
(35 minutes)
- *Colonel Patrick Pflaum, U.S. Army, Chief, Criminal Law Division, Office of the Trial Judge Advocate General*
- 3:30 p.m. – 3:45 p.m.** **Meeting Wrap-Up and Public Comment**
(15 minutes)
- *Colonel Steven Weir, U.S. Army, DAC-IPAD Staff Director*
- 3:45 p.m.** **Public Meeting Adjourned**



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

MINUTES OF NOVEMBER 15, 2019, PUBLIC MEETING

AUTHORIZATION

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee” or “DACIPAD”) is a federal advisory committee established by the Secretary of Defense in February 2016 in accordance with section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 537 of the NDAA for FY 2016. The Committee is tasked 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 based on its review of such cases on an ongoing basis.

EVENT

The Committee held its fifteenth public meeting on November 15, 2019, from 9:00 a.m. to 3:30 p.m. At this meeting the Committee heard from Mr. Don Christensen, President of Protect Our Defenders, on his organization’s perspective regarding military sexual assault prosecutions, victim access to information, and sentencing. The Committee conducted final deliberations and voted to approve its *Sexual Assault Case Adjudication Data Report* for fiscal years 2015 through 2018. The Committee received a presentation by its Case Review Working Group on the working group’s observations and findings after reviewing more than 2,000 sexual assault investigative case files closed in fiscal year 2017, followed by Committee deliberations.

The DAC-IPAD’s Policy Working Group provided a status update and the Committee deliberated on the Military Services’ written responses to questions and testimony received at its August 23, 2019, public meeting related to sexual assault conviction and acquittal rates, victim participation in the military justice process, Article 32 preliminary hearings, and the referral process for sexual assault cases. The DAC-IPAD Staff Director and staff provided updates to the Committee on the Department of Defense’s recent sexual assault-related collateral misconduct report and the input provided by the Committee; the military installation site visit plan for DAC-IPAD members in 2020; and sexual assault court-martial attendance by Committee members.

LOCATION

The meeting was held at Doubletree by Hilton Crystal City, 300 Army Navy Drive, Arlington, Virginia.

MATERIALS

A verbatim transcript of the meeting and preparatory materials provided to the Committee members prior to and during the meeting are incorporated herein by reference and listed individually below. The meeting transcript and materials received by the Committee are available on the website at <https://dacipad.whs.mil>.

PARTICIPANTS

Participating Committee Members

Ms. Martha S. Bashford, Chair
Major General Marcia M. Anderson, U.S.
Army, Retired
The Honorable Leo I. Brisbois
Ms. Kathleen B. Cannon
The Honorable Paul W. Grimm
Mr. James P. Markey
Dr. Jenifer Markowitz
Chief Master Sergeant of the Air Force
Rodney J. McKinley, Retired

Brigadier General James R. Schwenk, U.S.
Marine Corps, Retired
Ms. Meghan A. Tokash
The Honorable Reggie B. Walton

Absent Committee Members

Ms. Margaret A. Garvin
Mr. A. J. Kramer
Ms. Jennifer G. Long
Dr. Cassia C. Spohn

Committee Staff

Colonel Steven Weir, U.S. Army, Staff
Director
Ms. Julie Carson, Deputy Staff Director
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor*
Ms. Amanda Hagy, Senior Paralegal
Ms. Patricia Ham, Attorney-Advisor
Mr. Glen Hines, Attorney-Advisor
Ms. Marguerite McKinney, Analyst
Mr. Chuck Mason, Attorney-Advisor
Ms. Meghan Peters, Attorney-Advisor
Ms. Stacy Powell, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor
Mr. Dale Trexler, Chief of Staff

Service Representatives

Ms. Janet K. Mansfield, U.S. Army, Chief, Programs Branch, Criminal Law Division, Office of the Judge Advocate General
Captain Josephine VanDriel, U.S. Air Force, Chief, Victim and Witness Policy
Mr. James S. Martinson, U.S. Navy, HQE, Criminal Law Division, Office of the Judge Advocate General

Other Participant

Mr. Dwight Sullivan, Designated Federal Officer (DFO)

Presenter

Mr. Don Christensen, President, Protect Our Defenders

*Telephonic participation

MEETING MINUTES

The DFO opened the public meeting at 9:00 a.m. Chair Martha Bashford provided opening remarks welcoming those in attendance and explained the purpose and agenda for the meeting. In her remarks she stated that on November 1, 2019, she assigned issues related to Articles 32, 33, and 34 of the Uniform Code of Military Justice to the DAC-IPAD Policy Working Group. She explained that the issues related to these UCMJ articles were recommended to the DAC-IPAD for review by its predecessor, the Judicial Proceedings Panel, and also by the Department of Defense General Counsel in a June 2019 letter to the DAC-IPAD.

Protect Our Defenders' Perspective on Military Sexual Assault Prosecution, Victim Access to Information, and Sentencing

Mr. Don Christensen informed the Committee that there are three issues that Protect Our Defenders believes are of concern in the military justice system: sentencing; the prosecution/conviction rates; and access to “discovery” materials for victims and their counsel. Mr. Christensen reported that the military sentencing process is virtually unchanged since George Washington headed the Continental Army.

Mr. Christensen stated that he looked at Air Force court-martial results for a six month period that were published monthly up until June of this year. He explained that there were 33 cases in which an accused was convicted of a sexual assault, and expressed concern that in 10 of those cases the accused received no confinement. He believes this is a process problem and that the military should adopt the federal sentencing model which includes judge-alone sentencing and allows judges to order restrictions such as supervision or treatment upon inmates' release from confinement. He contrasted federal sentencing with the military's process which requires no follow-up once a Service member serves his or her sentence.

Mr. Christensen stated that there is not an ideal conviction rate, however he said that the military's conviction rate of less than 30% for penetrative sexual offenses and around 14% for contact offenses indicates that something is wrong. Of further concern, he noted, is that the DoD Sexual Assault and Prevention Office's Annual Reports (SAPRO Report) show that in fiscal year 2015 there were 255 convictions, but in 2018 there were only 108, even though there were more allegations in 2018. He feels this should be setting off alarm bells.

From his own experience serving as an Air Force judge advocate for 23 years, he explained that he believes the low conviction rate is due in large part to the relative lack of experience of military prosecutors compared to their civilian counterparts, noting that a special victim

prosecutor may have 20 to 25 “trials” in their tenure as a litigator, only about 10 of which are contested trials, as opposed to civilian counsel who may have 20 or 30 years’ experience with 500 cases under their belt. The solution, he believes, is legislative, and he hopes the DAC-IPAD will advise Congress that the military needs career prosecutors and defense counsel.

He noted similar concerns about military judges’ lack of experience and tenure on the bench. Mr. Christensen recommended that trial judges serve for at least five years and appellate judges for at least 10.

Next, Mr. Christensen discussed victim access to information related to the court-martial. He explained that he represents victims and that he has been denied “discovery” because he was a civilian and not a military lawyer. He relayed that the special victims’ counsel (SVC) in a case had evidence that she was told she could not share with Mr. Christensen as a civilian counsel. He said that would never happen for a civilian defense counsel, who is entitled to the same documents as the military defense counsel. He does not believe that the Privacy Act is a bar to victims’ access to their own statements or that the Freedom of Information Act is a solution to victim discovery.

The other problem area with respect to victims’ access to information Mr. Christensen addressed involves victims’ inability to obtain the results of forensic tests such as DNA tests, sexual assault forensic exams (SAFE), and digital analysis of the victim’s cell phone. He noted that the consequence is that a victim’s counsel cannot provide adequate advice to his or her client whether to go forward with the case or not. His recommendation is that victims, at a minimum, should have routine and complete access to anything that they have said and that has been recorded by the United States Government.

Committee Vote on the DAC-IPAD’s Sexual Assault Court-Martial Adjudication Data Report Case Review Working Group Presentation and Deliberations

Mr. Chuck Mason, DAC-IPAD Attorney-Advisor, asked the Committee to vote whether to approve the data report that was presented to the members for deliberation at the August 23, 2019, DAC-IPAD Public Meeting. The report was unanimously approved for publication by the Committee.

Next, Mr. Mason asked for a Committee vote whether to approve a proposed request for information (RFI) for submission to the Military Services requesting the names of military justice cases completed in fiscal year 2019. He explained that the proposed request this year would ask for all cases closed with a preferred charge under the Uniform Code of Military Justice, not just sexual assault cases. He stated that the purpose of the expanded request is to be able to determine which cases are responsive to the DAC-IPAD’s sexual assault case criteria and to then ask for the documents related to sexual assault. The Committee approved the request unanimously.

Case Review Working Group Presentation and Deliberations

Retired Marine Corps Brigadier General James Schwenk, the Case Review Working Group (CRWG) Chair, informed the Committee that the working group completed its review of adult penetrative sexual assault investigative case files for cases that were closed in FY17. He reported that about two-thirds of the data collected from the case files has now been entered into the DAC-IPAD's database and submitted for analysis by DAC-IPAD criminologist, Dr. Bill Wells. General Schwenk explained that the CRWG members reviewed a total of 321 out of the approximately 2,000 FY17 cases, and the staff have reviewed all of the cases, with the objective of providing a stand-alone report in 2020. This report will provide descriptive data by Military Service from the case files as well as bivariate and multivariate analysis of case factors that may be predictive of whether charges would be preferred in a given case. Further, the report will include an analysis of characteristics in cases that result in no action and acquittals as well as subjective determinations on command decisions based on the Committee members' professional expertise.

General Schwenk stated that the purpose of this briefing to the Committee is to provide the CRWG's general impressions based on each member's review of the case files and related case documents. He noted that the findings and observations of the CRWG will help in developing questions for the Committee's site visits in 2020.

The following three findings and nine observations were then presented to the Committee by CRWG members:

Proposed Finding 1: Statements of sexual assault victims taken by military criminal investigators often lack sufficient detail and appropriate follow-up questioning by the investigator. The lack of detail and follow-up questioning in these made it difficult to properly assess an appropriate disposition for the case.

The Committee unanimously approved the finding.

Proposed Finding 2: Investigators need more discretion to tailor the investigation to the specific facts of the complaint. There needs to be a mechanism early in the investigation for assessing complaints for closure, where appropriate.

- (a) The investigation and resolution of sex assault complaints frequently take longer than the facts necessitate;
- (b) All complaints receive the same level of investigation without the investigation being tailored to the allegation;
- (c) In some cases, investigations continue, irrespective of the victim's preference, even when the victim asserts there was no sex assault or where the elements of a sex assault were not established;
- (d) Our review of investigative case files leads us to conclude this practice of untailored investigations is not an effective use of time and resources, and it confirms our previous finding

from March 2019, which is listed below, which was based on testimony from military investigators.

The Committee unanimously approved the finding.

Proposed Finding 3: Immediately following an allegation of sexual assault, the subject's command routinely imposes some form of administrative action, including, but not limited to, suspension of security clearances and administrative holds prohibiting favorable personnel actions such as promotions, educational opportunities, moves, and awards. These actions have negative personal and professional impact on the subject.

The Committee unanimously approved the finding.

Observation 1: Article 30 of the UCMJ directs that commanders and convening authorities determine what disposition should be made of charges in the interest of justice and discipline. Our review of investigative files, Article 32 reports, Article 34 advice, and the disposition action of commanders and convening authorities found in cases where there was an indication of the rationale for the disposition decision consideration primarily of the following factors: consideration of probable cause; sufficiency of the evidence; multiple victims; victim preference; and the declination of other jurisdictions to prosecute.

Observation 2: In many cases the victim's preference as to disposition seems to receive more weight by convening authorities than the consideration of whether admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court-martial. The Article 33 non-binding disposition guidance may not give appropriate weight to the sufficiency of the evidence factor.

Observation 3: While judge advocates often provided investigators advice on probable cause for submission of fingerprints and DNA to federal databases, it is unclear what, if any, advice on appropriate disposition factors, including advice on probable cause, judge advocates provided to the initial disposition authority.

Observation 4: The initial disposition authority often did not identify which factors were considered significant in the disposition decision and currently is not required to do so. This created, or appeared to create, some impact or effect on the credibility, consistency, and transparency of how these decisions are being made, which lends itself to the fact of questioning how the process is working or not working when decisions, hopefully, we believe, are being made on sound legal principles.

Observation 5: Detailed Article 32 preliminary hearing reports containing a summary of the facts supporting the elements and the preliminary hearing officer's (PHO) analysis and conclusions are useful to SVCs, VLCs, and defense counsel in advising their clients and SJAs and convening authorities in rendering advice and making decisions on the charges, probable cause, jurisdiction, and dispositions.

Observation 6: Based on reviews of the investigative files and Article 32 reports, the CRWG noted that sufficient evidence for a probable cause determination is not always presented at the Article 32 hearing. The Article 32 PHO should be presented with sufficient evidence to support a probable cause determination at the Article 32 hearing where it is subject to be challenged by the defense.

Observation 7: The lack of a binding probable cause determination by the PHO, allowing the staff judge advocate (SJA) to come to a different conclusion on probable cause without explanation, reduces the usefulness of the Article 32.

Observation 8: Many sexual assault cases are being referred to courts martial when there is insufficient evidence to support and sustain a conviction.

(a) The Article 32 PHO do not consistently include in their reports an evaluation of whether there is sufficient admissible evidence to support a conviction. Such an evaluation would be helpful to subordinate commanders, convening authorities, and SJAs.

(b) Article 34 requires SJAs to provide convening authorities a binding determination of probable cause as the standard for referring a case to trial. Probable cause may not be the appropriate standard for referring a case to trial.

(c) Staff judge advocates rarely provide an evaluation of the sufficiency of the evidence to support a conviction in the Article 34 pretrial advice, and they are not required to do so. Including such an analysis, as well as the SJA's conclusion as to whether there is sufficient admissible evidence to obtain and sustain a conviction in trial, the court-martial, would be helpful to convening authorities.

(d) Many cases did not seem to afford consideration of the sufficiency of evidence to obtain and sustain a conviction, the same deference accorded in the U.S. Attorneys' Manual.

Observation 9: Currently, Article 34 prohibits convening authorities from referring charges to a general court-martial unless the SJA provides written advice that the specification alleges an offense, that there is probable cause to believe the accused committed the offense, and that jurisdiction over both the person and the offense exists. Additionally, the SJA must provide a written recommendation as to the disposition to be made in the interest of justice and discipline. The SJA's Article 34 pretrial advice to the convening authority often consists of conclusions without explanation. These unexplained conclusions are not useful in assessing factors relevant to a referral determination. The Article 34 pretrial advice would be more helpful to convening authorities if they included detailed explanation for the SJA's conclusions.

Chair Bashford asked the Policy Working Group to continue exploring the issues raised in observations 1 through 9.

Policy Working Group Presentation

General Schwenk, acting as the interim chair of the Policy Working Group (PWG), and Ms. Terri Saunders, DAC-IPAD Attorney-Advisor, advised the Committee that the PWG met in October to discuss the way ahead and how to approach the review of issues related to Article 32 preliminary hearings and the referral process. Ms. Saunders explained that the PWG members agreed to begin by looking at Article 32, UCMJ, followed by a review of the pretrial process from preferral to referral. She said that the group's goal is to gather additional evidence on Article 32 hearings and the referral process, including military installation site visits next year. She noted that the working group will gather information and report it to the Committee for inclusion in the 2021 DAC-IPAD annual report.

Ms. Saunders then reviewed a summary of Article 32 data collected by the staff from the DAC-IPAD's case adjudication database for cases closed in fiscal years 2017 and 2018 in which an Article 32 hearing was held, the most serious offense charged was a penetrative sexual offense, and the preliminary hearing officer (PHO) found there was no probable cause for one or more penetrative sexual offenses.

She explained that the question posed by the Committee at the August 23, 2019, meeting was how often the PHO finds no probable cause exists for a sexual offense, and how often those offenses are referred to trial. Ms. Saunders reported that in FY18 the PHO found no probable cause for a least one penetrative sexual offense, in about 16% of cases and that in FY17 it was 22%.

She explained that the special court-martial convening authority (SPCMCA) is the individual who orders the Article 32 hearing to be held, and once the hearing is complete, the SPCMCA reviews the report and has the option of either dismissing the charges or sending the case forward to the general court-martial convening authority for disposition. Ms. Saunders noted that in FY18, the majority of cases in which the PHO found no probable cause were dismissed and most were dismissed at the SPCMCA level. She added that the exception is the Army, in which most of the cases were referred to court-martial rather than dismissed.

Ms. Saunders reported that in FY18, out of 52 penetrative sexual assault charges for which PHOs found no probable cause, a total of 18 were referred to court-martial. She noted that when Army cases are taken out, only seven such cases were referred to court-martial, and of these seven, three were dismissed after being referred.

Ms. Saunders next reviewed the FY17 cases and stated out of 80 penetrative sexual assault charges for which PHOs found no probable cause, 32 were referred to court-martial. She also explained that the majority of PHOs were in the grade of O-4 and O-5, and that the grade did not seem to be a factor in whether or not the convening authority acted consistently with their determinations.

An observation the group noted was that the Military Services, for the most part, provided well-developed Article 32 reports with factual summaries and thorough analysis. Ms. Saunders added that amendments to the Article 32 process implemented in January of this year now require the PHO to provide analysis, which should lead to more well-developed analysis in preliminary hearing officers' reports.

Sexual Assault Victim Collateral Misconduct Report Status Update

Colonel Steven Weir, DAC-IPAD Staff Director, provided the Committee with an update on the Sexual Assault Victim Collateral Misconduct Report stating that the final report was submitted to DoD on behalf of the DAC-IPAD on September 16, 2019. He explained that along with the report was a request that the Secretary of Defense provide the DAC-IPAD a written response with his approval or disapproval of the DAC-IPAD recommendations by November 1, 2019.

Colonel Weir informed the Committee that on October 2, 2019, the DoD General Counsel, Mr. Paul Ney, responded in a letter to the Chair. Mr. Ney informed the Chair that he had forwarded the DAC-IPAD's report to the Joint Service Committee on Military Justice for its analysis and asked for their recommendations by March 13, 2020. Colonel Weir added that Mr. Ney also commented that he was appreciative of the DAC-IPAD's involvement to provide a thorough and complete report for the Secretary and his Department to review and make policy determinations or recommendations. He noted that the next required collateral misconduct report is due in 2021.

Committee Deliberations on the Services' Responses to DAC-IPAD Request for Information Set 11 and Testimony from the August, 23, 2019 DAC-IPAD Public Meeting

Ms. Meghan Peters, DAC-IPAD Attorney Advisor, explained that the purpose of this session of the meeting is to gather the members' thoughts, impressions, and comments on the information they have received to date regarding the Article 32 preliminary hearing process; Article 33 non-binding disposition factors; Article 34 advice required prior to referral; the DAC-IPAD's conviction and acquittal rate data; and victims' decisions to decline participation in the investigation or prosecution of sex assault cases. She asked the members to provide feedback: (1) to identify specific research questions for further study; (2) to identify specific Article 32 reforms for consideration; (3) to suggest other stakeholders the Committee may want to hear from; and (3) to identify specific tasks the PWG may want to undertake. She added that the DAC-IPAD should plan to leverage the military installation site visits in 2020 to help answer the questions the Committee develops concerning these substantive topics.

Ms. Peters identified the following issues raised in presenter testimony and RFI responses that the Committee may want to explore: (1) as a result of Congress's changes to the Article 32, preliminary hearings are no longer a comprehensive review of available evidence; (2) since the FY14 NDAA changes, more preliminary hearings are waived; (3) victims rarely testify at the Article 32 preliminary hearing; (4) at some preliminary hearings, no witnesses testify; and (5) according to the Rules for Courts-Martial, the PHO cannot compel evidence at the hearing.

Ms. Peters reported that based on the staff's review of the data, in FY18, out of all penetrative and contact sexual assault cases eligible for an Article 32 hearing, an Article 32 hearing was held in 70% of the cases. She noted that FY16 and FY17 were roughly the same statistically. Chair Bashford expressed interest in why more are being waived. Ms. Peters referred to the testimony of the defense counsel at the August 23, 2019, DAC-IPAD public meeting during which they raised the issue of the PHO not being able to compel evidence. She noted again that the 2019

changes to the UCMJ will require a more robust analysis in the preliminary hearing reports, but that it remains to be seen how helpful they will be to convening authorities.

General Schwenk suggested that the Committee may want to look at the purpose of the Article 32 preliminary hearing and address the fundamental question of why the military has them, and if it is going to have them, what the purpose should be. Judge Grimm agreed that determining the purpose of the Article 32 hearing, even if it would require amendment of Article 32, is a proper function of the Committee. Ms. Tokash stated that when talking about whether probable cause exists, the more proper question might be whether there is evidence to obtain and sustain a conviction.

Ms. Peters asked the Committee members for their impressions of the statistic that 16% to 20% of the Article 32 hearings held result in findings of no probable cause for a penetrative sexual assault. General Schwenk responded that there should be zero cases that don't have probable cause because the real question in determining whether to go to a court-martial should be whether there is evidence beyond a reasonable doubt. Judge Grimm stated that probable cause does not speak to the likely outcome of the case, and if instead the factor was, as would be applicable to prosecutors in the federal system—the ability to obtain and sustain a conviction—that would be a more helpful recommendation.

Ms. Cannon explained that in her jurisdiction there is a time limit for conducting the preliminary hearing and that the judicial officer can grant delays. She added that the hearing can include hearsay such as a qualified investigator testifying to what a complaining witness might have said, or what another witness may have said. General Schwenk proposed that the PWG look at the efficacy of having some kind of initial time limit for a preliminary hearing, and allowing the PHO to grant delays.

The members then discussed potential reforms mentioned in the August meeting testimony and some of the potential problems presenters highlighted. One such concern was the ramifications of making the Article 32 PHO's finding of no probable cause binding and giving the PHO more power. The RFIs asked the Military Services to consider creating an alternative in which the SJA has to justify disagreement with the PHO's finding of no probable cause in writing. The members discussed that the military justice chiefs were not in favor of making a PHO's determination of no probable cause binding, noting the rationales they offered such as: (1) convening authorities are well-positioned to make an independent probable cause determination, and they should be imbued with the power to make their judgment in the case in the interest of good order and discipline and justice; and (2) the current format of the preliminary hearing does not provide a sufficient vetting of the evidence and therefore isn't where the dispositive decision on the case's sufficiency should be made. The defense counsel, on the other hand, universally favored making the PHO's determination of no probable cause binding.

Ms. Tokash highlighted the military justice chiefs' point that a binding Article 32 hearing could erode a victim's right to be heard, and also that it could erode a defendant's due process rights, especially in the 20 cases in FY18 that were referred to court-martial, regardless of the fact that a lawyer said there was no probable cause. She expressed that she found that the sentiments from

the military justice chiefs didn't comport with the actual case files the DAC-IPAD analyzed. She stated her opinion that the [no] probable cause determination should be binding.

The Committee agreed that the Policy Working Group should further analyze the binding nature of the Article 32 hearing determination.

Ms. Peters noted that the victim's view as to disposition at referral wasn't always included in the documents in the case files reviewed. She noted that some referral documents showed that there was a change, but in many cases the victim's preference wasn't documented. She explained that this information may have been included in the prosecution merits memo or a case analysis memo that was not part of the case file provided to the DAC-IPAD. Ms. Peters then highlighted that an SJA may be privy to some information which a preliminary hearing officer isn't, such as interviews beyond the initial law enforcement interviews, digital forensics examinations, and additional witness testimony.

Ms. Peters explained that there isn't a lot of information available yet on the new post-hearing written submissions authorized for the Article 32 preliminary hearings conducted on or after January 1, 2019. She noted that the defense, the government, and the victim have a day or two after the preliminary hearing to provide written materials on what they think the disposition recommendation should be. She explained that before referral, a written submission is prepared after the preliminary hearing; the SJA consults with his or her prosecution team to discuss their assessment of the case; and the victim may exercise his or her right to express a preference as to disposition, which will come, usually in writing, to the prosecution team and is then provided to the SJA prior to a referral decision.

Judge Brisbois explained that the purpose of grand juries and preliminary hearings is to help the government perfect its case, and act as a check and balance on excessive prosecutorial action. He said that the Article 32 preliminary hearing currently is not serving that function. He suggested that the PWG and the DAC-IPAD recommend what the Article 32 substantive function should be, how it serves as an analog to the state and federal systems, and how it provides a tool for good order and discipline.

Ms. Cannon questioned the usefulness of the Article 32 preliminary hearing if it is "just another set of eyes." She added that if it is considered a Constitutionally-charged oversight of the prosecution and a protection for the accused, the Committee should consider strengthening it. Chief McKinley agreed and added that if the preliminary hearing had more teeth in it, and it could determine whether to dismiss or not, it would be better for the victim and the accused.

Ms. Peters reviewed the CRWG's observations of the Article 33, UCMJ, disposition guidance that became effective January 1, 2019, noting that the Military Services, in their responses to the DAC-IPAD's RFI and in their representatives' August testimony, universally agreed that two of the disposition factors—the ability to obtain a conviction and the victim's preference as to disposition of the case—are important to consider. She referenced the Air Force military justice chief's testimony that when there is probable cause and a credible, cooperating victim, the Air Force leans towards referring sexual assault cases to court-martial. She also noted that when the Military Services were asked about reasons a case would be referred to court-martial when the

ability to obtain a conviction is low, they talked about the interest of good order and discipline, of having a high visibility case, or potential ramifications to the unit and the military community around the conduct at issue. The Military Services also mentioned the safety of the community and honoring the victim's preference to have their day in court. Ms. Peters asked the Committee members if they had any questions on the disposition guidance that would be useful for the site visit discussions.

General Schwenk questioned whether Appendix 2.1 (Non-Binding Disposition Guidance to Article 33) was in the correct place in the MCM and suggested that it should be looked into. He also expressed concern about the language in Appendix 2.1 that convening authorities "should consider" the guidance factors, commenting that in his opinion the guidance should require that convening authorities "must consider" the disposition factors. He also suggested that the PWG look at the Article 34 advice letter and assess the relevant information the convening authority will need to have an understanding of the case, such as an explanation of the relevant factors, the SJA's assessment of likelihood of conviction, and the victim's preference.

Ms. Peters noted that the JPP recommendations suggested that the DAC-IPAD evaluate the implementation of Article 33, UCMJ, to assess its effect, if any, on the referral of sexual assault cases. Ms. Peters explained that the Committee has not received meaningful testimony for this task to date, and therefore the site visits could provide an opportunity to ask practitioners how the new guidance is affecting their calculation on the referral decision.

Mr. Markey agreed and suggested that the question to ask is whether convening authorities know about the non-binding guidance form and if it is in use. He also suggested questions could be asked about training received about the new guidance and if convening authorities feel that the guidance is clear and effective in allowing them to make decisions.

Chair Bashford expressed concern that the overriding of the PHO's determination of no probable cause and the perception that convening authorities are never going to get into trouble by sending a case to court-martial are what is underlying the high acquittal rate.

Ms. Peters asked the Committee members if they thought the Military Services were applying the Article 33 disposition guidance differently and, if so, whether that is a problem. Chair Bashford responded that it's hard to know since there are few documents that reflect which of the factors convening authorities relied on. Mr. Markey added that there seems to be a disparity in how decisions are made and what process is used to make those decisions.

Ms. Peters next discussed the testimony received by the Committee regarding the value of conviction and acquittal rates, and the factors that contributed to the conviction and acquittal rates. She stated that the testimony from the Military Services was that conviction rates alone are not very useful in evaluating the health of the system. Ms. Peters also noted that high acquittal rates could be indicative of too many cases being referred or preferred and that other factors that may contribute to acquittals are: the use of alcohol and its effect on victims' and witnesses' memories; a prior relationship between the victim and the accused; delayed reporting; counterintuitive behavior; presence or absence of digital evidence; and impeachment evidence of

character or truthfulness. Chair Bashford responded that the same factors are as prevalent in civilian cases, and the conviction rate isn't 20 percent.

Ms. Peters asked the Committee members for any additional comments on the conviction and acquittal rate data, the Military Service's RFI responses, and testimony that they would like to add. Chief McKinley found it notable that the acquittal rate was substantially higher for member panels than in judge-alone sentencing. Chair Bashford and Ms. Tokash both made the point that the 20% conviction rate is indicative of a problem in the military justice system. Dr. Markowitz noted that the lion's share of the problem for the conviction rate is in the Article 33 and 34 decision-making process. Chair Bashford added that the Committee should look at the data on instances when the CRWG thought that there was enough evidence to sustain a conviction but there was an acquittal, noting there could be something at the trial level causing this. Ms. Cannon suggested the Committee hear the perspectives of judges regarding their impressions and opinions of the trial process.

Colonel Weir added that the Committee may want to consider why roughly 30% of victims decline to participate in the process. He added that none of the special victims' programs track the reasons for victim declination. He suggested that if the length of time for the case to be adjudicated is the reason for a majority of declinations, then tracking that data would help to inform department policy for time limits.

2020 Military Installation Site Visit Update

Mr. Glen Hines, DAC-IPAD Attorney-Advisor, explained to the Committee that the purpose of the site visits is to meet with and speak to the various stakeholders and to gather information in order to formulate findings and recommendations. He added that judges would be included in the panel discussions, noting that the JPP site visits included retired military judges who gave their unbiased opinion of the Article 120 and how it could be improved.

Mr. Hines provided a sample agenda and noted that the panels would be conducted in a non-attributional format to allow the participants to feel comfortable to give their honest opinions. He said the roundtable panels would be composed of three to six members of a stakeholder group. He informed the Committee members that the site visits will include training installations where the Committee participants will meet with individual Service members and trainees to find out whether they were trained about sexual assault and, if so, what they learned from the training. He added they would also be touring Service member living quarters.

Mr. Hines explained that a packet of staff-prepared discussion topics and questions would be provided to the Committee soon for member input. He emphasized his appreciation for the extensive assistance the Service representatives provide to the Committee in coordinating the logistics of getting on the installation; getting to the reserved meeting place; and having the needed resources.

Court-Martial Observations Update

Ms. Theresa Gallagher, DAC-IPAD Attorney-Advisor, provided the Committee members with an update on the Court-Martial Observation Project. She explained that the goal is to have all of the DAC-IPAD members observe a penetrative sexual assault court-martial with a jury by December 2020, and to have at least one trial in each Military Service observed. She explained that the criteria for selecting courts-martial for members to attend are that it is a penetrative sexual assault case that has a not guilty plea in place and a panel for the forum. The purpose, she said, is to observe and assess the current policies and practices in the court room. Additionally, the state of training and experience of all the participants in the trial will be observed, which will help inform the site visits and the development of discussion questions.

Ms. Gallagher explained that she identifies sexual assault trials for the members to attend by searching the e-dockets of each Military Service and based on the dates and location of the trial. The Committee members decide which trials to attend. She explained that the Military Services provide points of contact at the location of the trial and are critical in assisting with the logistics as well as providing timely updates of any changes in the trial. Ms. Gallagher explained that at the trial a charge sheet can be provided for members' review. She said that a checklist is provided that assists members in recording their observations as the trial goes along. A DAC-IPAD staff member will be in attendance at each of the court-martial trials, and will be completing the checklist as well. She encouraged the members to review the list of upcoming trials and sign up for a trial convenient to their schedules.

Meeting Wrap-Up

Colonel Weir reported that the Chair will be meeting with the Secretary of Defense and the Secretaries of the Military Departments on December 17, 2019. Additionally, he stated that the staff is working to procure a database, and recently met with a member of the Department of Defense Office of General Counsel (DoD OGC) staff about an e-discovery database. He explained that DoD OGC is planning to contract for an e-discovery system that is cloud-based and that would likely work for both the needs of the DAC-IPAD and of the Military Justice Review Panel. Colonel Weir noted that at this time, the DoD OGC system appears to be the best solution. He said the proposal will be out after the first of the year and the DAC-IPAD staff will be working closely with OGC as it moves forward.

Finally, Colonel Weir advised that the next public meeting is scheduled for February 14, 2020, with a preparatory session on February 13, 2020. Additionally, in advance of drafting the annual report, a telephonic public meeting may need to be scheduled prior to the February meeting. He said additional public meetings in 2020 are scheduled for May 15, August 21, and November 6.

Public Comment


There were no requests for public comment.

With no further comments or issues to address, the meeting concluded.

The DFO closed the public meeting at 3:30p.m.

CERTIFICATION

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate and complete.



Martha Bashford
Chair

MATERIALS

Meeting Records

1. Transcript of November 15, 2019, Committee Public Meeting, prepared by Neal R. Gross and Co., Inc.

Read Ahead Materials Provided Prior to and at the Public Meeting

1. Meeting Agenda, DAC-IPAD Public Meeting, November 15, 2019
2. Mr. Don Christensen, President, Protect Our Defenders
3. Letter from Protect Our Defenders (January 31, 2019)
4. Written remarks from Mr. Don Christensen, President, Protect Our Defenders (November 15, 2019)
5. DAC-IPAD Staff Prepared: Article 32 No Probable Cause Charts
6. Article 32, 33, and 34 Statutes, Uniform Code of Military Justice
7. DAC-IPAD Staff Prepared Presentation: Deliberations Regarding Article 32, 33, and 34, UCMJ

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

**February 14, 2020
DAC-IPAD Public Meeting
Presenter Biographies**

9:05 a.m. – 11:00 a.m. – Military Judges’ Perspectives Regarding the Military Justice System and Military Sexual Assault Cases—including Conviction and Acquittal Rates

Colonel (Ret.) Andrew Glass, U.S. Army, was born in Munich, West Germany and grew up on Air Force bases in the U.S. and overseas until his father retired. COL(R) Glass attended The Ohio State University, receiving a Bachelor of Arts Degree in History. He then attended the University of Cincinnati College of Law and received his Juris Doctorate. He later received an LLM in Military Law from the Judge Advocate General’s Legal Center and School.

COL (R) Glass began his Army career at Fort Campbell, Kentucky and served as a Legal Assistance Attorney, and a Trial Defense Attorney at Fort Campbell. Later assignments include: Trial Counsel with Division Artillery, 2nd Infantry Division, in the Republic of Korea; Command Judge Advocate and Instructor, USAJFK Special Warfare Center and School, Chief, Military Justice, US Army Special Operations Command, and Chief, Claims, XVIII Airborne Corps, all located at Fort Bragg, North Carolina; Professor, Judge Advocate General’s Legal Center and School, located in Charlottesville, Virginia; Student, Command and General Staff College located at Fort Leavenworth, Kansas; Deputy Staff Judge Advocate, US Army Recruiting Command, located at Fort Knox, Kentucky; Chief, Atlantic Region, US Army Trial Defense Service; Military Judge, located at Fort Drum, New York, and Joint Base Lewis-McChord, Washington and Chief Circuit Judge for the First Judicial Circuit. He also served as the Staff Judge Advocate at Fort Lee, Virginia.

COL(R) Glass is a member of the Ohio Bar and is admitted to practice before the Ohio Supreme Court and the U.S. Army Court of Criminal Appeals. He is currently Of Counsel to the Richardson Firm in Fayetteville, North Carolina, primarily practicing military law.

Colonel (Ret.) Jeffery Nance, U.S. Army, was born in Greensboro, NC and raised in Charleston, SC. COL(R) Jeff Nance graduated from Brigham Young University in Political Science as an ROTC scholarship student in 1985 and from BYU’s J. Reuben Clark law school in May 1988.

1LT Nance attended the 117th JAOBC in the fall 1988. He was then assigned to 101st Airborne (Air Assault) Division from 1989 – 1991 where he served as a claims JA and a defense counsel. He then PCSd to Okinawa, Japan where he served in many capacities including trial counsel and international/operational law attorney from 1991 – 1994. CPT Nance was then fortunate enough to be selected for the highly competitive job of Litigation Division attorney. He served in the civilian personnel branch where he was able to represent the Army in several civil cases in federal district courts throughout the United States. From there he attended the 45th Graduate Course and was thereafter assigned to 1st Armored Division in Bad Kreuznach, Germany from 1997 – 1999 where he served as Chief, Military Justice. From 1999 – 2001 he served as the

DSJA of SETAF(A) in Vicenza, Italy. From there he was transferred to V Corps to serve as the Chief, Military Justice. Shortly after promotion to LTC in 2002, he was fortunate to serve as the Chief of Operational Law as V Corps deployed to fight Operation Iraqi Freedom. He served in this capacity throughout the invasion in 2003 and then oversaw the initial reconstitution of the Iraqi criminal courts system before transferring back to the United States and taking over duties as Regional Defense Counsel, USATDS Region II in July 2003. In 2005, LTC Nance was selected to serve as a Military Judge and assigned to duties at Fort Bliss, TX. Promoted to Colonel in April 2007, COL Nance was transferred back to Germany in 2008 to serve as Chief Circuit Judge, 5th Judicial Circuit. From there, he deployed several times between 2008 and 2011 to preside over scores of courts-martial in Iraq, Afghanistan and Kuwait. In July 2011, he was transferred to Ft. Leavenworth, KS where he served first as Circuit Judge and then as Chief Circuit Judge, 3rd Judicial Circuit. In May 2016, COL Nance was transferred to Fort Bragg, NC to serve as Chief Circuit Judge, 2nd Judicial Circuit. In his 13+ years as a military judge, COL Nance presided over hundreds of courts-martial, including some of the Army's most complex and high profile cases. After retiring from active duty in October 2018, Jeff was sworn in as an Immigration Judge with the Department of Justice, Executive Office of Immigration Review. He has served as an IJ since that time.

Captain (Ret.) Bethany L. Payton-O'Brien, U.S. Navy, is a retired Navy Judge Advocate, and presently sole owner of her own Law Practice (<http://www.jagdefenders.com>) with a focus on military law; criminal law; administrative law; litigation; and security clearance appeals. She is a highly accomplished attorney with over 25 years of experience in every facet of legal analysis and litigation, in the judiciary and before the bar, as well as leadership and management of large and small organizations in legal; customer service; and training environments. She has extensive expertise and a proven track record of success in military law; criminal litigation; client and victim advocacy; and settlement of diverse legal matters.

Ms. Payton-O'Brien received her Bachelor of Arts Degree in Political Science from Wayne State University in Detroit, Michigan. She received her Juris Doctor from DePaul College of Law in Chicago, Illinois in June 1994, and in May 2007 she received an LL.M. in Trial Advocacy from California Western School of Law in San Diego, California. She is currently a member of the U.S. Court of Appeals for the Armed Forces; Navy-Marine Corps Court of Criminal Appeals; Air Force Court of Criminal Appeals; the Chicago Bar Association; and the Illinois Bar. In November of 1994 she entered the Navy and in August 2017 she retired at the rank of Captain almost 23 years of military service. Ms. Payton-O'Brien's military career included several assignments in the Judge Advocate General's Corps serving as prosecutor; defense counsel; staff judge advocate, and military judge and appellate judge.

Ms. Payton-O'Brien is a Military Law Conference Lecturer at Gujarat National Law University in Gandhinagar, India.

Colonel (Ret.) J. Wesley (Wes) Moore, U.S. Air Force, is assigned to the Office of Military Commissions as Deputy Staff Director. He assumed his current duties in February 2018. Mr. Moore is received his Bachelor of Arts Degree in Political Science from Texas Tech University in Lubbock, Texas in 1988 graduating *cum laude*. He received his Juris Doctor from Baylor Law School in February 1991 and is admitted to practice law in Texas. He entered the Air Force in July of 1991, and retired at the rank of Colonel in February 2018 after 26 ½ years of service.

Mr. Moore's military career included varying base level assignments in Civil Law, Military Justice, Claims and Acquisitions and as a Deputy Staff Judge Advocate before being selected as the Deputy Chief Circuit Defense Counsel for the Pacific Judicial Circuit. Colonel Moore has tried 75 courts-martial as either Trial or Defense Counsel.

He was competitively selected in 2000 to attend the Institute of Air & Space Law at McGill University to pursue his Master of Laws (LL.M.) degree under the sponsorship of the Air Force Institute of Technology. He entered McGill in the Fall of 2001 and completed the program in July of 2002. Upon graduation, Mr. Moore received the Setsuko Ushioda-Aoki Prize for academic excellence. Thereafter, Mr. Moore served as Chief, Space Law Division at the USSTRATCOM Staff Judge Advocate Office, Offutt AFB Nebraska and then as Chief, Air and Space Law Branch, Headquarters USAF in the Pentagon.

Mr. Moore served two tours as a Staff Judge Advocate at the base and headquarters levels and two tours as a Military Judge, culminating his career as the Chief Circuit Military Judge for the Eastern Circuit.

FY 2020 National Defense Authorization Act (NDAA)

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

COL Patrick D. Pflaum
14 February 2020

Section 535: DAC-IPAD extended from five to ten years (expiry now 8 February 2026)

Section 550B: Establishes a new “Defense Advisory Committee for the Prevention of Sexual Misconduct”

- Requires consultation with DAC-IPAD on matters of “joint interest”

Section 540I: Assessment of Racial, Ethnic, and Gender Disparities

- Requires the services to record race, ethnicity, and gender of victim and accused;
- Requires the services to determine whether and how to review possible disparities when identified;
- Requires DAC-IPAD:
 - to review and assess, by FY, race and ethnicity of servicemembers accused of sexual assault in an unrestricted report;
 - to review and assess, by FY, race and ethnicity of servicemembers against whom charges preferred;
 - to review and assess, by FY, race and ethnicity of servicemembers who were convicted of a penetrative sexual assault offense or contact sexual assault offense
 - Within one year, provide a report of the results of the review and assessment.

Conference Report Tasks to DAC-IPAD

- **Other Justice Programs**
 - Review whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender
- **RCM 1001 Assessment**
 - Assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under RCM 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001
- **Guardian Ad Litem**
 - Assess the need for and feasibility of establishing a process for appointing a Guardian Ad Litem to represent a victim of a sex-related offense who has not attained the age of 18
 - *Compare with DoD Guardian Ad Litem task in Sec. 540L*

Provisions Impacting Victim Notification:

Sec. 536: Return of Personal Property

- DoD will prescribe procedures for victims who file restricted reports to request the return of personal property collected as part of a sexual assault forensic examination without jeopardizing restricted nature of report.

Sec. 538: Notification of “each significant event”

- NLT 17 Jun 20, DoD will prescribe procedures for sexual assault victims to receive notification of “each significant event” in the military justice process and the documentation of notifications.

Sec. 549: Status Updates

- Secretary of Defense will prescribe regulations to require commanders who make a determination not to refer a sexual assault case to court-martial to make at least monthly notifications to victims of the status of a final determination of further action, until final determination is made.

Provisions Impacting the Investigation of Sexual Assault:

Secs. 539, 540: Increase in Manpower

- MCIOs will increase the number of digital forensic examiners (DFEs) by at least 10 over the 30 September 2019 number of DFEs.
- MCIOs will increase number of sexual assault investigators to ensure sexual assault investigations, to the extent practicable, are completed within six months of initiation.
- Services will increase Victim Witness Assistance Program liaisons to fill personnel shortages no later than 19 Dec 20.

Sec. 540C: Timely Disposition

- NLT 17 Jun 20, requires policy to ensure timely disposition of nonprosecutable sex-related offenses (e.g., insufficient evidence to support prosecution).

Provisions Impacting Training on Military Justice Matters:

Sec. 540A: IDA Training

- Requires training for sexual assault initial disposition authorities
- Must cover the exercise of disposition authority with respect to cases for which disposition authority is withheld
- Goal – to promote confidence and trust in the military justice process

Sec. 540B: Role of Commanders

- Commanders across all Services will receive uniform training on the role of commanders in all stages of military justice in sexual assault cases.

Sec. 540D: Prevention Policy

- NLT 17 Jun 20, the Secretary of Defense will develop and issue a comprehensive policy to reinvigorate prevention of sexual assault.

Provisions Impacting the Prosecution of Sexual Assault:

Sec. 540J: Each Service will carry out a defense investigator pilot program. A defense investigator may only interview victims upon request to SVC/VLC.

Sec. 543: Amends 10 USC § 1567a(a), requiring commanders issuing MPOs to notify local law enforcement within seven days of issuing the MPO.

Sec. 550: Victim disclosures under the Catch a Serial Offender Program withheld from public disclosure under FOIA. Report does not terminate the restricted nature of a restricted report.

Provisions Impacting Legal Counsel to Victims:

Sec. 541: SVCs/VLCs must consult and assist victims with incidents of retaliation: understanding of victim's rights, filing complaints, and any resulting military justice proceedings. By 20 December 2024, SVC case loads should not exceed 25 cases at any given time.

Sec. 542: If an SVC/VLC is not available at an installation, one must be made available within 72 hours after a request absent exigent circumstances.

Sec. 548: DoD is required to either expand an existing program or establish a new program to provide legal counsel (with sufficient paralegal support) to victims of alleged domestic violence.

Sec. 550C: Update SVC/VLC training to include law and policies of states in which the SVC/VLC's military installation is located in order to help victims make an informed decision as to jurisdictional preference.

Reports Involving Sexual Assault Prevention, Investigation, and Prosecution:

Sec. 540E: Recommendations with respect to the establishment of a separate sexual harassment punitive article (NLT 17 Jun 20)

Sec. 540F: Assessing the feasibility and advisability of an alternative military justice system for felony-level offenses where an O-6 Judge Advocate with significant criminal litigation experience outside of the chain of command of the accused makes preferral and referral decisions (NLT 15 Oct 20)

Sec. 540H: Assessing the feasibility and advisability of expanding the applicability of the U.S. Air Force Safe to Report policy to the entire Armed Forces (NLT 17 Jun 20)

Sec. 540K: Assessing the feasibility and advisability of a policy permitting sexual assault victims to preserve restricted reporting following certain third-party communications. DoD is required to consult with DAC-IPAD in preparing this report. (NLT 17 Jun 20)

Reports Involving Sexual Assault Prevention, Investigation, and Prosecution, cont.:

Sec. 540L: Assessing the feasibility and advisability of establishing a guardian ad litem program for military dependents who are victims or witnesses in a crime under the UCMJ

Sec. 540M: Comptroller General of the US to report on the implementation of statutory requirements on sexual assault prevention and response in the military (a comprehensive review of all requirements from FY 2004 – FY 2019).

Sec. 542: Assessing the feasibility and advisability of establishing and maintaining civilian positions for providing support to SVCs/VLCs and preserving institutional knowledge. (NLT 17 Jun 20)

Sec. 548: Report on the implementation of program expanding SVCs to domestic violence victims (NLT 18 Apr 20)

Article 37 – Command Influence (Sec. 532)

- Most significant statutory change since 1968
- Preliminary hearing officers and SVCs/VLCs included among personnel protected from coercion and unlawful influence
- Express authorization for statements regarding criminal activity and offenses that **do not** advocate a particular disposition, a particular court-martial finding or sentence, or do not relate to a particular accused
- Express authorization for superior convening authorities and commanders to discuss particular cases and provide advice and mentorship to subordinate commanders on particular cases so long as the superior does not direct a specific disposition or substitute the subordinate's discretion
- The accused must show prejudice to receive relief

Summary

- **Multiple DAC-IPAD specific provisions**
- **Eight provisions require reports on sexual assault matters**
- **Four provisions expand victim counsel support**
- **Amendments to Article 37 affirm that commanders are responsible for functioning of the military justice system**

Questions?

Military Justice and Other Sexual Assault-Related Provisions FY 2020 NDAA

(Public Law 116-92, December 20, 2019)

Subtitle D—Military Justice Matters

Sec. 531. Expansion of pre-referral matters reviewable by military judges and military magistrates in the interest of efficiency in military justice.

Sec. 532. Command influence.

Sec. 533. Statute of limitations for certain offenses.

Sec. 534. Public access to dockets, filings, and court records of courts-martial or other records of trial of the military justice system.

Sec. 535. Extension of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.

Sec. 536. Authority for return of personal property to victims of sexual assault who file a Restricted Report before conclusion of related proceedings.

Sec. 537. Guidelines on sentences for offenses committed under the Uniform Code of Military Justice.

Sec. 538. Notification of significant events and documentation of preference for prosecution jurisdiction for victims of sexual assault.

Sec. 539. Increase in number of digital forensic examiners for certain military criminal investigative organizations.

Sec. 540. Increase in investigative personnel and Victim Witness Assistance Program liaisons.

Sec. 540A. Training for sexual assault initial disposition authorities on exercise of disposition authority for sexual assault and collateral offenses.

Sec. 540B. Training for commanders in the Armed Forces on their role in all stages of military justice in connection with sexual assault.

Sec. 540C. Timely disposition of nonprosecutable sex-related offenses.

Sec. 540D. Department of Defense-wide policy and military department-specific programs on reinvigoration of the prevention of sexual assault involving members of the Armed Forces.

Sec. 540E. Recommendations on separate punitive article in the Uniform Code of Military Justice on sexual harassment.

Sec. 540F. Report on military justice system involving alternative authority for determining whether to prefer or refer charges for felony offenses under the Uniform Code of Military Justice.

Sec. 540G. Report on standardization among the military departments in collection and presentation of information on matters within the military justice system.

Sec. 540H. Report on expansion of Air Force safe to report policy across the Armed Forces.

Sec. 540I. Assessment of racial, ethnic, and gender disparities in the military justice system.

Sec. 540J. Pilot programs on defense investigators in the military justice system.

Sec. 540K. Report on preservation of recourse to restricted report on sexual assault for victims of sexual assault following certain victim or third-party communications.

Sec. 540L. Report on establishment of guardian ad litem program for certain military dependents who are a victim or witness of an offense under the Uniform Code of Military Justice involving abuse or exploitation.

Sec. 540M. Comptroller General of the United States report on implementation by the Armed Forces of recent statutory requirements on sexual assault prevention and response in the military.

Subtitle E—Other Legal Matters

Sec. 541. Improvement of certain Special Victims' Counsel authorities.

Sec. 542. Availability of Special Victims' Counsel at military installations.

Sec. 543. Notification of issuance of military protective order to civilian law enforcement.

Sec. 548. Legal counsel for victims of alleged domestic violence offenses.

Sec. 549. Notice to victims of alleged sexual assault of pendency of further administrative action following a determination not to refer to trial by court-martial.

Sec. 550. Treatment of information in Catch a Serial Offender Program for certain purposes.

Sec. 550A. Policies and procedures on registration at military installations of civilian protective orders applicable to members of the Armed Forces assigned to such installations and certain other individuals.

Sec. 550B. Defense Advisory Committee for the Prevention of Sexual Misconduct.

Sec. 550C. Training for Special Victims' Counsel on civilian criminal justice matters in the States of the military installations to which assigned.

Sec. 550D. Enhancing the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.

Sec. 550E. Feasibility study on establishment of database of military protective orders.

Subtitle F—Member Education

Sec. 555. Consideration of request for transfer of a cadet or midshipman at a military service academy who is the victim of a sexual assault or related offense.

Sec. 570A. Limitations and requirements in connection with separations for members of the Armed Forces who suffer from mental health conditions in connection with a sex-related, intimate partner violence-related, or spousal abuse offense.

Sec. 599. Information for Members of the Armed Forces on Availability of Services of the Department of Veterans Affairs Relating to Sexual Trauma.

Sec. 531. Expansion of Pre-Referral Matters Reviewable by Military Judges and Military Magistrates in the Interest of Efficiency in Military Justice. (S. Sec. 555, H. Sec. 540B)

(a) IN GENERAL.—Subsection (a) of section 830a of title 10, United States Code (article 30a of the Uniform Code of Military Justice), is amended by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges and specifications to court-martial for trial, including the following:

“(A) Pre-referral investigative subpoenas.

“(B) Pre-referral warrants or orders for electronic communications.

“(C) Pre-referral matters referred by an appellate court.

“(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

“(E) Pre-referral matters relating to the following:

“(i) Pre-trial confinement of an accused.

“(ii) The mental capacity or responsibility of an accused.

“(iii) A request for an individual military counsel.

“(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

“(A) set forth the matters that a military judge may rule upon in such proceedings;

“(B) include procedures for the review of such rulings;

“(C) include appropriate limitations to ensure that proceedings under this section extend only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

“(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.”

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) HEADING AMENDMENT.—The heading of such section is amended to read as follows:

“§ 830a. Art 30a. Proceedings conducted before referral”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter VI of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by striking the item relating to section 830a (article 30a) and inserting the following new item:

“830a. 30a. Proceedings conducted before referral.”.

Sec. 531. Command Influence (H. Sec. 531)

(a) IN GENERAL, - Section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), is amended—

(1) by striking **“Unlawfully influencing action of court”** and inserting **“Command influence”**;

(2) by amending subsection (a) to read as follows:

“(a) (1) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

“(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

“(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case,

or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

“(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

“(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

“(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding, or sentence, or do not relate to a particular accused; or

“(C) statements and instructions given in open court by the military judge or counsel.

“(5) (A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

“(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

“(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

“(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.”;

(3) in subsection (b)—

(A) by striking “advanced, in grade” and inserting “advanced in grade”; and

(B) by striking “accused before a court-martial” and inserting “person in a court-martial proceeding”; and

(4) by adding at the end the following new subsections:

“(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

“(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

“(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning subchapter VII of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by striking the item relating to section 837 (article 37) and inserting the following new item:

“837. Art. 37. Command influence.”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to violations of section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), committed on or after such date.

Sec. 533. Statute of Limitations for Certain Offenses. (H. Sec. 532)

(a) IN GENERAL.—Section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a), by inserting “maiming of a child, kidnapping of a child,” after “sexual assault of a child,”; and

(2) in subsection (b)(2)(B)—

(A) by striking clauses (ii) and (iv); and

(B) by redesignating clause (iii) as clause (ii).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply with respect to the prosecution of offenses committed before, on, or after the date of the enactment of this Act if the applicable limitation period has not yet expired.

Sec. 534. Public Access to Dockets, Filings, and Court Records of Courts-Martial or Other Records of Trial of the Military Justice System. (S. Sec. 559)

(a) IN GENERAL.—Section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), is amended—

(1) by striking “The Secretary of Defense” and inserting “(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Homeland Security,”;

(2) in subsection (a), as designated by paragraph (1)—

(A) in the matter preceding paragraph (1), by inserting “(including with respect to the Coast Guard)” after “military justice system”; and

(B) in paragraph (4), by inserting “public” before “access to docket information”; and

(3) by adding at the end the following new subsections:

“(b) PROTECTION OF CERTAIN PERSONALLY IDENTIFIABLE INFORMATION.—Records of trial, docket information, filings, and other records made publicly accessible in accordance with the uniform standards and criteria for conduct established by the Secretary under subsection (a) shall restrict access to personally identifiable information of minors and victims of crime (including victims of sexual assault and domestic violence), as practicable to the extent such information is restricted in electronic filing systems of Federal and State courts.

“(c) INAPPLICABILITY TO CERTAIN DOCKETS AND RECORDS.—Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.”.

(b) EXISTING STANDARDS AND CRITERIA.—The Secretary of Homeland Security shall apply to the Coast Guard the standards and criteria for conduct established by the Secretary of Defense under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as in effect on the day before the date of the enactment of this Act, until such time as the Secretary of Defense, in consultation with the Secretary of Homeland Security, prescribes revised standards and criteria for conduct under such section that implement the amendments made by subsection (a) of this section.

Sec. 535. Extension of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. (S. Sec 533, H. Sec. 548)

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

Joint Explanatory Statement:

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

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

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

Sec. 536. Authority for Return of Personal Property to Victims of Sexual Assault Who File a Restricted Report Before Conclusion of Related Proceedings. (S. Sec. 532)

Section 586 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 1561 note) is amended—

- (1) by redesignating subsection (f) as subsection (e);
- (2) in subsection (e), as so redesignated, in the subsection heading, by inserting “IN UNRESTRICTED REPORTING CASES” after “PROCEEDINGS”; and
- (3) by adding at the end the following new subsection:

“(f) RETURN OF PERSONAL PROPERTY IN RESTRICTED REPORTING CASES.—(1) The Secretary of Defense shall prescribe procedures under which a victim who files a restricted report on an incident of sexual assault may request, at any time, the return of any personal property of the victim obtained as part of the sexual assault forensic examination.

“(2) The procedures shall ensure that—

“(A) a request of a victim under paragraph (1) may be made on a confidential basis and without affecting the restricted nature of the restricted report; and

“(B) at the time of the filing of the restricted report, a Sexual Assault Response Coordinator or Sexual Assault Prevention and Response Victim Advocate—

“(i) informs the victim that the victim may request the return of personal property as described in paragraph (1); and

“(ii) advises the victim that such a request for the return of personal property may negatively impact a subsequent case adjudication, if the victim later decides to convert the restricted report to an unrestricted report.

“(3) Except with respect to personal property returned to a victim under this subsection, nothing in this subsection shall affect the requirement to retain a sexual assault forensic examination (SAFE) kit for the period specified in subsection (c)(4)(A).”.

Sec. 537. Guidelines on Sentences for Offenses Committed Under the Uniform Code of Military Justice. (H. Sec. 533)

(a) DEVELOPMENT OF GUIDELINES.—Not later than the date specified in subsection (d), the Secretary of Defense shall establish nonbinding guidelines on sentences for offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). The guidelines shall provide the sentencing authority with a suggested range of punishments, including suggested ranges of confinement, that will generally be appropriate for a violation of each offense under such chapter.

(b) SENTENCING DATA.—In developing the guidelines for sentences under subsection (a), the Secretary of Defense shall take into account the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 146(f)(2) of the Uniform Code of Military Justice).

(c) SUBMITTAL TO CONGRESS.—Not later than the date specified in subsection (d), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

(1) the guidelines for sentences developed under subsection (a); and

(2) an assessment of the feasibility and advisability of implementing such guidelines in

panel sentencing cases.

- (d) DATE SPECIFIED.—The date specified in this subsection is the date that is not later than one year after the date on the which the first report of the Military Justice Review Panel is submitted to the Committees on Armed Services of the Senate and the House of Representatives pursuant to section 946(f)(5) of title 10, United States Code (article 146(f)(5) of the Uniform Code of Military Justice).

Sec. 538. Notification of Significant Events and Documentation of Preference for Prosecution Jurisdiction for Victims of Sexual Assault. (H. Sec 534, S. Sec. 524)

- (a) NOTIFICATION OF VICTIMS OF EVENTS IN MILITARY JUSTICE PROCESS.—

(1) NOTIFICATION REQUIRED.—A member of the Armed Forces who is the alleged victim of an alleged sexual assault by another member of the Armed Forces shall receive notification of each significant event in the military justice process that relates to the investigation, prosecution, and confinement of such other member for such assault.

(2) DOCUMENTATION.—Appropriate documentation of each notification made pursuant to paragraph (1) shall be created and maintained in an appropriate system of records of the military department concerned.

- (b) DOCUMENTATION OF VICTIM'S PREFERENCE ON JURISDICTION IN PROSECUTION.—In the case of a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces who is subject to prosecution for such offense both by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and by a civilian court under Federal or State law, appropriate documentation of the preference, if any, of such victim for prosecution of such offense by court-martial or by a civilian court as provided for by Rule for Courts-Martial 306(e) (as set forth in the Manual for Courts-Martial, 2019 edition, or any successor rule), shall be created and maintained in an appropriate system of records of the military department concerned.

- (c) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall prescribe regulations implementing this section.

Sec. 539. Increase in Number of Digital Forensic Examiners for Certain Military Criminal Investigative Organizations. (S. Sec. 557, H. Sec. 536)

- (a) IN GENERAL.—Each Secretary of a military department shall take appropriate actions to increase the number of digital forensic examiners in each military criminal investigative organization specified in subsection (b) under the jurisdiction of such Secretary by not fewer

than 10 from the authorized number of such examiners for such organization as of September 30, 2019.

(b) **MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.**—The military criminal investigative organizations specified in this subsection are the following:

(1) The Army Criminal Investigation Command.

(2) The Naval Criminal Investigative Service.

(3) The Air Force Office of Special Investigations.

(c) **FUNDING.**—Funds for additional digital forensic examiners as required by subsection (a) for fiscal year 2020, including for compensation, initial training, and equipment, shall be derived from amounts authorized to be appropriated for that fiscal year for the Armed Force concerned for operation and maintenance.

Sec. 540. Increase in Investigative Personnel and Victim Witness Assistance Program Liaisons. (H. Sec. 535)

(a) **MILITARY CRIMINAL INVESTIGATIVE SERVICES.**—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall increase the number of personnel assigned to the military criminal investigative services of the department with the goal of ensuring, to the extent practicable, that the investigation of any sex-related offense is completed not later than six months after the date on which the investigation is initiated. An investigation shall be considered completed for purposes of the preceding sentence when the active phase of the investigation is sufficiently complete to enable the appropriate authority to reach a decision with respect to the disposition of charges for the sex-related offense.

(b) **VICTIM WITNESS ASSISTANCE PROGRAM LIAISONS.**—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall increase the number of personnel serving as Victim Witness Assistance Program liaisons to address personnel shortages in the Victim Witness Assistance Program.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 540A. Training for Sexual Assault Initial Disposition Authorities on Exercise of Disposition Authority for Sexual Assault and Collateral Offenses. (H. Sec. 540, S. Sec. 523)

- (a) IN GENERAL.—The training for sexual assault initial disposition authorities on the exercise of disposition authority under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), shall include comprehensive training on the exercise of disposition authority with respect to cases for which disposition authority is withheld to such authorities pursuant to the memorandum described in subsection (b) for the purpose of promoting confidence and trust in the military justice process with respect to such cases.
- (b) MEMORANDUM DESCRIBED.—The memorandum described in this subsection is the memorandum of the Secretary of Defense titled “Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases” and dated April 20, 2012, or any successor memorandum.

Sec. 540B. Training for Commanders in the Armed Forces on Their Role in all Stages of Military Justice in Connection with Sexual Assault. (S. Sec. 525, H. Sec. 540C)

- (a) IN GENERAL.—The training provided commanders in the Armed Forces shall include comprehensive training on the role of commanders in all stages of military justice in connection with sexual assaults by members of the Armed Forces.
- (b) ELEMENTS TO BE COVERED.—The training provided pursuant to subsection (a) shall include training on the following:
 - (1) The role of commanders in each stage of the military justice process in connection with sexual assault committed by a member of the Armed Forces, including investigation and prosecution.
 - (2) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are informed of, and have the opportunity to obtain, assistance available for victims of sexual assault by law.
 - (3) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are afforded the rights and protections available to victims by law.
 - (4) The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their complaints, statements, testimony, and status in connection with sexual assault described in paragraph (1), including the role of commanders in ensuring that subordinates in the command are aware of their responsibilities in preventing such retaliation.
 - (5) The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault described in paragraph (1) and in the response of the commander, subordinates in the command, and other personnel in the

command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault.

- (6) Any other matters on the role of commanders in connection with sexual assault described in paragraph (1) that the Secretary of Defense considers appropriate for purposes of this section.

(c) INCORPORATION OF BEST PRACTICES.—

- (1) IN GENERAL.—The training provided pursuant to subsection (a) shall incorporate best practices on all matters covered by the training.

- (2) IDENTIFICATION OF BEST PRACTICES.—The Secretaries of the military departments shall, acting through the training and doctrine commands of the Armed Forces, undertake from time to time surveys and other reviews of the matters covered by the training provided pursuant to subsection (a) in order to identify and incorporate into such training the most current practicable best practices on such matters.

- (d) UNIFORMITY.—The Secretary of Defense shall ensure that the training provided pursuant to subsection (a) is, to the extent practicable, uniform across the Armed Forces.

Sec. 540C. Timely Disposition of Nonprosecutable Sex-Related Offenses. (H. Sec. 539)

- (a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop and implement a policy to ensure the timely disposition of nonprosecutable sex-related offenses.

- (b) NONPROSECUTABLE SEX-RELATED OFFENSE DEFINED.—In this section, the term “nonprosecutable sex-related offense” means an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) that a court-martial convening authority has declined to refer for trial by a general or special court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) due to a determination that there is insufficient evidence to support prosecution of the sex-related offense.

Sec. 540D. Department of Defense–wide Policy and Military Department–Specific Programs on Reinvigoration of the Prevention of Sexual Assault Involving Members of the Armed Forces. (S. Sec. 521)

- (a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop and issue a comprehensive policy for the Department of Defense to reinvigorate the prevention of sexual assault involving members of the Armed Forces.

(b) POLICY ELEMENTS.—

(1) IN GENERAL.—The policy required by subsection (a) shall include the following:

- (A) Education and training for members of the Armed Forces on the prevention of sexual assault.
- (B) Elements for programs designed to encourage and promote healthy relationships among members of the Armed Forces.
- (C) Elements for programs designed to empower and enhance the role of non-commissioned officers in the prevention of sexual assault.
- (D) Elements for programs to foster social courage among members of the Armed Forces to encourage and promote intervention in situations in order to prevent sexual assault.
- (E) Processes and mechanisms designed to address behaviors among members of the Armed Forces that are included in the continuum of harm that frequently results in sexual assault.
- (F) Elements for programs designed to address alcohol abuse, including binge drinking, among members of the Armed Forces.
- (G) Such other elements, processes, mechanisms, and other matters as the Secretary of Defense considers appropriate.

(2) CONTINUUM OF HARM RESULTING IN SEXUAL ASSAULT.—For purposes of paragraph (1)(E), the continuum of harm that frequently results in sexual assault includes hazing, sexual harassment, and related behaviors (including language choices, off-hand statements, jokes, and unconscious attitudes or biases) that create a permissive climate for sexual assault.

(c) PROGRAMS REQUIRED.—Not later than 180 days after the issuance of the policy required by subsection (a), each Secretary of a military department shall develop and implement for each Armed Force under the jurisdiction of such Secretary a program to reinvigorate the prevention of sexual assaults involving members of the Armed Forces. Each program shall include the elements, processes, mechanisms, and other matters developed by the Secretary of Defense pursuant to subsection (a) tailored to the requirements and circumstances of the Armed Force or Armed Forces concerned.

Sec. 540E. Recommendations on Separate Punitive Article in the Uniform Code of Military Justice on Sexual Harassment. (S. Sec. 529)

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing such recommendations as the Secretary considers appropriate with respect to the establishment of a separate punitive article in chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on sexual harassment.

Sec. 540F. Report on Military Justice System Involving Alternative Authority for Determining Whether to Prefer or Refer Charges for Felony Offenses Under the Uniform Code of Military Justice. (S. Sec. 561)

(a) REPORT REQUIRED.—

(1) **IN GENERAL.**—Not later than 300 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of a study, conducted for purposes of the report, on the feasibility and advisability of an alternative military justice system in which determinations as to whether to prefer or refer charges for trial by court-martial for any offense specified in paragraph (2) is made by a judge advocate in grade O–6 or higher who has significant experience in criminal litigation and is outside of the chain of command of the member subject to the charges rather than by a commanding officer of the member who is in the chain of command of the member.

(2) **SPECIFIED OFFENSE.**—An offense specified in this paragraph is any offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), for which the maximum punishment authorized includes confinement for more than one year.

(b) ELEMENTS.—The study required for purposes of the report under subsection (a) shall address the following:

(1) Relevant procedural, legal, and policy implications and considerations of the alternative military justice system described in subsection (a).

(2) An analysis of the following in connection with the implementation and maintenance of the alternative military justice system:

(A) Legal personnel requirements.

(B) Changes in force structure.

(C) Amendments to law.

(D) Impacts on the timeliness and efficiency of legal processes and court-martial adjudications.

(E) Potential legal challenges to the system.

(F) Potential changes in prosecution and conviction rates.

(G) Potential impacts on the preservation of good order and discipline, including the ability of a commander to carry out nonjudicial punishment and other administrative actions.

(H) Such other considerations as the Secretary considers appropriate.

(3) A comparative analysis of the military justice systems of relevant foreign allies with the current military justice system of the United States and the alternative military justice system, including whether or not approaches of the military justice systems of such allies to determinations described in subsection (a) are appropriate for the military justice system of the United States.

(4) An assessment of the feasibility and advisability of conducting a pilot program to assess the feasibility and advisability of the alternative military justice system, and, if the pilot program is determined to be feasible and advisable—

(A) an analysis of potential legal issues in connection with the pilot program, including potential issues for appeals; and

(B) recommendations on the following:

(i) The populations to be subject to the pilot program.

(ii) The duration of the pilot program.

(iii) Metrics to measure the effectiveness of the pilot program.

(iv) The resources to be used to conduct the pilot program.

Sec. 540G. Report on Standardization among the Military Departments in Collection and Presentation of Information on Matters within the Military Justice System. (S. Sec. 562)

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the following:

(1) A plan for actions to provide for standardization, to the extent practicable, among the military departments in the collection and presentation of information on matters within

their military justice systems, including information collected and maintained for purposes of section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), and such other information as the Secretary considers appropriate.

- (2) An assessment of the feasibility and advisability of establishing and maintaining a single, Department of Defense-wide data management system for the standardized collection and presentation of information described in paragraph (1).

Sec. 540H. Report on Expansion of Air Force Safe to Report Policy Across the Armed Forces. (S. Sec. 528)

- (a) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment of the feasibility and advisability of expanding the applicability of the safe to report policy described in subsection (b) so that the policy applies across the Armed Forces.
- (b) **SAFE TO REPORT POLICY.**—The safe to report policy described in this subsection is the policy, currently applicable in the Air Force alone, under which a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces, but who may have committed minor collateral misconduct at or about the time of such alleged sexual assault, or whose minor collateral misconduct at or about such time is discovered only as a result of the investigation into such alleged sexual assault, may report such alleged sexual assault to proper authorities without fear or receipt of discipline in connection with such minor collateral misconduct.

Sec. 540I. Assessment of Racial, Ethnic, and Gender Disparities in the Military Justice System. (H. Sec. 540A, S. Sec. 535)

- (a) **IN GENERAL.**—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Defense to detect and address racial, ethnic, and gender disparities in the military justice system.
- (b) **SECRETARY OF DEFENSE AND RELATED ACTIVITIES.**—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:
 - (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—

- (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;
 - (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.
 - (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—
 - (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and
 - (B) describes how such a review should be conducted.
 - (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—
 - (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;
 - (B) take steps to address the causes of such disparities, as appropriate.
- (c) DAC-IPAD ACTIVITIES.—
- (1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:
 - (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year addressed.
 - (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
 - (C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(2) INFORMATION FROM FEDERAL AGENCIES.—

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

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

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

(4) DEFINITIONS.—In this subsection:

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

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

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

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

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

Sec. 540J. Pilot Programs on Defense Investigators in the Military Justice System. (H. Sec 537, S. Sec. 560)

(a) **IN GENERAL.**—Each Secretary of a military department shall carry out a pilot program on defense investigators within the military justice system under the jurisdiction of such Secretary in order to do the following:

(1) Determine whether the presence of defense investigators within such military justice system will—

(A) make such military justice system more effective in providing an effective defense for the accused; and

(B) make such military justice system more fair and efficient.

(2) Otherwise assess the feasibility and advisability of defense investigators as an element of such military justice system.

(b) **ELEMENTS.**—

(1) **INTERVIEW OF VICTIM.**—A defense investigator may question a victim under a pilot program only upon a request made through the Special Victims’ Counsel or other counsel if the victim does not have such counsel.

(2) **UNIFORMITY ACROSS MILITARY JUSTICE SYSTEMS.**—The Secretary of Defense shall ensure that the personnel and activities of defense investigators under the pilot programs are, to the extent practicable, uniform across the military justice systems of the military departments.

(c) **REPORT.**—

(1) **IN GENERAL.**—Not later than three years after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs under subsection (a).

(2) **ELEMENTS.**—The report required by paragraph (1) shall include the following:

(A) A description of each pilot program, including the personnel and activities of defense investigators under such pilot program.

(B) An assessment of the feasibility and advisability of establishing and maintaining defense investigators as an element of the military justice systems of the military departments.

(C) If the assessment under subparagraph (B) is that the establishment and maintenance of defense investigators as an element of the military justice systems of the military departments is feasible and advisable, such recommendations for legislative and administrative action as the Secretary of Defense considers appropriate to establish and maintain defense investigators as an element of the military justice systems.

(D) Any other matters the Secretary of Defense considers appropriate.

Sec. 540K. Report on Preservation of Recourse to Restricted Report on Sexual Assault for Victims of Sexual Assault Following Certain Victim or Third-Party Communications. (S. Sec. 531, H. Sec. 550P)

- (a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report making findings and recommendations on the feasibility and advisability of a policy for the Department of Defense that would permit a victim of a sexual assault, that is or may be investigated as a result of a communication described in subsection (b), which victim is a member of the Armed Forces or an adult dependent of a member of the Armed Forces, to have the reporting on the sexual assault be treated as a restricted report without regard to the party initiating or receiving such communication.
- (b) **COMMUNICATIONS.**—A communication described in this subsection is a communication reporting a sexual assault as follows:
- (1) By the victim to a member of the Armed Forces, whether a commissioned officer or a noncommissioned officer, in the chain of command of the victim or the victim's military sponsor.
 - (2) By the victim to military law enforcement personnel or personnel of a military criminal investigative organization (MCIO).
 - (3) By any individual other than victim.
- (c) **SCOPE OF FINDINGS AND RECOMMENDATIONS.**— The report required by subsection (a) may include recommendations for new provisions of statute or regulations, or modification of current statute or regulations, that may be required to put into effect the findings and recommendations described in subsection (a).
- (d) **CONSULTATION.**—In preparing the report required by subsection (a), the Secretary shall consult with the Defense Advisory Committee on Investigation, Prosecution, and Defense of

Sexual Assault in the Armed Forces (DAC–IPAD) under section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note).

SEC. 540L. Report on Establishment of Guardian Ad Litem Program for Certain Military Dependents who are a Victim or Witness of Offenses under the Uniform Code of Military Justice Involving Abuse or Exploitation. (S. Sec. 563)

(a) REPORT REQUIRED.—

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment of the feasibility and advisability of establishing a guardian ad litem program for military dependents described in paragraph (2) who are a victim or witness of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that involves an element of abuse or exploitation in order to protect the best interests of such dependents in a court-martial of such offense.

(2) **COVERED DEPENDENTS.**—The military dependents described in this paragraph are as follows:

(A) Military dependents under 12 years of age.

(B) Military dependents who lack mental or other capacity.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) An assessment of the feasibility and advisability of establishing a guardian ad litem program as described in subsection (a).

(2) If establishment of the guardian ad litem program is considered feasible and advisable, the following:

(A) A description of administrative requirements in connection with the program, including the following:

(i) Any memoranda of understanding between the Department of Defense and State and local authorities required for purposes of the program.

(ii) The personnel, funding, and other resources required for purposes of the program.

(B) Best practices for the program (as determined in consultation with appropriate civilian experts on child advocacy).

- (C) Such recommendations for legislative and administration action to implement the program as the Secretary considers appropriate.

H. Rept. 116-120 on H.R. 2500
TITLE V—MILITARY PERSONNEL POLICY
ITEMS OF SPECIAL INTEREST

Appointment of Guardian ad Litem for Minor Victims

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

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

SEC. 540M. Comptroller General of the United States Report on Implementation by the Armed Forces of Recent Statutory Requirements on Sexual Assault Prevention and Response in the Military. (S. Sec. 537)

- (a) **REPORT REQUIRED.**—The Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report, in writing, on a study, conducted by the Comptroller General for purposes of the report, on the implementation by the Armed Forces of statutory requirements on sexual assault prevention and response in the military in the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) and each succeeding national defense authorization Act through the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232).
- (b) **ELEMENTS.**—The report required by subsection (a) shall include the following:
- (1) A list and citation of each statutory requirement (whether codified or uncoded) on sexual assault prevention and response in the military in each national defense authorization Act specified in paragraph (1), including—
 - (A) whether such statutory requirement is still in force; and

(B) if such statutory requirement is no longer in force, the date of the repeal or expiration of such requirement.

(2) For each statutory requirement listed pursuant to paragraph (1), the following:

(A) An assessment of the extent to which such requirement was implemented, or is currently being implemented, as applicable, by each Armed Force to which such requirement applied or applies.

(B) A description and assessment of the actions taken by each of the Department of Defense, the military department concerned, and the Armed Force concerned to assess and determine the effectiveness of actions taken pursuant to such requirement in meeting its intended objective.

(3) Any other matters in connection with the statutory requirements specified in subsection (a), and the implementation of such requirements by the Armed Forces, that the Comptroller General considers appropriate.

(c) BRIEFINGS.—Not later than May 1, 2020, the Comptroller General shall provide to the committees referred to in subsection (a) one or more briefings on the status of the study required by subsection (a), including any preliminary findings and recommendations of the Comptroller General as a result of the study as of the date of such briefing.

Sec. 541. Improvement of Certain Special Victims' Counsel Authorities. (S. Sec. 542)

(a) ENHANCEMENT OF LEGAL CONSULTATION AND ASSISTANCE IN CONNECTION WITH POTENTIAL VICTIM BENEFITS.—Paragraph (8)(D) of subsection (b) of section 1044e of title 10, United States Code, is amended by striking “and other” and inserting “, section 1408(h) of this title, and other”.

(b) EXPANSION OF LEGAL ASSISTANCE AUTHORIZED TO INCLUDE CONSULTATION AND ASSISTANCE FOR RETALIATION.—Subsection (b) of such section is amended further—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following new paragraph (10):

“(10) Legal consultation and assistance in connection with an incident of retaliation, whether such incident occurs before, during, or after the conclusion of any criminal proceedings, including—

“(A) in understanding the rights and protections afforded to victims of retaliation;

“(B) in the filing of complaints; and

“(C) in any resulting military justice proceedings.”.

(c) STAFFING CASELOAD LEVELS.—Such section is further amended—

- (1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and
- (2) by inserting after subsection (f) the following new subsection (g):

“(g) STAFFING CASELOAD LEVELS.—Commencing not later than four years after the date of the enactment of the National Defense Authorizataion Act for Fiscal Year 2020, each Secretary concerned shall ensure that the number of Special Victims’ Counsel serving in each military department (and with respect to the Coast Guard) is sufficient to ensure that the average caseload of a Special Victims’ Counsel does not exceed, to the extent practicable, 25 cases at any given time.”.

Sec. 543. Availability of Special Victims’ Counsel at Military Installations. (S. Sec. 543, H. Sec. 550A)

(a) DEADLINE FOR AVAILABILITY.—Section 1044e(f) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4)(A) Subject to subparagraph (B), if a Special Victims’ Counsel is not available at a military installation for access by a member of the Armed Forces who requests access to a Special Victims’ Counsel, a Special Victims’ Counsel shall be made available at such installation for access by such member by not later than 72 hours after such request.

“(B) If the Secretary concerned determines that, due to exigent circumstances related to military activities, a Special Victims’ Counsel cannot be made available to a member of the armed forces within the time period required by subparagraph (A), the Secretary concerned shall ensure that a Special Victims’ Counsel is made available to such member as soon as is practical under such circumstances.”.

(b) REPORT ON CIVILIAN SUPPORT OF SVCs.—Not later than 180 days after the date of the enactment of this Act, each Secretary of a military department shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the assessment of such Secretary of the feasibility and advisability of establishing and maintaining for each Special Victims’ Counsel under the jurisdiction of such Secretary one or more civilian positions for the purpose of—

- (1) providing support to such Special Victims’ Counsel; and
- (2) ensuring continuity and the preservation of institutional knowledge in transitions between the service of individuals as such Special Victims’ Counsel.

Sec. 543. Notification of Issuance of Military Protective Order to Civilian Law

Enforcement. (H. Sec. 543)

(a) NOTIFICATION OF ISSUANCE.—Section 1567a of title 10, United States Code, is amended—

(1) in subsection (a), by striking “and any individual involved in the order does not reside on a military installation at any time during the duration of the military protective order, the commander of the military installation shall notify” and inserting “, the commander of the unit to which the member is assigned shall, not later than seven days after the date of the issuance of the order, notify”;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b);

“(b) NOTIFICATION IN EVENT OF TRANSFER.—In the event that a member of the armed forces against whom a military protective order is issued is transferred to another unit—

“(1) not later than the date of the transfer, the commander of the unit from which the member is transferred shall notify the commander of the unit to which the member is transferred of—

“(A) the issuance of the protective order; and

“(B) the individuals involved in the order; and

“(2) not later than seven days after receiving the notice under paragraph (1), the commander of the unit to which the member is transferred shall provide notice of the order to the appropriate civilian authorities in accordance with subsection (a).”; and

(4) in subsection (c), as so redesignated, by striking “commander of the military installation” and inserting “commander of the unit to which the member is assigned”.

(b) ANNUAL REPORT REQUIRED.—Not later than March 1, 2021, and each year thereafter through 2025, the Secretary of Defense shall submit to the congressional defense committees a report that identifies—

(1) the number of military protective orders issued in the calendar year preceding the year in which the report is submitted; and

- (2) the number of such orders that were reported to appropriate civilian authorities in accordance with section 1567a(a) of title 10, United States Code, in such preceding year.

Sec. 548. Legal Counsel for Victims of Alleged Domestic Violence Offenses. (S. Sec. 541, H. Sec. 542)

- (a) **IN GENERAL.**—Not later than December 1, 2020 the Secretary of Defense shall carry out a program to provide legal counsel (referred to in this section as “Counsel”) to victims of alleged domestic violence offenses who are otherwise eligible for military legal assistance under section 1044 of title 10, United States Code.
- (b) **FORM OF IMPLEMENTATION.**—The program required under subsection (a) may be carried out as part of another program of the Department of Defense or through the establishment of a separate program.
- (c) **TRAINING AND TERMS.**—The Secretary of Defense shall ensure that Counsel—
- (1) receive specialized training in legal issues commonly associated with alleged domestic violence offenses; and
- (2) to the extent practicable, serve as Counsel for a period of not less than 2 years.
- (d) **ATTORNEY-CLIENT RELATIONSHIP.**—The relationship between a Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.
- (e) **PARALEGAL SUPPORT.**—The Secretary of Defense shall ensure that sufficient trained paralegal support is provided to Counsel under the program.
- (f) **REPORT REQUIRED.**—
- (1) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation of the program under subsection (a).
- (2) **ELEMENTS.**—The report required under paragraph (1) shall include the following:
- (A) A description and assessment of the manner in which the Department of Defense will implement the program required under subsection (a).
- (B) An explanation of whether the program will be carried out as part of another program of the Department or through the establishment of a separate program.

(C) A comprehensive description of the additional personnel, resources, and training that will be required to implement the program, including identification of the specific number of additional billets that will be needed to staff the program.

(D) Recommendations for any modifications to law that may be necessary to effectively and efficiently implement the program.

(g) **ALLEGED DOMESTIC VIOLENCE DEFINED.**—In this section, the term “alleged domestic violence offense” means any allegation of—

(1) a violation of section 928, 928b(1), 928b(5), or 930 of title 10, United States Code (article 128(b), 128b(1), 128b(5), or 130 of the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member;

(2) a violation of any other provision of subchapter X of chapter 47 of such title (the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member; or

(3) an attempt to commit an offense specified in a subparagraph (A) or (B) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

Sec. 549. Notice to Victims of Alleged Sexual Assault of Pendency of Further Administrative Action Following a Determination Not to Refer to Trial by Court-Martial. (S. Sec 526, H. Sec. 550B)

Under regulations prescribed by the Secretary of Defense, upon a determination not to refer a case of alleged sexual assault for trial by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the commander making such determination shall periodically notify the victim of the status of a final determination on further action on such case, whether non-judicial punishment under section 815 of such title (article 15 of the Uniform Code of Military Justice), other administrative action, or no further action. Such notifications shall continue not less frequently than monthly until such final determination.

Sec. 550. Treatment of Information in Catch a Serial Offender Program for Certain Purposes. (S. Sec. 530, H. Sec. 550O)

(a) **TREATMENT UNDER FOIA.**—Victim disclosures under the Catch a Serial Offender Program shall be withheld from public disclosure under paragraph (b)(3) of section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act”).

(b) **PRESERVATION OF RESTRICTED REPORT.**—The transmittal or receipt in connection with the Catch a Serial Offender Program of a report on a sexual assault that is treated as a restricted report shall not operate to terminate its treatment or status as a restricted report.

Sec. 550A. Policies and Procedures on Registration at Military Installations of Civilian Protective Orders Applicable to Members of the Armed Forces Assigned to Such Installations and Certain Other Individuals. (S. Sec. 556, H. Sec. 544)

- (a) **POLICIES AND PROCEDURES REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish policies and procedures for the registration at military installations of any civil protection orders described in subsection (b), including the duties and responsibilities of commanders of installations in the registration process.
- (b) **CIVIL PROTECTION ORDERS.**—A civil protection order described in this subsection is any civil protective order as follows:
- (1) A civil protection order against a member of the Armed Forces assigned to the installation concerned.
 - (2) A civil protection order against a civilian employee employed at the installation concerned.
 - (3) A civil protection order against the civilian spouse or intimate partner of a member of the Armed Forces on active duty and assigned to the installation concerned, or of a civilian employee described in paragraph (2), which order provides for the protection of such member or employee.
- (c) **PARTICULAR ELEMENTS.**—The policies and procedures required by subsection (a) shall include the following:
- (1) A requirement for notice between and among the commander, military law enforcement elements, and military criminal investigative elements of an installation when a member of the Armed Forces assigned to such installation, a civilian employee employed at such installation, a civilian spouse or intimate partner of a member assigned to such installation, or a civilian spouse or intimate partner of a civilian employee employed at such installation becomes subject to a civil protection order.
 - (2) A statement of policy that failure to register a civil protection order may not be a justification for the lack of enforcement of such order by military law enforcement and other applicable personnel who have knowledge of such order.
- (d) **LETTER.**—As soon as practicable after establishing the policies and procedures required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a letter that includes the following:
- (1) A detailed description of the policies and procedures.
 - (2) A certification by the Secretary that the policies and procedures have been implemented on each military installation.

**Sec. 550B. DEFENSE ADVISORY COMMITTEE FOR THE PREVENTION OF
SEXUAL MISCONDUCT. (H. Sec. 549, S. Sec. 534)**

(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 for the Prevention of Sexual Misconduct” (in this section referred to as the “Advisory Committee”).

(2) **DEADLINE FOR ESTABLISHMENT.**—The Secretary shall establish the Advisory Committee not later than one year after the date of the enactment of this Act.

(b) MEMBERSHIP.—

(1) **IN GENERAL.**—The Advisory Committee shall consist of not more than 20 members, appointed by the Secretary from among individuals who have an expertise appropriate for the work of the Advisory Committee, including at least one individual with each expertise as follows:

(A) Expertise in the prevention of sexual assault and behaviors on the sexual assault continuum of harm.

(B) Expertise in adverse behaviors, including the prevention of suicide and the prevention of substance abuse.

(C) Expertise in the change of culture of large organizations.

(D) Expertise in implementation science.

(2) **BACKGROUND OF INDIVIDUALS.**—Individuals appointed to the Advisory Committee may include individuals with expertise in sexual assault prevention efforts of institutions of higher education, public health officials, and such other individuals as the Secretary considers appropriate.

(3) **PROHIBITION ON MEMBERSHIP OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY.**—A member 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 on the following:

- (A) The prevention of sexual assault (including rape, forcible sodomy, other sexual assault, and other sexual misconduct (including behaviors on the sexual assault continuum of harm)) involving members of the Armed Forces.
 - (B) The policies, programs, and practices of each military department, each Armed Force, and each military service academy for the prevention of sexual assault as described in subparagraph (A).
- (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, the following:
- (A) Closed cases involving allegations of sexual assault described in paragraph (1).
 - (B) Efforts of institutions of higher education to prevent sexual assault among students.
 - (C) Any other information or matters that the Advisory Committee or the Secretary considers appropriate.
- (3) COORDINATION OF EFFORTS.—In addition to the reviews required by paragraph (2), for purposes of providing advice to the Secretary the Advisory Committee shall also consult and coordinate with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) on matters of joint interest to the two Advisory Committees.
- (d) ANNUAL REPORT.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary and the Committees on Armed Services of the Senate and the House of Representatives a report on the activities of the Advisory Committee pursuant to this section during the preceding year.
- (e) SEXUAL ASSAULT CONTINUUM OF HARM.—In this section, the term “sexual assault continuum of harm” includes—
- (1) inappropriate actions (such as sexist jokes), sexual harassment, gender discrimination, hazing, cyber bullying, or other behavior that contributes to a culture that is tolerant of, or increases risk for, sexual assault; and
 - (2) maltreatment or ostracism of a victim for a report of sexual misconduct.
- (f) 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 notify the Committees on the Armed Services of the Senate and House of Representatives.

Sec. 550C. Training for Special Victims’ Counsel on Civilian Criminal Justice Matters in the States of the Military Installations to Which Assigned. (H. Sec. 550C, S. Sec. 544)

(a) TRAINING.—

- (1) IN GENERAL.—Except as provided in subsection (c), upon the assignment of a Special Victims’ Counsel (including a Victim Legal Counsel of the Navy) to a military installation in the United States, such Counsel shall be provided appropriate training on the law and policies of the State or States in which such military installation is located with respect to the criminal justice matters specified in paragraph (2). The purpose of the training is to assist such Counsel in providing victims of alleged sex-related offenses with information necessary to make an informed decision regarding preference as to the jurisdiction (whether court-martial or State court) in which such offenses will be prosecuted.

- (2) CRIMINAL JUSTICE MATTERS.—The criminal justice matters specified in this paragraph, with respect to a State, are the following:

- (A) Victim rights.
- (B) Prosecution of criminal offenses.
- (C) Sentencing for conviction of criminal offenses.

- (b) ALLEGED SEX-RELATED OFFENSE DEFINED.—In this section, the term “alleged sex-related offense” means any allegation of—

- (1) a violation of section 920, 920b, 920c, or 930 of title 10, United States Code (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or
- (2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

- (c) EXCEPTION.—The requirements of this section do not apply to a Special Victims’ Counsel of the Coast Guard.

Sec. 550D. Enhancing the Capability of Military Criminal Investigative Organizations to Prevent and Combat Child Sexual Exploitation. (H. Sec. 550N)

- (a) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish and carry out an initiative to enhance the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.
- (b) ACTIVITIES.—In establishing and carrying out the initiative under subsection (a), the Secretary of Defense may—
 - (1) work with internal and external functional experts to train the personnel of military criminal investigative organizations across the Department regarding—
 - (A) technologies, tools, and techniques, including digital forensics, to enhance the investigation of child sexual exploitation; and
 - (B) evidence-based forensic interviewing of child victims, and the referral of child victims for trauma-informed mental and medical health care, and other treatment and support services;
 - (2) to the extent authorized by law, collaborate with Federal, State, local, and other civilian law enforcement agencies on issues relating to child sexual exploitation, including by—
 - (A) participating in task forces established by such agencies for the purpose of preventing and combatting child sexual exploitation;
 - (B) establishing cooperative agreements to facilitate co-training and collaboration with such agencies; and
 - (C) ensuring that streamlined processes for the referral of child sexual exploitation cases to other agencies and jurisdictions, as appropriate, are fully operational;
 - (3) as appropriate, assist in educating the military community on the prevention and response to child sexual exploitation; and
 - (4) carry out such other activities as the Secretary determines to be relevant.

Sec. 550E. Feasibility Study on Establishment of Database of Military Protective Orders.
(H. Sec. 550F)

- (a) STUDY.—The Secretary of Defense shall conduct a study on the feasibility of establishing a database of military protective orders issued by military commanders against individuals suspected of having committed and offense of domestic violence under section 928b of title 10, United States Code (article 128b of the Uniform Code of Military Justice). The study shall include an examination of each of the following;

- (1) The feasibility of creating a database to record, track, and report such military protective orders to the National Instant Criminal Background Check System.
 - (2) The feasibility of establishing a process by which a military judge or magistrate may issue a protective order against an individual suspected of having committed such an offense.
 - (3) How the database and process described in paragraphs (1) and (2), respectively may differ from analogous civilian databases and processes, including with regard to due process and other procedural protections.
- (b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the study conducted under subsection (a).

SEC. 555. Consideration of Request for Transfer of a Cadet or Midshipman at a Military Service Academy who is the Victim of a Sexual Assault or Related Offense. (H. Sec. 558)

- (a) UNITED STATES MILITARY ACADEMY.—Section 7461 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) CONSIDERATION OF APPLICATION FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Army shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Military Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

“(2) The Secretary of the Army shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

“(A) provide that the Superintendent of the United States Military Academy shall ensure that any cadet who has been appointed to the United States Military Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

“(B) direct the Superintendent of the United States Military Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

“(i) to take action on a request for transfer not later than 72 hours after receiving the formal request from the cadet;

“(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

“(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

“(C) direct the Superintendent of the United States Military Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the cadet requests to transfer—

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

“(ii) subject to the cadet’s acceptance for and admission to the institution of higher education to which the cadet wishes to transfer unless there are exceptional circumstances that require denial of the application; and

“(iii) to take all necessary and appropriate action to effectuate the cadet’s enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.

“(3) If the Superintendent of the United States Military Academy denies a request for transfer under this subsection, the cadet may request review of the denial by the Secretary of the Army, who shall take action on such request not later than 72 hours after receipt of the formal request for review.

“(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

“(5) A cadet who transfers under this subsection may retain the cadet’s appointment to the United States Military Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”.

(b) UNITED STATES NAVAL ACADEMY.—Section 8480 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A MIDSHIPMAN WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Navy shall provide for timely consideration and action on a request submitted by a midshipman appointed to the United States Naval Academy who is the victim of an alleged sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

“(2) The Secretary of the Navy shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

“(A) provide that the Superintendent of the United States Naval Academy shall ensure that any midshipman who has been appointed to the United States Naval Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a transfer pursuant to this section, and that any formal request submitted by a midshipman is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

“(B) direct the Superintendent of the United States Naval Academy, in coordination with the Superintendent of the military service academy to which the midshipman requests to transfer—

“(i) to take action on a request for transfer not later than 72 hours after receiving the formal request from the midshipman;

“(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

“(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the midshipman to the military service academy concerned as expeditiously as possible; and

“(C) direct the Superintendent of the United States Naval Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the midshipman requests to transfer—

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the midshipman;

“(ii) subject to the midshipman’s acceptance for and admission to the institution of higher education to which the midshipman wishes to transfer unless there are exceptional circumstances that require denial of the application; and

“(iii) to take all necessary and appropriate action to effectuate the midshipman’s enrollment in the institution of higher education to which the midshipman wishes to transfer and to process the midshipman for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.

“(3) If the Superintendent of the United States Naval Academy denies a request for transfer under this subsection, the midshipman may request review of the denial by the Secretary of the Navy, who shall take action on such request not later than 72 hours after receipt of the formal request for review.

“(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

“(5) A midshipman who transfers under this subsection may retain the midshipman’s appointment to the United States Naval Academy or may be appointed to the military service academy to which the midshipman transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”.

(c) UNITED STATES AIR FORCE ACADEMY.—Section 9461 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) CONSIDERATION OF REQUEST FOR TRANSFER OF A CADET WHO IS THE VICTIM OF A SEXUAL ASSAULT OR RELATED OFFENSE.—(1) The Secretary of the Air Force shall provide for timely consideration of and action on a request submitted by a cadet appointed to the United States Air Force Academy who was a victim of an alleged sexual assault or other offense covered by section 920, , 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) for transfer to another military service academy or to enroll in a Senior Reserve Officers’ Training Corps program affiliated with another institution of higher education.

“(2) The Secretary of the Air Force shall prescribe regulations to carry out this subsection, within guidelines provided by the Secretary of Defense that—

“(A) provide that the Superintendent of the United States Air Force Academy shall ensure that any cadet who has been appointed to the United States Air Force Academy and who is a victim of an alleged sexual assault or other offense referred to in paragraph (1), is informed of the right to request a

transfer pursuant to this section, and that any formal request submitted by a cadet is processed as expeditiously as practicable through the chain of command for review and action by the Superintendent;

“(B) direct the Superintendent of the United States Air Force Academy, in coordination with the Superintendent of the military service academy to which the cadet requests to transfer—

“(i) to take action on a request for transfer not later than 72 hours after receiving the formal request from the cadet;

“(ii) to approve such request for transfer unless there are exceptional circumstances that require denial of the request; and

“(iii) upon approval of such request, to take all necessary and appropriate action to effectuate the transfer of the cadet to the military service academy concerned as expeditiously as possible; and

“(C) direct the Superintendent of the United States Air Force Academy, in coordination with the Secretary of the military department that sponsors the Senior Reserve Officers’ Training Corps program at the institution of higher education to which the cadet requests to transfer—

“(i) to take action on a request for transfer under this subsection not later than 72 hours after receiving the formal request from the cadet;

“(ii) subject to the cadet’s acceptance for and admission to the institution of higher education to which the cadet wishes to transfer unless there are exceptional circumstances that require denial of the application; and

“(iii) to take all necessary and appropriate action to effectuate the cadet’s enrollment in the institution of higher education to which the cadet wishes to transfer and to process the cadet for participation in the relevant Senior Reserve Officers’ Training Corps program as expeditiously as possible.

“(3) If the Superintendent of the Air Force Academy denies a request for transfer under this subsection, the cadet may request review of the denial by the Secretary of the Air Force, who shall take action on such request not later than 72 hours after submission of the formal request for review.

“(4) The Secretary concerned shall ensure that all records of any request, determination, transfer, or other action under this subsection remain confidential, consistent with applicable law and regulation.

“(5) A cadet who transfers under this subsection may retain the cadet’s appointment to the Air Force Academy or may be appointed to the military service academy to which the cadet transfers without regard to the limitations and requirements set forth in sections 7442, 8454, and 9442 of this title.”.

Sec. 570A. Limitations and Requirements in Connection with Separations for members of the Armed Forces Who Suffer from Mental Health Conditions in Connection with a Sex-Related, Intimate Partner Violence–Related, or Spousal Abuse Offenses. (S. Sec. 552)

- (a) **CONFIRMATION OF DIAGNOSIS OF CONDITION REQUIRED BEFORE SEPARATION.**—Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Armed Forces (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Armed Forces based solely on such condition, the diagnosis of such condition must be—
- (1) corroborated by a competent mental health care professional at the peer level or a higher level of the health care professional making the diagnosis; and
 - (2) endorsed by the Surgeon General of the military department concerned.
- (b) **NARRATIVE REASON FOR SEPARATION IF MENTAL HEALTH CONDITION PRESENT.**—If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release shall be a condition, not a disability, or Secretarial authority.
- (c) **DEFINITIONS.**—In this section:
- (1) The term “intimate partner violence-related offense” means the following:
 - (A) An offense under section 928 or 930 of title 10, United States Code (article 128 or 130 of the Uniform Code of Military Justice).
 - (B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).
 - (2) The term “sex-related offense” means the following:
 - (A) An offense under section 920 or 920b of title 10, United States Code (article 120 or 120b of the Uniform Code of Military Justice).

(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

(3) The term “spousal-abuse offense” means the following:

(A) An offense under section 928 of title 10, United States Code (article 128 of the Uniform Code of Military Justice).

(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

(d) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act, and shall apply with respect to separations, discharges, and releases from the Armed Forces that occur on or after that effective date.

Sec. 599. Information for Members of the Armed Forces on Availability of Services of the Department of Veterans Affairs Relating to Sexual Trauma. (H. Sec. 745)

(a) IN GENERAL.—The Secretary of Defense shall inform members of the Armed Forces, using mechanisms available to the Secretary, of the eligibility of such members for services of the Department of Veterans Affairs relating to sexual trauma.

(b) INFORMATION FROM SEXUAL ASSAULT RESPONSE COORDINATORS.—The Secretary of Defense shall ensure—

(1) that Sexual Assault Response Coordinators and uniformed victim’s advocates of the Department of Defense advise members of the Armed Forces who report instances of sexual trauma regarding the eligibility of such members for services at the Department of Veterans Affairs; and

(2) that such information is included in mandatory training materials.

(c) SEXUAL TRAUMA DEFINED.—In this section, the term “sexual trauma” means psychological trauma described in section 1720D(a)(1) of title 38, United States Code.