

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

## Meeting Materials

November 6, 2020

**Defense Advisory Committee on Investigation, Prosecution, and Defense of  
Sexual Assault in the Armed Forces (DAC-IPAD)  
19th Public Meeting**

**November 6, 2020  
Public Meeting Preparatory Materials  
of  
*Table of Contents***

- Tab 1** November 5, 2020, Preparatory Session Agenda and November 6, 2020, Public Meeting Agenda (2 pages)
- Tab 2** DAC-IPAD *Report on Racial and Ethnic Disparities in Investigations, Prosecutions, and Convictions for Sexual Offenses in the Military*
- Tab 3** General Counsel of the Department of Defense, *Memorandum for the Secretaries of the Military Departments: Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCMJ)* (Dec. 17, 2018)
- *Memorandum from the DoD GC to the Service Secretaries setting forth the uniform standards and criteria for collection of military justice data across all of the Military Services as required by Article 140a, Uniform Code of Military Justice.*
- Tab 4** General Counsel of the Department of Defense, *Memorandum for the Secretaries of the Military Departments: Recording Court-Martial Demographic Information* (June 8, 2020).
- *Memorandum from the DoD GC to the Service Secretaries directing that as of June 17, 2020 all of the Military Services are required to collect demographic data on the race, ethnicity, and gender of the victim and the accused for all courts-martial for purposes of reporting the data pursuant to Article 146a, Uniform Code of Military Justice.*
- Tab 5** Office of Management and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58,782 (Oct. 30, 1997).
- *1997 revision of Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. The revised standards have five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White as well as two categories for data on ethnicity: Hispanic or Latino and Not Hispanic or Latino.*

- Tab 6** Office of Management and Budget, *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*, 81 Fed. Reg. 67,398 (Sept. 30, 2016)
- *2016 review and request for comment on possible limited revision of OMB’s statistical policy directive on standards for maintaining, collecting, and presenting federal data on race and ethnicity.*
- Tab 7** Excerpt from DEPARTMENT OF DEFENSE, REPORT OF THE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES Vol. I (Nov. 30, 1972)
- *Transmittal letter excerpted from the 1972 DoD report on the administration of military justice in the Armed Forces summarizing the study and the Task Force’s findings on racial disparities.*
- Tab 8** Excerpt from the Joint Explanatory Statement Accompanying the FY 2020 NDAA Requesting that the DAC-IPAD Assess Restorative Justice as a Military Justice Alternative in Some Sexual Offense Cases and Victim’s Statements During Sentencing at Courts-Martial
- Tab 9** PowerPoint Slides to Accompany DAC-IPAD Staff Presentation on Restorative Justice and Victim’s Statements During Sentencing
- *DAC-IPAD staff-prepared slides for staff presentation on the request in the Joint Explanatory Statement accompanying the FY 20 NDAA requesting the DAC-IPAD assess restorative justice and victim’s statements during sentencing at courts-martial.*
- Tab 10** Mary P. Koss, “The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes,” JOURNAL OF INTERPERSONAL VIOLENCE (Dec. 24, 2013)
- *Academic study of a restorative justice program implemented in Pima County, Arizona between 2003 and 2007.*

- Tab 11**      PowerPoint Slides to Accompany DAC-IPAD Staff Presentation on Policy Subcommittee’s Interviews with Civilian Prosecutors and Defense Counsel Regarding the Pretrial Process.
- *DAC-IPAD staff-prepared presentation on the interviews conducted by the Policy Subcommittee members and staff over six months in 2020 with civilian prosecutors and defense counsel, many with military experience, about the civilian pretrial process.*
- Tab 12**      Approved Minutes from August 21, 2020, DAC-IPAD Public Meeting
- Tab 13**      News Articles of Interest from October 2020

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

**November 5, 2020**

**Teleconference**

**Dial-In: 410-874-6300, Web Pin: 941 116 583**

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**Administrative and Preparatory Session (41 C.F.R. § 102-3.160, not subject to notice & open meeting requirements)**

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|--------------------------------|---|
| <b>11:00 a.m. – 11:15 a.m</b>  | <b>Walk-through of November 6, 2020 Public Meeting Agenda and Preparatory Materials</b> <i>(15 minutes)</i> <ul style="list-style-type: none"><li>– Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</li><li>– Ms. Meghan Peters, DAC-IPAD Attorney-Advisor</li><li>– Ms. Kate Tagert, DAC-IPAD Attorney-Advisor</li><li>– Colonel Laura Calese, U.S. Army, DAC-IPAD Staff Director</li></ul> |
| <b>11:15 a.m. – 12:00 p.m</b>  | <b>Committee Review of the DRAFT DAC-IPAD <i>Racial and Ethnic Disparities Report</i></b> <i>(45 minutes)</i> <ul style="list-style-type: none"><li>– Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</li><li>– Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</li><li>– Ms. Nalini Gupta, DAC-PAD Attorney-Advisor</li><li>– Ms. Marguerite McKinney, Analyst</li></ul>                         |
| <b>12:00 p.m. – 12:30 p.m.</b> | <b>Lunch Break</b>  |
| <b>12:30 p.m. – 1:45 p.m.</b>  | <b>Committee Review of the DRAFT DAC-IPAD <i>Racial and Ethnic Disparities Report</i></b> <i>(1 hour and 15 minutes)</i> <ul style="list-style-type: none"><li>– Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</li><li>– Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</li><li>– Ms. Nalini Gupta, DAC-PAD Attorney-Advisor</li><li>– Ms. Marguerite McKinney, Analyst</li></ul>              |
| <b>1:45 p.m.</b>               | <b>Administrative and Preparatory Session Adjourns</b>  |

**Defense Advisory Committee on Investigation, Prosecution, and Defense  
of Sexual Assault in the Armed Forces (DAC-IPAD)  
20th PUBLIC MEETING AGENDA**

**November 6, 2020**

**Teleconference**

**Dial-In: 410-874-6300, Web Pin: 611 989 635**

**URL: <https://conference.apps.mil/webconf/DACIPAD-PublicMeeting-20201106>**

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|--------------------------------|---|
| <b>11:00 a.m. – 11:10 a.m.</b> | <b>Public Meeting Begins – Welcome and Introduction</b><br><br>– <i>Designated Federal Officer Opens Meeting</i><br>– <i>Remarks of the Chair</i>   |
| <b>11:10 a.m. – 12:30 p.m.</b> | <b>DAC-IPAD Deliberations on Draft Racial and Ethnic Disparities Report</b><br><i>(1 hour 20 minutes)</i><br><br>– <i>Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</i><br>– <i>Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Nalini Gupta, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Marguerite McKinney, Analyst</i>  |
| <b>12:30 p.m. – 1:00 p.m.</b>  | <b>Lunch Break</b><br><i>(30 minutes)</i>   |
| <b>1:00 p.m. – 2:00 p.m.</b>   | <b>DAC-IPAD Deliberations on Draft Racial and Ethnic Disparities Report</b><br><b>(Continued)</b><br><i>(1 hour)</i><br><br>– <i>Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</i><br>– <i>Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Nalini Gupta, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Marguerite McKinney, Analyst</i>   |
| <b>2:00 p.m. – 3:00 p.m.</b>   | <b>Staff Presentation and Testimony from a Civilian Expert on Restorative Justice and Staff Presentation on Victim Impact Statements at Sentencing Followed by Committee Discussion as Requested in the Joint Explanatory Statement to the FY20 NDAA</b><br><i>(1 hour)</i><br><br>– <i>Ms. Meghan Peters, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Kate Tagert, DAC-IPAD Attorney-Advisor</i> |
| <b>3:00 p.m. – 3:30 p.m.</b>   | <b>Policy Subcommittee Briefing on Interviews with Civilian Prosecutors and Defense Counsel and Update on Subcommittee Timeline for Review of Military Pretrial Processes</b><br><i>(30 minutes)</i><br><br>– <i>Ms. Meghan Peters, DAC-IPAD Attorney-Advisor</i><br>– <i>Ms. Terri Saunders, DAC-IPAD Attorney-Advisor</i>   |

**Defense Advisory Committee on Investigation, Prosecution, and Defense  
of Sexual Assault in the Armed Forces (DAC-IPAD)  
20th PUBLIC MEETING AGENDA**

**3:30 p.m. – 3:45 p.m.**

**Meeting Wrap-Up, and Public Comment**

*(15 minutes)*

– *Colonel Laura Calese, U.S. Army, DAC-IPAD Staff Director*

**4:00 p.m.**

**Public Meeting Adjourns**



# DAC-IPAD Public Meeting

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## Racial and Ethnic Data in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military

November 6, 2020





# Agenda

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- Review of Content of Draft Report
- Review of Draft Findings
- Review of Draft Recommendations



# Draft Findings

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- **Finding 1:** For the last 50 years, studies of racial and ethnic disparities in the military justice system have consistently recommended that the Department of Defense establish uniformity in the collection of statistical information, by race, ethnic group, and sex, in order to improve studies and monitoring efforts.
- **Finding 2:** Despite these consistent recommendations, the current data collection processes in the Military Services' investigation and military justice organizations with respect to the race and ethnicity of subjects and victims of criminal offenses are inadequate, incomplete, and inconsistent.



# Draft Findings

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- **Finding 3:** Decades of studies have identified varying degrees of racial disparities in the administration of military justice despite the inadequacies of race and ethnicity data collection in the military justice system.
- **Finding 4:** Although the DoD has several policy initiatives underway to improve data collection on race and ethnicity beginning in fiscal year 2020, significant gaps remain, including no DoD-wide requirement to collect information on the race and ethnicity of the victim at any time before initiation of a court-martial.



# Draft Recommendations

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**Recommendation 1:** The Secretary of Defense designate the military personnel system as the primary data collection system in the Department of Defense for the collection of demographic information such as race and ethnicity. All other Department of Defense systems that collect demographic data regarding military personnel, such as the military criminal investigative system and the military justice system, should obtain demographic information on military personnel from the military personnel system.



# Draft Recommendations

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**Recommendation 2:** The Secretary of Defense direct each Military Department or Military Service to report race and ethnicity in military criminal investigative organization databases, military justice databases, and personnel databases using the minimum categories for race and ethnicity set forth in Office of Management and Budget Statistical Policy Directive No. 15, *Race and Ethnic Standards for Federal Statistics and Administrative Reporting*. The racial categories from OMB Directive 15 are *American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White*. The two ethnic categories from OMB Directive 15 are *Hispanic or Latino; and Not Hispanic or Latino*. In addition to these minimum categories, in all databases include an option for reporting *Two or More or Other*.



# Draft Recommendations

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**Recommendation 3:** Congress authorize and appropriate funds for a pilot program operating one uniform case management system across all Services for data collection on contact and penetrative sexual offenses. The pilot program will collect case data from standardized source documents and should cover every sexual offense allegation made against a Service member under the military's jurisdiction that is investigated by a military criminal investigative organization (MCIO), and will include demographic data pertaining to each victim and accused—including race and ethnicity.



# Draft Recommendations

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**Recommendation 4:** The Secretary of Defense direct the Military Departments to record and track the race, ethnicity, sex, gender, age, and grade of the victim(s) and the accused for every case opened by military law enforcement in which a Service member is identified as a subject until completion through the final disposition within the military justice system.



# Draft Recommendations

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**Recommendation 5:** The Secretary of Defense direct the Military Departments to record the race and ethnicity of military investigators, military police, prosecutors, defense counsel, and victims' counsel, convening authorities, military panels, and judges beginning in fiscal year 2022. The source information for this data should be collected from the military personnel databases and maintained as general data for future studies.





# Draft Recommendations

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- **Recommendation 6:** Once the Department of Defense implements new data collection processes [as recommended in this report/as required pursuant to Article 140a, UCMJ], the Secretary of Defense direct the newly established Military Justice Review Panel to review and assess racial and ethnic disparities in every aspect of the military justice system as part of its charter for periodic and comprehensive reviews. This review and assessment of racial and ethnic disparities should include, but not be limited to, cases involving sexual offenses.



# Draft Recommendations

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- **Recommendation 7:** The DAC-IPAD incorporate studies on racial disparities [or data on race and ethnicity] into future reports and reviews on sexual misconduct in the Armed Forces.



# Draft Recommendations

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- **Recommendation 8:** Once the Department of Defense implements new data collection processes, the DAC-IPAD conduct an in-depth study on racial and ethnic disparities in cases involving adult victims of sexual offenses. Sexual offense cases should be studied independently from other studies involving military justice offenses because of the intimate nature of these types of crimes. Analysis of sexual offenses may reveal unique racial and ethnic disparities either not present, or that present differently in other crimes. Among other things, the studies of sexual misconduct in the military could include the following types of bivariate and multivariate analyses:
  - For investigations by criminal investigative organizations:
    - Analysis of the race/ethnicity of the accused-victim dyad
  - For cases with preferred charges:
    - Analysis of the race/ethnicity of the accused-victim dyad
    - Analysis of the race/ethnicity of the accused and the offense type (whether penetrative or contact sexual offense or both)
    - Analysis of the race/ethnicity of the accused and the court type
    - Analysis of the race/ethnicity of the accused and the use of alternative disposition
    - Analysis of the racial composition of the panel members and judges
    - Analysis of the data on hiring civilian defense counsel versus using assigned military trial defense counsel for convictions by race



# Draft Recommendations

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- **Recommendation 8 (continued):**
  - For courts-martial:
    - Analysis of the race/ethnicity of the accused-victim dyad
    - Analysis of the race/ethnicity of the accused and the offense type (whether penetrative or contact sexual offense or both)
    - Analysis of the race/ethnicity of the accused and pleas (whether guilty or not-guilty)
    - Analysis of the race/ethnicity of the accused and convictions (whether penetrative or contact sexual offense or both)
    - Analysis of the race/ethnicity of the accused and acquittals (whether penetrative or contact sexual offense or both)
    - Analysis of the race/ethnicity of the accused and the sentence at court-martial
    - Analysis of the race/ethnicity of the accused and the sentence approved by convening authority
    - Analysis of the race/ethnicity of the accused and characterization of discharge
    - Analysis of the racial composition of the panel members and judges
    - Analysis of the data on hiring civilian defense counsel versus using assigned military trial defense counsel for convictions by race



# Draft Recommendations

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- **Recommendation 9:** The Secretary of Defense direct the Military Services to develop training on racial basis for commanders, investigators, prosecutors, defense counsel, and victims' counsel, courts-martial members, and judges.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

DEC 17 2018

GENERAL COUNSEL

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCMJ)

Pursuant to Article 140a of the UCMJ, 10 U.S.C. § 940a, as enacted by section 5504 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2961, and DoD Directive 5145.01, I prescribe the attached uniform standards and criteria for the military justice system, to be implemented no later than December 23, 2020.

I am forwarding a copy of these uniform standards and criteria to the Judge Advocate General of the Coast Guard for adoption with regard to that Military Service as deemed appropriate by the applicable decision makers.



Paul C. Ney, Jr.  
DoD General Counsel

cc:

Judge Advocates General of the Military Departments  
Staff Judge Advocate to the Commandant of the Marine Corps  
Judge Advocate General of the Coast Guard



## **Military Justice Case Management, Data Collection, and Accessibility Standards**

### **I. Case Management System**

A. Each Military Service will maintain and operate a military justice case processing and management system. Each system will track every case opened by military law enforcement in which a Service member is identified as a subject until completion through the final disposition within the military justice system, to include direct appellate review. Each military justice case processing and management system will maintain all data collected indefinitely to ensure complete and accurate reporting. Each military justice case processing and management system must ensure accessibility by trial counsel, appellate government counsel, staff judge advocates, military judges, appellate judges, and Service clerks of court to ensure data fields are updated throughout the military justice process.

B. Two or more Military Services may operate a military justice case processing and management system in conjunction with each other.

### **II. Collection and Analysis of Data Concerning Substantive Offenses and Procedural Matters**

A. Each military justice case processing and management system will be capable of collecting information in accordance with the Data Points and Uniform Definitions set out in Appendix A.

B. Each Military Service is responsible for implementing standards to ensure the data entry is complete and accurate. To ensure the collection of uniform data across the Services, each case processing and management system will identify criminal offenses by the appropriate Defense Incident-Based Reporting System (DIBRS) Codes. To ensure the collection of uniform data concerning race and ethnicity, the definitions of race and ethnicity as established by the Office of Management and Budget Statistical Policy Directive No. 15 (OMB 15), Race and

Ethnic Standards for Federal Statistics and Administrative Reporting, will be applied by each military justice case processing and management system. A Military Service may elect to have its military justice case processing and management system capture expanded ethnic or racial categories; however, for reporting purposes, expanded categories will aggregate to those established by OMB 15.

### III. Distribution of Records of Trial Within the Military Justice System

A. A request by the accused for a copy of the recording of all open sessions of the court-martial and copies of or access to the evidence admitted at the court-martial will be submitted to the Trial Counsel. All copies of the recordings and/or exhibits will be made available to the accused or defense counsel as soon as practicable after a valid request is received.

B. A request by a victim as defined by Rule for Courts-Martial 1106A(b)(2) for a copy of the recording of all open sessions of the court-martial and copies of or access to the evidence admitted at the court-martial will be submitted to the Trial Counsel. All copies of the recordings and/or exhibits will be made available to the victim or the victim's counsel as soon as practicable after a valid request is received.

C. The accused and any victim as defined in Rule for Courts-Martial 1112(e) will be notified of the opportunity to obtain a copy of the certified record of trial within 10 days of the certification. Each Military Service will implement procedures to ensure adequate notification is provided in writing. Each Military Service will implement procedures to ensure that copies of certified records released to accused or victims do not contain any sealed exhibits, classified information, or information from closed court sessions.



#### IV. Public Access to Military Justice Docket Information, Filings, and Records

A. To the greatest extent practicable, military justice docket information, filings, and records should be no less accessible to the public than comparable information and documents from the Federal civilian criminal justice system. However, an important legal distinction exists between the military justice system and the federal civilian criminal justice system: the Privacy Act applies to the former but not to the latter. Privacy Act concerns are directly relevant to the manner in which information and documents from the military justice system may be made available to the public.

B. Accordingly, below I issue two alternative uniform standards for public access to military justice docket information, filings, and records. The first set of uniform standards will apply if, as determined by the General Counsel of the Department of Defense, the law is changed to exempt from the Privacy Act the release of military justice docket information, filings, and records. Absent such a determination, the second set of uniform standards will apply.

1. Standards Applicable If the General Counsel of the Department of Defense Determines the Law Is Changed to Exempt from the Privacy Act the Release of Military Justice Docket Information, Filings, and Records

a. The Secretaries of the Military Departments will prescribe procedures to protect from disclosure classified documents, privileged documents, documents filed under seal, and other documents protected by a court order. Procedures shall be created for all cases at the trial level and before the Courts of Criminal Appeals. These standards do not impose any requirement on the Court of Appeals for the Armed Forces.

b. The Secretaries of the Military Departments will prescribe procedures for the redaction of dockets, filings, and court records to remove the following information from the documents:

- i. all social security numbers;
- ii. all taxpayer identification numbers;
- iii. birthdates;
- iv. minors' names;
- v. victims' names;
- vi. all financial account numbers;
- vii. other sensitive information as determined by the Secretaries of

the Military Departments.

c. The Secretaries of the Military Departments will prescribe standards to maintain the dockets, filings, and court records on a central publicly accessible website for their respective trial judiciaries. Each Military Department's Court of Criminal Appeals will maintain its docket, filings, and court records on a publicly accessible website.

d. For the purposes of this document and the standards set forth to implement Article 140a across all Military Departments, the following definitions are provided:

i. Docket – includes information concerning each case docketed with the trial or appellate courts of each Military Department.

(a). The trial court docket includes the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The docket will include hearings only after the case has been referred to a court-martial; Article 32 preliminary hearings are not required to be published in this docket.

(b). The appellate court docket includes a list of all cases pending before the court and an oral argument schedule to include the name of the case, the location of the hearing, the type of hearing, and panel assignment.

ii. Filings – consists exclusively of all motions, notices, petitions, and requests submitted to a trial court or a Court of Criminal Appeals.

iii. Court Records – consists exclusively of the charge sheet, convening order(s), court rulings, Statement of Trial Results, Convening Authority’s Action, Entry of Judgment, and appellate court orders and opinions. Court records do not include the Article 32 Preliminary Hearing Report, a recording of any court session, or any transcript of the proceedings.

e. All dockets, filings, and court records will be made available to the public on a website as soon as practicable.

f. The Military Judge or Court of Criminal Appeals will make the final determination on any request for a protective order to prevent the public disclosure of a filing or court record. The protective order will be published to the public on a website with such redactions as are appropriate.

**B. Standards Applicable If the General Counsel of the Department of Defense Does Not Determine the Law Is Changed to Exempt from the Privacy Act the Release of Military Justice Docket Information, Filings, and Records**

1. The Secretaries of the Military Departments will implement procedures to ensure all dockets, filings, and court records at the trial and Court of Criminal Appeals levels are redacted to comply with the Privacy Act. These standards do not impose any requirement on the Court of Appeals for the Armed Forces.

2. The Secretaries of the Military Departments will prescribe standards to maintain the dockets, filings, and court records on a central publicly accessible website for their respective trial judiciaries. Each Military Department's Court of Criminal Appeals will maintain its docket, filings, and court records on a publicly accessible website.

3. The Secretaries of the Military Departments will prescribe standards for training the individuals redacting these documents to ensure compliance with the Privacy Act.

4. Each Secretary of a Military Department will provide for the publication of dockets, filings, and court records that are properly redacted in compliance with the Privacy Act and posted on a website that is accessible by the public. Dockets will be updated on an ongoing basis. Filings and court records will be published as soon as practicable after the certification of the record of trial (at the trial court level) or after the Court of Criminal Appeals decision (at the appellate level).

5. For the purposes of this document and the standards set forth to implement Article 140a across all Military Departments, the following definitions are provided:

a. Docket – includes information concerning each case docketed with the trial or appellate courts of each Military Department.

i. The trial court docket includes the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The docket will include hearings only after the case has been referred to a court-martial; Article 32 preliminary hearings are not required to be published in this docket.

ii. The appellate court docket includes a list of all cases pending before the court and an oral argument schedule to include the name of the case, the location of the hearing, the type of hearing, and panel assignment.

b. Filings – consists exclusively of all motions, notices, petitions, and requests submitted to a trial court or a Court of Criminal Appeals.

c. Court Records – consists exclusively of the charge sheet, convening order(s), court rulings, Statement of Trial Results, Convening Authority’s Action, Entry of Judgment, and appellate court orders and opinions. Court records do not include the Article 32 Preliminary Hearing Report, a recording of any court session, or any transcript of the proceedings.

**Appendix A**  
**Data Points & Uniform Definitions for Collection by the Services**

Data Point		Uniform Definition
<b>Basic Data (Subject/Accused)</b>		
1. Last name		n/a
2. First name		n/a
3. Middle initial		n/a
4. Pay grade		-E-1 -E-2 -E-3 -E-4 -E-5 -E-6 -E-7 -E-8 -E-9 -W-1 -W-2 -W-3 -W-4 -W-5 -O1E -O2E -O3E -O-1 -O-2 -O-3 -O-4 -O-5 -O-6 -O-7+ -Cadet -Midshipman -Civilian
5. SSN or DOD ID No.		####
6. Date of birth		Format (MM/DD/YYYY)
7. Sex		-M -F
8. Ethnicity		-Hispanic or Latino -Not Hispanic or Latino
9. Race		-American Indian/Alaska Native -Asian -Black or African American -Native Hawaiian or Other Pacific Islander -White -Other

Data Point	Uniform Definition
10. Branch of Service	<ul style="list-style-type: none"> <li>-Army</li> <li>-Air Force</li> <li>-Marine Corps</li> <li>-Navy</li> <li>-Coast Guard</li> <li>-Army National Guard</li> <li>-Air National Guard</li> <li>-USAR</li> <li>-USNR</li> <li>-USAFR</li> <li>-USMCR</li> <li>-USCGR</li> <li>-Other</li> <li>-N/A</li> </ul>
11. Pay entry date/Pay date	Format (MM/DD/YYYY)
<b>Investigation</b>	
12. Investigating entity	<ul style="list-style-type: none"> <li>-Chain of command</li> <li>-Military Criminal Investigative Organization</li> <li>-Military police</li> <li>-Civilian</li> <li>-Foreign</li> <li>-N/A</li> </ul>
13. Investigation number	Service dependent
14. Date investigation opened	Format (MM/DD/YYYY)
15. Date of earliest offense	Format (MM/DD/YYYY)
16. Date earliest offense reported/discovered	Format (MM/DD/YYYY)
17. Offenses investigated related to the accused	DIBRS code (DODM 7730.47 volume 2)
<b>Victim of Sexual Assault &amp; Domestic Violence</b>	
18. Does any charged offense involve a victim as defined by DoD Directive 1030.1?	<ul style="list-style-type: none"> <li>-Yes</li> <li>-No</li> </ul>
19. Number of victims: [questions 20-XX, should be captured for each victim]	##
20. Identification of victim	Initials of first & last names
21. Sex of victim:	<ul style="list-style-type: none"> <li>-M</li> <li>-F</li> </ul>
22. Status of victim:	<ul style="list-style-type: none"> <li>-Military</li> <li>-Military-spouse</li> <li>-Civilian-spouse</li> <li>-Civilian-dependent</li> <li>-Civilian-Department/Service employee</li> <li>-Civilian-non-Department/Service employee</li> <li>-Other</li> <li>-Unknown</li> </ul>

Data Point	Uniform Definition
23. Is victim a victim of domestic violence, as defined by Enclosure 2 of DoDI 6400.06?	-Yes -No
a. If "Yes," the victim's relation to the accused is:	-Current spouse -Former spouse -Person with whom the accused shares a child in common -Current intimate partner with whom the accused shares a common domicile -Former intimate partner with whom the accused shared a common domicile
24. VWAP notifications & elections (captured for each qualifying victim)	Date served and explained
a. DD Form 2701 – Initial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
b. DD Form 2702 – Court-Martial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
c. DD Form 2703 – Post-trial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
d. DD Form 2704 – Victim/Witness Certification and Election Concerning Prisoner Status	Format (MM/DD/YYYY)
e. Victim election to be notified under DD Form 2704	-Yes -No
f. DD Form 2704-1 – Victim Election of Post-trial Rights	Format (MM/DD/YYYY)
g. Victim election to be notified under DD Form 2704-1	-Yes -No
25. Was the victim notified of the opportunity for SVC services?	-Yes -No -N/A
a. Has an SVC been provided?	-Yes -No, victim requested SVC -No, victim declined -N/A
26. Did the victim request an expedited transfer?	-Yes -No -N/A
a. If "Yes," action on the expedited transfer:	-Approved -Disapproved
27. Was the victim advised, in accordance with Section 534(b), FY15 NDAA, of victim's right to submit a preference regarding exercise of civilian or military jurisdiction over offenses allegedly committed in the United States?	-Yes -No -N/A



Data Point	Uniform Definition
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a. Victim jurisdiction preference:	-Military -Civilian -N/A
<b>Pretrial</b>	
<i>Pretrial restraint/confinement</i>	
28. Has pretrial restraint/confinement of the accused been imposed?	-Yes -No
a. Type of pretrial restraint/confinement imposed:	-Conditions on liberty -Restriction in lieu of arrest -Arrest -Confinement
b. If "yes," date imposed:	Format (MM/DD/YYYY)
c. Date pretrial restraint/confinement terminated:	Format (MM/DD/YYYY)
<i>Preferral of Charges</i>	
29. Earliest referral date	Format (MM/DD/YYYY)
30. Was there an additional referral?	-Yes -No
a. If "yes," date of additional referral:	Format (MM/DD/YYYY)
31. Offense(s) charged:	DIBRS code (See DODM 7730.47 volume 2)
32. Does any offense involve alcohol and/or illegal use of drugs by the accused?	-N/A -Alcohol only -Illegal use of drugs only -Alcohol AND illegal use of drugs
33. Does any offense involve alcohol and/or illegal use of drugs by a victim?	-N/A -Alcohol only -Illegal use of drugs only -Alcohol AND illegal use of drugs
34. Was a firearm utilized in the commission of an offense?	-Yes -No
<i>Pre-referral judicial proceedings (R.C.M. 309)</i>	
35. Was a pre-referral investigative subpoena requested? If yes, then	-Yes -No
a. Was request granted?	-Yes -No
b. Action by individual subject to subpoena:	-Comply -Seek relief
c. Judge action on a request for relief:	-Ordered to comply -Modify -Quash subpoena
36. Was a pre-referral warrant or order for wire or electronic communications requested?	-Yes -No
a. Was request granted?	-Yes -No
b. Action by individual/service provider subject to warrant or order	-Comply -Seek relief

Data Point	Uniform Definition
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c. Judge action on request for relief:	-Order to comply -Modify -Quash subpoena
<b>Action by Chain of Command</b>	
37. Action by commander not authorized to convene courts-martial (R.C.M. 402). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Forwarded to superior commander for disposition -N/A
a. Date of action	Format (MM/DD/YYYY)
38. Action by commander exercising summary court-martial jurisdiction (R.C.M. 403). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition - Referred to summary court-martial -Preliminary hearing directed under R.C.M. 405 and Article 32
a. Date of action	Format (MM/DD/YYYY)
39. Action by commander exercising special court-martial jurisdiction (R.C.M. 404). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition -Forwarded to superior commander for disposition -Referred to summary court-martial -Referral to an Article 16(c)(2)(A) Special Court-Martial -Referral to Special Court-Martial -Preliminary hearing directed under R.C.M. 405 and Article 32
40. Date of action:	Format (MM/DD/YYYY)
<b>Article 32 Preliminary Hearing (R.C.M. 405)</b>	
41. Was an Article 32 preliminary hearing ordered?	-Yes -No
42. Did appointing authority grant waiver of Article 32 preliminary hearing?	-Yes -No -N/A
a. Date appointing authority acted on waiver request:	Format (MM/DD/YYYY)
43. Date of Article 32 hearing:	-Format (MM/DD/YYYY) -N/A

Data Point	Uniform Definition
44. Were all victims, as defined by R.C.M. 405(g)(1), provided notice of the preliminary hearing?	-Yes -No -N/A
45. Did any victim, as defined by R.C.M. 405(g)(1), testify at the Article 32 preliminary hearing?	-Yes -No -N/A
46. Did any victim file a petition for writ of mandamus with the Court of Criminal Appeals pursuant to Article 6(b), UCMJ?	-Yes -No
47. Action by Court of Criminal Appeals:	-Relief Granted -Relief Denied
48. Date report submitted by Preliminary Hearing Officer (PHO):	Format (MM/DD/YYYY)
49. PHO determination of whether convening authority has court-martial jurisdiction over the accused:	-Yes -No
50. For each Specification, PHO determination of the following:	
a. Is there a recommendation to modify the Specification?	-Yes -No
b. Does the convening authority have court-martial jurisdiction over the offense?	-Yes -No
c. Does the Specification allege an offense?	-Yes -No
d. Does probable cause exist to believe the accused committed the offense?	-Yes -No
51. Did the PHO determine probable cause existed to believe the accused committed additional, uncharged offenses?	-Yes -No
a. If yes, provide offense(s)	DIBRS code
52. Recommendation as to disposition of the case:	-No action -Administrative action -Non-judicial punishment -Referral to Summary Court-Martial -Referral to an Article 16(c)(2)(A) Special Court-Martial -Referral to Special Court-Martial -Referral to General Court-Martial
<b><i>SJA Pretrial Advice (R.C.M. 406)</i></b>	
53. Is Article 34, UCMJ, SJA advice required? If "yes," system must capture the following conclusions by the SJA for each Specification:	-Yes -No
a. Does the Specification allege an offense under the UCMJ?	-Yes -No
b. Is there probable cause to believe the accused committed the offense?	-Yes -No

Data Point	Uniform Definition
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c. Did the SJA recommend dismissal of the specification?	-Yes -No
d. Does the convening authority have court-martial jurisdiction over the offense?	-Yes -No
54. SJA conclusion of whether the convening authority has court-martial jurisdiction over the accused:	-Yes -No
55. SJA disposition recommendation	-No action -Administrative action -Non-judicial punishment -Referral to court-martial
56. Date of Article 34, UCMJ, SJA advice	Format (MM/DD/YYYY)
<i>Referral – Action by the GCMCA</i>	
57. Name of Command/GCMCA	Look up by Unit Identification Code
58. Disposition of each Charge and Specification (R.C.M. 407)	-Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition -Forwarded to superior commander for disposition -Referred to court-martial
59. When referred to court-martial:	
a. Level of court-martial to which charges were referred:	Dropdown: -Summary Court-Martial - Article 16(c)(2)(A) Special Court-Martial -Special Court-Martial -General Court-Martial
b. If referral is to a Special Court-Martial, did the convening authority consult with a judge advocate, iaw R.C.M. 406A?	-Yes -No
60. Was elevated review by the next higher GCMCA triggered? (A situation in which the SJA and GCMCA both concur that a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA, should not be referred to trial)	-Yes -No
a. If yes, decision by reviewing GCMCA:	-Referred charges to court-martial -The decision of the subordinate GCMCA was upheld
b. Date of decision by reviewing GCMCA:	Format (MM/DD/YYYY)
61. Was elevated review by the Secretary of the Military Department/Commandant of the USCG triggered? (Either: 1. The SJA recommends referral and the GCMCA declines referral; OR 2. The SJA and GCMCA both concur with non-referral, but the Service Chief Prosecutor seeks Secretarial/Commandant of USCG review when the non-	-Yes -No

Data Point	Uniform Definition
referral decision involves a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA)	
a. Decision by Secretary of the Military Department/Commandant of the USCG:	-Referred charges to court-martial -The decision of the subordinate GCMCA was upheld
b. Date of decision by Secretary of the Military Department/Commandant of the USCG:	Format (MM/DD/YYYY)
<i>Plea Agreement (R.C.M. 705)</i>	
62. Is there a plea agreement?	-Yes -No
63. Date plea agreement approved:	Format (MM/DD/YYYY)
64. Does the plea agreement contain an Offer to Plead Guilty? If yes, the following shall be answered for each Charge and Specification referred to court-martial	-Yes -No
a. Plea of the accused	-Plea of Guilty -Plea of Guilty to LIO or other offense -Plea of Not Guilty -Withdrawn and/or Dismissed
b. LIO or other offense– Article, UCMJ	DIBRS code
65. If applicable, was the victim, as defined by R.C.M. 705(e)(3)(B), provided the opportunity to submit views concerning the plea agreement?	-Yes -No -N/A
a. Did victim submit views concerning plea agreement?	-Yes -No
b. Date victim submitted views concerning plea agreement:	Format (MM/DD/YYYY)
66. Is there an agreed-upon composition for sentencing?	-Members -Judge -Magistrate judge -No forum agreed upon
67. Is there an agreement to refer to a particular forum?	-Summary Court-Martial - Article 16(c)(2)(A) Special Court-Martial -Special Court-Martial -None
<i>Enlisted Separation/Officer Resignation in Lieu of Court-Martial</i>	
68. Was a request for Separation/Resignation in Lieu of Court-Martial submitted?	-Yes -No
69. Was request approved?	-Yes -No
a. Date request approved/denied:	Format (MM/DD/YYYY)
70. Characterization of Service	Dropdown: -Honorable -General, Under Honorable Conditions -Other than Honorable

Data Point	Uniform Definition
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<i>Inquiry Into Mental Capacity/Mental Responsibility of the Accused (R.C.M. 706)</i>	
71. R.C.M. 706 inquiry requested?	-Yes -No
72. R.C.M. 706 inquiry request approved?	-Yes -No
a. Date R.C.M. 706 inquiry request approved/denied:	Format (MM/DD/YYYY)
73. R.C.M. 706 inquiry completed date:	Format (MM/DD/YYYY)
74. Determination of the R.C.M. 706 inquiry:	
a. As a result of the accused suffering from a severe mental disease or defect, was the accused unable to appreciate the nature and quality or wrongfulness of his or her conduct?	-Yes -No
b. As a result of a present mental disease or defect, is the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently with the defense?	-Yes -No
75. The court found the accused incompetent to stand trial pursuant to R.C.M. 909	-Yes -No -N/A
<b>Trial</b>	
<i>Forum (R.C.M. 903)</i>	
76. Composition of the Court for merits phase:	-Members -Officer members at the accused's election - Members with 1/3 enlisted representation at the accused's election - Military Judge alone - Magistrate judge
<i>Pleas (R.C.M. 910)</i>	
77. Plea(s) of the accused to each Charge and Specification:	-Guilty -Not guilty of an offense as charged, but guilty of a named lesser included offense (LIO) or other offense -Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any -Not guilty
a. In the case of guilty of LIO or other offense:	DIBRS Code
<i>Findings (R.C.M. 918)</i>	
78. Prior to findings, whether the convening authority caused any of the Charges or Specifications to be withdrawn and or dismissed. For each Charge and Specification, as applicable:	-Withdrawn -Withdrawn and dismissed

Data Point	Uniform Definition
79. Mistrial (R.C.M. 915):	-Yes -No
a. If mistrial, date of mistrial:	Format (MM/DD/YYYY)
80. Finding as to each Specification:	-Guilty -Not guilty of an offense as charged, but guilty of a named LIO or other offense -Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any -Not guilty only by reason of lack of mental responsibility -Not guilty -Not guilty pursuant to R.C.M. 917 -Withdrawn and dismissed
81. In the case of guilty of LIO or other offense:	DIBRS code
82. Finding as to each Charge:	-Guilty -Not guilty, but guilty of violation of Article ____ -Not guilty by reason of lack of mental responsibility -Not guilty
83. Date of Findings:	Format (MM/DD/YYYY)
<i>Sentence (if applicable)</i>	
84. Composition of court for sentencing phase:	- Members - Officer members at the accused's election - Members with 1/3 enlisted representation at the accused's election - Military Judge alone - Magistrate judge
85. Did a crime victim of an offense of which the accused has been found guilty exercise his/her right to be heard at the presentencing (R.C.M. 1001(c)) relating to that offense? System must capture victim who exercised right.	-N/A -Yes -No
86. Date sentence adjudged:	Format (MM/DD/YYYY)
87. Sentence adjudged (if sentenced by military judge, for most offenses committed on or after 01 Jan 2019, those parts of the sentence adjudging a fine or confinement, subparagraphs e. and h. below, must be included for each Specification in which there was a finding of guilty). System must capture whether part of sentence was impacted by plea agreement.	
a. No punishment	-No punishment adjudged

Data Point	Uniform Definition
b. Reprimand:	-None adjudged; -Adjudged
c. Reduction to the grade of:	-None adjudged -E-1 -E-2 -E-3 -E-4 -E-5 -E-6 -E-7 -E-8
d. Forfeitures:	-None adjudged -\$ #####.## per month for ## months
e. Fine:	-None adjudged -\$ #####.##
f. Restriction to specific limits:	-None adjudged -## months -## days
g. Hard labor w/out confinement:	-None adjudged -## months -## days
h. Confinement:	-None adjudged -Life without eligibility for parole -Life -## years -## months -## days -FOR JUDGE ALONE: must include "To be served: consecutively or concurrently" if sentence is imposed for more than one specification
i. Punitive discharge:	-None adjudged -Bad-Conduct Discharge -Bad-Conduct Discharge (mandated) -Dishonorable Discharge -Dishonorable Discharge (mandated) -Dismissal
j. Death	-Yes -No
88. Days of pretrial confinement credit:	-## days
89. Days of judicially ordered credit	-## days
90. Total days of credit	-## days
91. Did the military judge recommend a suspension of any portion of the sentence?	-Yes -No
92. Did the Government submit a request to The Judge Advocate General to appeal the sentence either because	-Yes -No



Data Point	Uniform Definition
it violates the law or is plainly unreasonable (Article 56(d), UCMJ, and R.C.M 1117)?	
a. Did any victim, as defined in R.C.M. 1001, submit matters for consideration to The Judge Advocate General	-Yes -No
b. Action by The Judge Advocate General on the Government's request to appeal the sentence:	-Denied -Approved
c. Decision by the Court of Criminal Appeals on Government's appeal of sentence:	-Denied -Set aside and remanded, sentence as adjudged is unlawful -Set aside and remanded, sentence as adjudged is plainly unreasonable
<b>Post-Trial</b>	
<b>Processing Related to Conviction and Sentence</b>	
93. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	-Yes -No
94. Is sex offender registration reporting required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	-Yes -No
95. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	-Yes -No
96. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	-Yes -No
97. Date confinement ordered:	Format (MM/DD/YYYY)
98. Law enforcement agency notified of disposition for criminal indexing purposes:	-Yes -No
<b>Deferment and Waiver (R.C.M 1103)</b>	
99. Deferment:	-N/A -Deferment requested by accused, approved -Deferment requested by accused, denied -Deferment of confinement ordered without request from accused
100. Date of action on deferment:	Format (MM/DD/YYYY)
101. Did the convening authority waive automatic forfeitures by operation of Article 58(b), UCMJ?	-Yes -No
<b>Post-trial Motions and Proceedings (R.C.M. 1104)</b>	
102. Did any post-trial Article 39(a) sessions occur?	-Yes -No
103. Did any post-trial Article 39(a) impact any part of the findings or sentence?	-Yes -No
<b>Post-trial Action by the Convening Authority</b>	
104. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided,	-Yes -No

Data Point	Uniform Definition
upon request, to the accused or accused's counsel (R.C.M. 1106)?	
105. Accused action regarding submission of matters pursuant to R.C.M. 1106:	-Submitted -Expressly waived right to submit matters -Failed to submit matters
106. Was notice provided to all qualifying crime victims of their right to submit matters pursuant to R.C.M. 1106A (DD Form 2703)? Must capture by victim.	-N/A -Yes -No
107. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided, upon request, to any qualifying victim (R.C.M. 1106A)? System must capture each victim provided.	-Yes -No
108. Were matters submitted by crime victims pursuant to R.C.M. 1106A? System must capture each victim who submitted matters.	-N/A -Yes -No
109. Was any portion of the sentence suspended or remitted by the convening authority prior to the entry of judgment (R.C.M. 1107)?	-Yes -No
a. If the convening authority suspended any portion of the sentence, was that suspension later vacated (R.C.M. 1108)?	-Yes -No
b. Were any victims of the underlying offense(s) for which the probationer received a suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, provided notice of the vacation hearing?	-N/A -Yes -No
110. Did the convening authority take any action impacting a finding of guilty, pursuant to R.C.M. 1110?	-Yes -No
111. Did the convening authority take any action impacting a portion of the sentence, pursuant to R.C.M. 1109 and/or 1110?	-Yes -No
<b>Entry of Judgment (R.C.M. 1111)</b>	
112. Date of Entry of Judgment:	Format (MM/DD/YYYY)
113. Date copy of Entry of Judgment provided to accused:	Format (MM/DD/YYYY)
114. Was a copy of the Entry of Judgment provided to any crime victim or crime victim's counsel, upon request?	-N/A -Yes -No
<b>Preparation and Forwarding to Court of Criminal Appeals</b>	
115. Type of Transcript Prepared (R.C.M. 1114):	-Transcript not prepared -Verbatim -Summarized
116. Date record of trial certified as containing all required contents pursuant to R.C.M. 1112(b):	Format (MM/DD/YYYY)
117. Date copy of certified record of trial was provided to accused or counsel (R.C.M. 1112(e)):	Format (MM/DD/YYYY)

Data Point	Uniform Definition
118. Date copy of certified record of trial was provided to victim, or counsel for the victim, of an offense of which the accused was charged if the victim testified during the proceedings (R.C.M. 1112(e)):	Format (MM/DD/YYYY)
119. Date copy of certified record of trial was provided to any victim, or counsel for any victim, named in a Specification of which the accused was charged, upon request, without regard to the findings of the court-martial (R.C.M. 1112(e)):	Format (MM/DD/YYYY)
120. Date certified record of trial forwarded to appropriate reviewing authority:	Format (MM/DD/YYYY)
<b><i>Waiver or Withdrawal of Appellate Review (R.C.M. 1115)</i></b>	
121. Date waiver or withdrawal submitted by accused:	-N/A -Format (MM/DD/YYYY)
122. Determination of review in cases in which the accused has waived or withdrawn appellate review (R.C.M. 1201):	
a. Whether the court had jurisdiction over the accused and the offense	-Yes -No
b. Whether each charge and specification stated an offense	-Yes -No
c. Whether the sentence was within the limits prescribed as a matter of law	-Yes -No
d. Date of review:	Format (MM/DD/YYYY)
<b><i>Review by The Judge Advocate General</i></b>	
123. For each certified record of trial received by The Judge Advocate General pursuant to R.C.M. 1201 and Article 69, UCMJ, the following determinations will be made:	
a. Whether the court had jurisdiction over the accused and the offense	-Yes -No
b. Whether each charge and specification stated an offense	-Yes -No
c. Whether the sentence was within the limits prescribed as a matter of law	-Yes -No
d. Whether the response contained any response to an allegation of error made in writing by the accused	-Yes -No
124. Was a remedy granted by The Judge Advocate General?	-Yes -No
125. Date accused notified of results of review conducted by The Judge Advocate General:	Format (MM/DD/YYYY)
a. Date application submitted for relief to The Judge Advocate General after final review (R.C.M. 1201(h))	-N/A - Format (MM/DD/YYYY)
126. Action by The Judge Advocate General upon an application for relief	-N/A -Relief granted -Relief denied

Data Point	Uniform Definition
127. Was any remission or suspension of any unexecuted portion of any sentence by The Judge Advocate General pursuant to R.C.M. 1201(i) and Article 74, UCMJ?	-Yes -No
128. Date action taken by The Judge Advocate General under R.C.M. 1201(h) or (j) referred or submitted to or requested by the Court of Criminal Appeals (R.C.M. 1201(k)):	-N/A -Format (MM/DD/YYYY)
129. Action taken by the Court of Criminal Appeals upon such a referral or submission:	-Affirmed -Reversed
a. Date of Action by the Court of Criminal Appeals:	Format (MM/DD/YYYY)
<i>Review by Court of Criminal Appeals (R.C.M. 1203)</i>	
130. Court of Criminal Appeals determined accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings:	-Yes -No
131. Action on findings of guilty, by Charge and its Specification(s)	-Affirmed -Affirmed in part, remanded -Affirmed in part, dismissed -Reversed
132. Action on sentence	-Affirmed -Affirmed in part, remanded -Affirmed in part, reassessed -Set aside, remanded -Set aside, reassessed
133. Date of opinion of the Criminal Court of Appeals	Format (MM/DD/YYYY)
134. Date accused notified of opinion of the Criminal Court of Appeals	Format (MM/DD/YYYY)
135. Decision of the Criminal Court of Appeals upon a request for reconsideration	-N/A -Denied -Granted
136. Decision upon reconsideration:	-N/A -Relief denied -Relief granted
137. Date of certification by The Judge Advocate General to the Court of Appeals for the Armed Forces (C.A.A.F.):	-N/A -Format (MM/DD/YYYY)
138. Date of petition by accused to C.A.A.F.:	-N/A -Format (MM/DD/YYYY)
139. Date record of trial forwarded to C.A.A.F.:	-N/A -Format (MM/DD/YYYY)
<i>Review by the Court of Appeals for the Armed Forces (R.C.M. 1204)</i>	
140. Action on petition by the accused for review:	-Denied -Granted
141. Date of action on petition:	Format (MM/DD/YYYY)
142. Opinion of the Court of Appeals for the Armed Forces (C.A.A.F.) regarding findings and sentence:	-Affirmed -Affirmed in part, remanded -Affirmed in part, dismissed -Reversed
143. Date of opinion of C.A.A.F.	Format (MM/DD/YYYY)

Data Point	Uniform Definition
144. Decision of C.A.A.F. upon a request for reconsideration	-N/A -Denied -Granted
a. Date of decision on request for reconsideration	Format (MM/DD/YYYY)
145. Decision of C.A.A.F. upon reconsideration	-Relief denied -Relief granted
a. Date of reconsideration decision:	Format (MM/DD/YYYY)
<i>Review by the Supreme Court of the United States (R.C.M. 1205)</i>	
146. Date petition for writ of certiorari filed:	-N/A -Format (MM/DD/YYYY)
147. Petition for writ of certiorari filed by:	-United States -Accused
148. Action on petition for writ of certiorari:	-N/A -Denied -Granted
149. Date of action on petition for writ of certiorari	Format (MM/DD/YYYY)
150. If certiorari was granted, was the C.A.A.F. opinion summarily vacated and remanded?	-Yes -No
151. If certiorari was granted, was briefing ordered?	-Yes -No
152. If certiorari was granted, was oral argument held?	-Yes -No
153. If certiorari was granted, the outcome was:	-Dismissed as improvidently granted -Affirmed -Affirmed in part, reversed in part -Reversed -Other
<i>Action by the Service Secretary</i>	
154. Upon final judgment involving the dismissal of a commissioned officer, cadet, or midshipmen, action by the Service Secretary or designee	-Approved and ordered executed -Substituted, for good cause, for an administrative form of discharge -Remitted -Suspended
a. Date of action on the dismissal	Format (DD/MM/YYYY)
<i>Action by the President of the United States</i>	
155. Action upon a sentence to death by the President	-Approved -Commutated to life without eligibility for parole -Commutated to life -Commutated to confinement for a term of years
a. Date of action by the President	Format (MM/DD/YYYY)



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

JUN 3 3 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

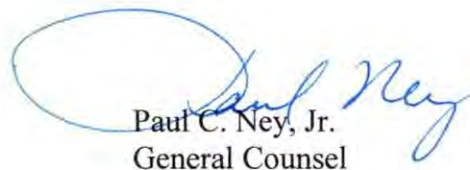
SUBJECT: Recording Court-Martial Demographic Information

Pursuant to section 540I(b)(1) of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1198 (2019), and DoD Directive 5145.01, I prescribe the following minimum standards for recording demographic information in connection with courts-martial. A Military Department or Military Service is authorized to prescribe standards requiring the collection of demographic information in addition to that required by this memorandum.

For each court-martial conducted by a Military Service within the Department of Defense convened on or after June 17, 2020:

- (1) The applicable Military Department will record the race, ethnicity, and gender of the victim and the accused.
- (2) The applicable Military Department or Military Service will include the above-required information in the annual military justice report it submits pursuant to Article 146a of the Uniform Code of Military Justice, 10 U.S.C. § 946a.

In carrying out this requirement, the Military Departments will apply the definitions of race and ethnicity established by Office of Management and Budget Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.



Paul C. Ney, Jr.  
General Counsel

cc:

Under Secretary of Defense for Personnel and Readiness  
Judge Advocates General of the Military Departments  
Staff Judge Advocate to the Commandant of the Marine Corps  
Judge Advocate General of the Coast Guard



**OFFICE OF MANAGEMENT AND BUDGET****Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity**

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

**ACTION:** Notice of decision.

**SUMMARY:** By this Notice, OMB is announcing its decision concerning the revision of Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. OMB is accepting the recommendations of the Interagency Committee for the Review of the Racial and Ethnic Standards with the following two modifications: (1) the Asian or Pacific Islander category will be separated into two categories—"Asian" and "Native Hawaiian or Other Pacific Islander," and (2) the term "Hispanic" will be changed to "Hispanic or Latino."

The revised standards will have five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There will be two categories for data on ethnicity: "Hispanic or Latino" and "Not Hispanic or Latino."

The Supplementary Information in this Notice provides background information on the standards (Section A); a summary of the comprehensive review process that began in July 1993 (Section B); a brief synopsis of the public comments OMB received on the recommendations for changes to the standards in response to the July 9, 1997, **Federal Register** Notice (Section C); OMB's decisions on the specific recommendations of the Interagency Committee (Section D); and information on the work that is underway on tabulation issues associated with the reporting of multiple race responses (Section E).

The revised standards for the classification of Federal data on race and ethnicity are presented at the end of this notice; they replace and supersede Statistical Policy Directive No. 15.

**EFFECTIVE DATE:** The new standards will be used by the Bureau of the Census in the 2000 decennial census. Other Federal programs should adopt the standards as soon as possible, but not later than January 1, 2003, for use in household surveys, administrative forms and records, and other data collections. In addition, OMB has

approved the use of the new standards by the Bureau of the Census in the "Dress Rehearsal" for Census 2000 scheduled to be conducted in March 1998.

**ADDRESSES:** Please send correspondence about OMB's decision to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503; fax: (202) 395-7245.

**ELECTRONIC AVAILABILITY AND ADDRESSES:** This **Federal Register** Notice and the related OMB Notices of June 9, 1994, August 28, 1995, and July 9, 1997, are available electronically from the OMB Homepage on the World Wide Web: <<<http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html>>>.

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**FOR FURTHER INFORMATION CONTACT:** Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, N.W., Washington, D.C. 20503; telephone: (202) 395-3093; fax (202) 395-7245.

**SUPPLEMENTARY INFORMATION:****A. Background**

For more than 20 years, the current standards in OMB's Statistical Policy Directive No. 15 have provided a common language to promote uniformity and comparability for data on race and ethnicity for the population groups specified in the Directive. They were developed in cooperation with Federal agencies to provide consistent data on race and ethnicity throughout the Federal Government. Development of the data standards stemmed in large measure from new responsibilities to enforce civil rights laws. Data were needed to monitor equal access in housing, education, employment, and other areas, for populations that historically had experienced discrimination and differential treatment because of their race or

ethnicity. The standards are used not only in the decennial census (which provides the data for the "denominator" for many measures), but also in household surveys, on administrative forms (e.g., school registration and mortgage lending applications), and in medical and other research. The categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups in this country, and are not anthropologically or scientifically based.

**B. Comprehensive Review Process**

Particularly since the 1990 census, the standards have come under increasing criticism from those who believe that the minimum categories set forth in Directive No. 15 do not reflect the increasing diversity of our Nation's population that has resulted primarily from growth in immigration and in interracial marriages. In response to the criticisms, OMB announced in July 1993 that it would undertake a comprehensive review of the current categories for data on race and ethnicity.

This review has been conducted over the last four years in collaboration with the Interagency Committee for the Review of the Racial and Ethnic Standards, which OMB established in March 1994 to facilitate the participation of Federal agencies in the review. The members of the Interagency Committee, from more than 30 agencies, represent the many and diverse Federal needs for data on race and ethnicity, including statutory requirements for such data. The Interagency Committee developed the following principles to govern the review process:

1. The racial and ethnic categories set forth in the standards should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance. To assure they are reliable, meaningful, and understood by respondents and observers, the racial and ethnic categories set forth in the standard should be developed using

appropriate scientific methodologies, including the social sciences.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicative, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any federal program.

6. The standards should be developed to meet, at a minimum, Federal legislative and programmatic requirements. Consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents; public and private costs to implement the revisions should be a factor in the decision.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

12. Time will be allowed to phase in any new categories. Agencies will not be required to update historical records.

13. The new directive should be applicable throughout the U.S. Federal statistical system. The standard or standards must be usable for the decennial census, current surveys, and administrative records, including those using observer identification.

The principal objective of the review has been to enhance the accuracy of the demographic information collected by the Federal Government. The starting point for the review was the minimum set of categories for data on race and ethnicity that have provided information for more than 20 years for a variety of purposes, and the recognition of the importance of being able to maintain this historical continuity. The review process has had two major elements: (1) public comment on the present standards, which helped to identify concerns and provided numerous suggestions for changing the standards; and (2) research and testing related to assessing the possible effects of suggested changes on the quality and usefulness of the resulting data.

Public input, the first element of the review process, was sought through a variety of means: (1) During 1993, Congressman Thomas C. Sawyer, then Chairman of the House Subcommittee on Census, Statistics, and Postal Personnel, held four hearings that included 27 witnesses, focusing particularly on the use of the categories in the 2000 census. (2) At the request of OMB, the National Academy of Sciences' Committee on National Statistics (CNSTAT) conducted a workshop in February 1994 to articulate issues surrounding a review of the categories. The workshop included representatives of Federal agencies, academia, social science research institutions, interest groups, private industry, and a local school district. (A summary of the workshop, *Spotlight on Heterogeneity: The Federal Standards for Racial and Ethnic Classification*, is available from CNSTAT, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.) (3) On June 9, 1994, OMB published a **Federal Register** (59 FR 29831–29835) Notice that contained background information on the development of the current standards and requested public comment on: the adequacy of current racial and ethnic categories; the principles that should govern any proposed revisions to the standards; and specific suggestions for change that had been offered by individuals and interested groups over a period of several years. In response, OMB received nearly 800 letters. As part of this comment period and to bring the review closer to the public, OMB also heard testimony from 94 witnesses at hearings held during July 1994 in Boston, Denver, San Francisco, and Honolulu. (4) In an August 28, 1995, **Federal Register** (60 FR 44674–44693) Notice, OMB provided an interim report

on the review process, including a summary of the comments on the June 1994 **Federal Register** Notice, and offered a final opportunity for comment on the research to be conducted during 1996. (5) OMB staff have also discussed the review process with various interested groups and have made presentations at numerous meetings.

The second element of the review process involved research and testing of various proposed changes. The categories in OMB's Directive No. 15 are used not only to produce data on the demographic characteristics of the population, but also to monitor civil rights enforcement and program implementation. Research was undertaken to provide an objective assessment of the data quality issues associated with various approaches to collecting data on race and ethnicity. To that end, the Interagency Committee's Research Working Group, co-chaired by the Bureau of the Census and the Bureau of Labor Statistics, reviewed the various criticisms and suggestions for changing the current categories, and developed a research agenda for some of the more significant issues that had been identified. These issues included how to collect data on persons who identify themselves as "multiracial"; whether to combine race and Hispanic origin in one question or have separate questions on race and Hispanic origin; whether to combine the concepts of race, ethnicity, and ancestry; whether to change the terminology used for particular categories; and whether to add new categories to the current minimum set.

Because the mode of data collection can have an effect on how a person responds, the research agenda proposed studies both in surveys using in-person or telephone interviews and in self-administered questionnaires, such as the decennial census, which are filled out by the respondent and mailed back. Cognitive interviews were conducted with various groups to provide guidance on the wording of the questions and the instructions for the tests and studies.

The research agenda included several major national tests, the results of which are discussed throughout the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15*: (1) In May 1995, the Bureau of Labor Statistics (BLS) sponsored a Supplement on Race and Ethnicity to the Current Population Survey (CPS). The findings were made available in a 1996 report, *Testing Methods of Collecting Racial and Ethnic Information: Results of the Current Population Survey Supplement on Race*



and *Ethnicity*, available from BLS, 2 Massachusetts Avenue, N.E., Room 4915, Postal Square Building, Washington, D.C. 20212, or by calling 202-606-7375. The results were also summarized in an October 26, 1995, news release, which is available electronically at <<<http://stats.bls.gov/news.release/ethnic.toc.htm>>>. (2) The Bureau of the Census, as part of its research for the 2000 census, tested alternative approaches to collecting data on race and ethnicity in the March 1996 National Content Survey (NCS). The Census Bureau published the results in a December 1996 report, *Findings on Questions on Race and Hispanic Origin Tested in the 1996 National Content Survey*; highlights of the report are available at <<<http://www.census.gov/population/www/socdemo/96natcontentsurvey.html>>>. (3) In June 1996, the Census Bureau conducted the Race and Ethnic Targeted Test (RAETT), which was designed to permit assessments of the effects of possible changes on smaller populations not reliably measured in national samples, including American Indians, Alaska Natives, detailed Asian and Pacific Islander groups (such as Chinese and Hawaiians), and detailed Hispanic groups (such as Puerto Ricans and Cubans). The Census Bureau released the results in a May 1997 report, *Results of the 1996 Race and Ethnic Targeted Test*; highlights of the report are available at <<<http://www.census.gov/population/www/documentation/twps-0018.html>>>. Single copies (paper) of the NCS and RAETT reports may be obtained from the Population Division, U.S. Bureau of the Census, Washington, D.C. 20233; telephone 301-457-2402.

In addition to these three major tests, the National Center for Education Statistics (NCES) and the Office for Civil Rights in the Department of Education jointly conducted a survey of 1,000 public schools to determine how schools collect data on the race and ethnicity of their students and how the administrative records containing these data are maintained to meet statutory requirements for reporting aggregate information to the Federal Government. NCES published the results in a March 1996 report, *Racial and Ethnic Classifications Used by Public Schools* (NCES 96-092). The report is available electronically at <<<http://nces.ed.gov/pubs/96092.html>>>. Single paper copies may be obtained from NCES, 555 New Jersey, NW, Washington, D.C. 20208-5574, or by calling 202-219-1442.

The research agenda also included studies conducted by the National Center for Health Statistics, the Office of the Assistant Secretary for Health, and

the Centers for Disease Control and Prevention to evaluate the procedures used and the quality of the information on race and ethnicity in administrative records such as that reported on birth certificates and recorded on death certificates.

On July 9, 1997, OMB published a **Federal Register** Notice (62 FR 36874-36946) containing the Interagency Committee's *Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15*. The Notice made available for comment the Interagency Committee's recommendations for how OMB should revise Directive No. 15. The report consists of six chapters. Chapter 1 provides a brief history of Directive No. 15, a summary of the issues considered by the Interagency Committee, a review of the research activities, and a discussion of the criteria used in conducting the evaluation. Chapter 2 discusses a number of general concerns that need to be addressed when considering any changes to the current standards. Chapters 3 through 5 report the results of the research as they bear on the more significant suggestions OMB received for changes to Directive No. 15. Chapter 6 gives the Interagency Committee's recommendations concerning the various suggested changes based on a review of public comments and testimony and the research results.

### C. Summary of Comments Received on the Interagency Committee's Recommendations

In response to the July 9, 1997, **Federal Register** Notice, OMB received approximately 300 letters (many of them hand written) on a variety of issues, plus approximately 7000 individually signed and mailed, preprinted postcards on the issue of classifying data on Native Hawaiians, and about 500 individually signed form letters from members of the Hapa Issues Forum in support of adopting the recommendation for multiple race reporting. Some of the 300 letters focused on a single recommendation of particular interest to the writer, while other letters addressed a number of the recommendations. The preponderance of the comments were from individuals. Each comment was considered in preparing OMB's decision.

#### 1. Comments on Recommendations Concerning Reporting More Than One Race

The Interagency Committee recommended that, when self-identification is used, respondents who wish to identify their mixed racial

heritage should be able to mark or select more than one of the racial categories originally specified in Directive No. 15, but that there should not be a "multiracial" category. This recommendation to report multiple races was favorably received by most of those commenting on it, including associations and organizations such as the American Medical Association, the National Education Association, the National Council of La Raza, and the National Committee on Vital and Health Statistics, as well as all Federal agencies that responded. Comments from some organizations, such as the NAACP Legal Defense and Educational Fund, the Lawyers' Committee for Civil Rights Under Law, and the Equal Employment Advisory Council, were receptive to the recommendation on multiple race responses, but expressed reservations pending development of tabulation methods to ensure the utility of these data. The recommendation was also supported by many of the advocacy groups that had earlier supported a "multiracial" (box) category, such as the Association of MultiEthnic Americans and its affiliates nationwide. Several individuals wrote in support of "multiple race" reporting, basing their comments on a September 1997 article, "What Race Am I?" in *Mademoiselle* magazine, which urged its readers "to express an opinion on whether or not a 'Multiracial' category should be included in all federal recordkeeping, including the 2000 census." A few comments specifically favoring multiple race responses suggested that respondents should also be asked to indicate their primary racial affiliation in order to facilitate the tabulation of responses. A handful of comments on multiple race reporting suggested that individuals with both Hispanic and non-Hispanic heritages be permitted to mark or select both categories (see discussion below).

A few comments, in particular some from state agencies and legislatures, opposed any multiple race reporting because of possible increased costs to collect the information and implementation problems. Comments from the American Indian tribal governments also were opposed to the recommendation concerning reporting more than one race. A number of the comments that supported multiple race responses also expressed concern about the cost and burden of collecting the information to meet Federal reporting requirements, the schedule for implementation, and how the data would be tabulated to meet the requirements of legislative redistricting

and enforcement of the Voting Rights Act. A few comments expressed support for categories called "human," or "American"; several proposed that there be no collection of data on race.

#### *2. Comments on Recommendation for Classification of Data on Native Hawaiians*

The Interagency Committee recommended that data on Native Hawaiians continue to be classified in the Asian or Pacific Islander category. This recommendation was opposed by the Hawaiian congressional delegation, the 7,000 individuals who signed and sent preprinted yellow postcards, the State of Hawaii departments and legislature, Hawaiian organizations, and other individuals who commented on this recommendation. Instead, the comments from these individuals supported reclassifying Native Hawaiians in the American Indian or Alaska Native category, which they view as an "indigenous peoples" category (although this category has not been considered or portrayed in this manner in the standards). Native Hawaiians, as the descendants of the original inhabitants of what is now the State of Hawaii, believe that as indigenous people they should be classified in the same category as American Indians and Alaska Natives. On the other hand, the American Indian tribal governments have opposed such a reclassification, primarily because they view the data obtained from that category as being essential for administering Federal programs for American Indians. Comments from the Native Hawaiians also noted the Asian or Pacific Islander category provides inadequate data for monitoring the social and economic conditions of Native Hawaiians and other Pacific Islander groups. Because the Interagency Committee had recommended against adding categories to the minimum set of categories, requesting a separate category for Native Hawaiians was not viewed as an option by those who commented.

#### *3. Comments on Recommendation Concerning Classification of Data on Central and South American Indians*

The Interagency Committee recommended that data for Central and South American Indians be included in the American Indian or Alaska Native category. Several comments from the American Indian community opposed this recommendation. Moreover, comments from some Native Hawaiians pointed out what they believed to be an inconsistency in the Interagency Committee's recommendation to

include in the American Indian or Alaska Native category descendants of Central and South American Indians—persons who are not original peoples of the United States—if Native Hawaiians were not to be included.

#### *4. Comments on Recommendation Not to Add an Arab or Middle Eastern Ethnic Category*

The Interagency Committee recommended that an Arab or Middle Eastern ethnic category should not be added to the minimum standards for all reporting of Federal data on race and ethnicity. Several comments were received in support of having a separate category in order to have data viewed as necessary to monitor discrimination against this population.

#### *5. Comments on Recommendations for Terminology*

Comments on terminology largely supported the Interagency Committee's recommendations to retain the term "American Indian," to change "Hawaiian" to "Native Hawaiian," and to change "Black" to "Black or African American." There were a few requests to include "Latino" in the category name for the Hispanic population.

#### **D. OMB's Decisions**

This section of the Notice provides information on the decisions taken by OMB on the recommendations that were proposed by the Interagency Committee. The Committee's recommendations addressed options for reporting by respondents, formats of questions, and several aspects of specific categories, including possible additions, revised terminology, and changes in definitions. In reviewing OMB's decisions on the recommendations for collecting data on race and ethnicity, it is useful to remember that these decisions:

- retain the concept that the standards provide a *minimum* set of categories for data on race and ethnicity;
- permit the collection of more detailed information on population groups provided that any additional categories can be aggregated into the minimum standard set of categories;
- underscore that self-identification is the preferred means of obtaining information about an individual's race and ethnicity, except in instances where observer identification is more practical (e.g., completing a death certificate);
- do *not* identify or designate certain population groups as "minority groups";
- continue the policy that the categories are *not* to be used for determining the eligibility of population

groups for participation in any Federal programs;

- do *not* establish criteria or qualifications (such as blood quantum levels) that are to be used in determining a particular individual's racial or ethnic classification; and
- do *not* tell an individual who he or she is, or specify how an individual should classify himself or herself.

In arriving at its decisions, OMB took into account not only the public comment on the recommendations published in the **Federal Register** on July 9, 1997, but also the considerable amount of information provided during the four years of this review process, including public comments gathered from hearings and responses to two earlier OMB Notices (on June 9, 1994, and August 28, 1995). The OMB decisions benefited greatly from the participation of the public that served as a constant reminder that there are real people represented by the data on race and ethnicity and that this is for many a deeply personal issue. In addition, the OMB decisions benefited from the results of the research and testing on how individuals identify themselves that was undertaken as part of this review process. This research, including several national tests of alternative approaches to collecting data on race and ethnicity, was developed and conducted by the professional statisticians and analysts at several Federal agencies. They are to be commended for their perseverance, dedication, and professional commitment to this challenging project.

OMB also considered in reaching its decisions the extent to which the recommendations were consistent with the set of principles (see Section B of the Supplementary Information) developed by the Interagency Committee to guide the review of this sensitive and substantively complex issue. OMB believes that the Interagency Committee's recommendations took into account the principles and achieved a reasonable balance with respect to statistical issues, data needs, social concerns, and the personal dimensions of racial and ethnic identification. OMB also finds that the Committee's recommendations are consistent with the principal objective of the review, which is to enhance the accuracy of the demographic information collected by the Federal Government by having categories for data on race and ethnicity that will enable the capture of information about the increasing diversity of our Nation's population while at the same time respecting each individual's dignity.

As indicated in detail below, OMB accepts the Interagency Committee's recommendations concerning reporting more than one race, including the recommendation that there be no category called "multiracial," the formats and sequencing of the questions on race and Hispanic origin, and most of the changes to terminology.

OMB does not accept the Interagency Committee's recommendations concerning the classification of data on the Native Hawaiian population and the terminology for Hispanics, and it has instead decided to make the changes that follow.

**Native Hawaiian classification.**—OMB does not accept the recommendation concerning the continued classification of Hawaiians in the Asian or Pacific Islander category. *Instead, OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander."* As a result, there will be five categories in the minimum set for data on race.

*The "Native Hawaiian or Other Pacific Islander" category will be defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands."* (The term "Native Hawaiian" does not include individuals who are native to the State of Hawaii by virtue of being born there.) In addition to Native Hawaiians, Guamanians, and Samoans, this category would include the following Pacific Islander groups reported in the 1990 census: Carolinian, Fijian, Kosraean, Melanesian, Micronesian, Northern Mariana Islander, Palauan, Papua New Guinean, Ponapean (Pohnpelan), Polynesian, Solomon Islander, Tahitian, Tarawa Islander, Tokelauan, Tongan, Trukese (Chuukese), and Yapese.

*The "Asian" category will be defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."*

The Native Hawaiians presented compelling arguments that the standards must facilitate the production of data to describe their social and economic situation and to monitor discrimination against Native Hawaiians in housing, education, employment, and other areas. Under the current standards for data on race and ethnicity, Native Hawaiians comprise about three percent of the Asian and Pacific Islander population. By creating separate categories, the data on the Native

Hawaiians and other Pacific Islander groups will no longer be overwhelmed by the aggregate data of the much larger Asian groups. Native Hawaiians will comprise about 60 percent of the new category.

The Asian, Native Hawaiian, and Pacific Islander population groups are well defined; moreover, there has been experience with reporting in separate categories for the Native Hawaiian and Pacific Islander population groups. The 1990 census included "Hawaiian," "Samoaan," and "Guamanian" as response categories to the race question. In addition, two of the major tests conducted as part of the current review (the NCS and the RAETT) used "Hawaiian" and/or "Native Hawaiian," "Samoaan," "Guamanian," and "Guamanian or Chamorro" as response options to the race question. These factors facilitate breaking apart the current category.

**Terminology for Hispanics.**—OMB does not accept the recommendation to retain the single term "Hispanic." *Instead, OMB has decided that the term should be "Hispanic or Latino."* Because regional usage of the terms differs—Hispanic is commonly used in the eastern portion of the United States, whereas Latino is commonly used in the western portion—this change may contribute to improved response rates.

The OMB decisions on the Interagency Committee's specific recommendations are presented below:

(1) OMB accepts the following recommendations concerning reporting more than one race:

- *When self-identification is used, a method for reporting more than one race should be adopted.*
- *The method for respondents to report more than one race should take the form of multiple responses to a single question and not a "multiracial" category.*
- *When a list of races is provided to respondents, the list should not contain a "multiracial" category.*
- *Based on research conducted so far, two recommended forms for the instruction accompanying the multiple response question are "Mark one or more \* \* \*" and "Select one or more \* \* \*"*
- *If the criteria for data quality and confidentiality are met, provision should be made to report, at a minimum, the number of individuals identifying with more than one race. Data producers are encouraged to provide greater detail about the distribution of multiple responses.*
- *The new standards will be used in the decennial census, and other data producers should conform as soon as*

*possible, but not later than January 1, 2003.*

(2) OMB accepts the following recommendations concerning a combined race and Hispanic ethnicity question:

- *When self-identification is used, the two question format should be used, with the race question allowing the reporting of more than one race.*
- *When self-identification is not feasible or appropriate, a combined question can be used and should include a separate Hispanic category co-equal with the other categories.*
- *When the combined question is used, an attempt should be made, when appropriate, to record ethnicity and race or multiple races, but the option to indicate only one category is acceptable.*

(3) OMB accepts the following recommendations concerning the retention of both reporting formats:

- *The two question format should be used in all cases involving self-identification.*
- *The current combined question format should be changed and replaced with a new format which includes a co-equal Hispanic category for use, if necessary, in observer identification.*

(4) OMB accepts the following recommendation concerning the ordering of the Hispanic origin and race questions:

- *When the two question format is used, the Hispanic origin question should precede the race question.*

(5) OMB accepts the following recommendation concerning adding Cape Verdean as an ethnic category:

- *A Cape Verdean ethnic category should not be added to the minimum data collection standards.*

(6) OMB accepts the following recommendation concerning the addition of an Arab or Middle Eastern ethnic category:

- *An Arab or Middle Eastern ethnic category should not be added to the minimum data standards.*

(7) OMB interprets the recommendation not to add any other categories to mean the expansion of the minimum set to include new population groups. The OMB decision to break apart the "Asian or Pacific Islander" category does not create a category for a new population group.

(8) OMB accepts the following recommendation concerning changing the term "American Indian" to "Native American":

- *The term American Indian should not be changed to Native American.*

(9) OMB accepts the following recommendation concerning changing the term "Hawaiian" to "Native Hawaiian":

- The term "Hawaiian" should be changed to "Native Hawaiian."

(10) OMB does not accept the recommendation concerning the continued classification of Native Hawaiians in the Asian or Pacific Islander category.

- OMB has decided to break apart the Asian or Pacific Islander category into two categories—one called "Asian" and the other called "Native Hawaiian or Other Pacific Islander." As a result, there are five categories in the minimum set for data on race.

- The "Native Hawaiian or Other Pacific Islander" category is defined as "A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands."

- The "Asian" category is defined as "A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."

(11) OMB accepts the following recommendations concerning the use of "Alaska Native" instead of "Eskimo" and "Aleut": "Alaska Native" should replace the term "Alaskan Native."

- Alaska Native should be used instead of Eskimo and Aleut.

- The Alaska Native response option should be accompanied by a request for tribal affiliation when possible.

(12) OMB accepts the following recommendations concerning the classification of Central and South American Indians:

- Central and South American Indians should be classified as American Indian.

- The definition of the "American Indian or Alaska Native" category should be modified to include the original peoples from Central and South America.

- In addition, OMB has decided to make the definition for the American Indian or Alaska Native category more consistent with the definitions of the other categories.

(13) OMB accepts the following recommendations concerning the term or terms to be used for the name of the Black category:

- The name of the Black category should be changed to "Black or African American."

- The category definition should remain unchanged.

- Additional terms, such as Haitian or Negro, can be used if desired.

(14) OMB decided to modify the recommendations concerning the term or terms to be used for Hispanic:

- The term used should be "Hispanic or Latino."

- The definition of the category should remain unchanged.

- In addition, the term "Spanish Origin," can be used if desired.

Accordingly, the Office of Management and Budget adopts and issues the revised minimum standards for Federal data on race and ethnicity for major population groups in the United States which are set forth at the end of this Notice.

#### Topics for Further Research

There are two areas where OMB accepts the Interagency Committee's recommendations but believes that further research is needed: (1) multiple responses to the Hispanic origin question and (2) an ethnic category for Arabs/Middle Easterners.

**Multiple Responses to the Hispanic Origin Question.**—The Interagency Committee recommended that respondents to Federal data collections should be permitted to report more than one race. During the most recent public comment process, a few comments suggested that the concept of "marking more than one box" should be extended to the Hispanic origin question. Respondents are now asked to indicate if they are "of Hispanic origin" or "not of Hispanic origin." Allowing individuals to select more than one response to the ethnicity question would provide the opportunity to indicate ethnic heritage that is both Hispanic and non-Hispanic.

The term "Hispanic" refers to persons who trace their origin or descent to Mexico, Puerto Rico, Cuba, Central and South America, and other Spanish cultures. While there has been considerable public concern about the need to review Directive No. 15 with respect to classifying individuals of mixed racial heritage, there has been little comment on reporting both an Hispanic and a non-Hispanic origin. On many Federal forms, Hispanics can also express a racial identity on a separate race question. In the decennial census, individuals who consider themselves part Hispanic can also indicate additional heritages in the ancestry question.

On one hand, it can be argued that allowing individuals to mark both categories in the Hispanic origin question would parallel the instruction "to mark (or select) one or more" racial categories. Individuals would not have to choose between their parents' ethnic heritages, and movement toward an increasingly diverse society would be recognized.

On the other hand, because the matter of multiple responses to the Hispanic ethnicity question was not raised in the

early phases of the public comment process, no explicit provisions were made for testing this approach in the research conducted to inform the review of Directive No. 15. While a considerable amount of research was focused on how to improve the response rate to the Hispanic origin question, it is unclear whether and to what extent explicitly permitting multiple responses to the Hispanic origin question would affect nonresponse to the race question or hamper obtaining more detailed data on Hispanic population groups.

Information on the possible impact of any changes on the quality of the data has been an essential element of the review. While the effects of changes in the Hispanic origin question are unknown, they could conceivably be substantial. Thus, OMB has decided *not* to include a provision in the standards that would explicitly permit respondents to select both "Hispanic origin" and "Not of Hispanic Origin" options. OMB believes that this is an item for future research. In the meantime, the ancestry question on the decennial census long form does provide respondents who consider themselves part Hispanic to write in additional heritages.

**Research on an Arab/Middle Easterner category.**—During the public comment process, OMB received a number of requests to add an ethnic category for Arabs/Middle Easterners so that data could be obtained that could be useful in monitoring discrimination. The public comment process indicated, however, that there was no agreement on a definition for this category. The combined race, Hispanic origin, and ancestry question in the RAETT, which was designed to address requests that were received from groups for establishing separate categories, did not provide a solution.

While OMB accepted the Interagency's Committee recommendation not to create a new category for this population group, OMB believes that further research should be done to determine the best way to improve data on this population group. Meanwhile, the write-ins to the ancestry question on the decennial census long form will continue to provide information on the number of individuals who identify their heritage as Arab or Middle Easterner.

#### E. Tabulation Issues

The revised standards retain the concept of a minimum set of categories for Federal data on race and ethnicity and make possible at the same time the collection of data to reflect the diversity of our Nation's population. Since the

Interagency Committee's recommendation concerning the reporting of more than one race was made available for public comment, the focus of attention has been largely on how the data would be tabulated. Because of the concerns expressed about tabulation methods and our own view of the importance of this issue, OMB committed to accelerate the work on tabulation issues when it testified in July 1997 on the Interagency Committee's recommendations.

A group of statistical and policy analysts drawn from the Federal agencies that generate or use these data has spent the past few months considering the tabulation issues. Although this work is still in its early stages, some preliminary guidance can be shared at this time. In general, OMB believes that, consistent with criteria for confidentiality and data quality, the tabulation procedures used by the agencies should result in the production of as much detailed information on race and ethnicity as possible.

Guidelines for tabulation ultimately must meet the needs of at least two groups within the Federal Government, with the overriding objective of providing the most accurate and informative body of data. The first group is composed of those government officials charged with carrying out constitutional and legislative mandates, such as redistricting legislatures, enforcing civil rights laws, and monitoring progress in anti-discrimination programs. (The legislative redistricting file produced by the Bureau of the Census, also known as the Public Law 94-171 file, is an example of a file meeting such legislative needs.) The second group consists of the staff of statistical agencies producing and analyzing data that are used to monitor economic and social conditions and trends.

Many of the needs of the first group can be met with an initial tabulation that provides, consistent with standards for data quality and confidentiality, the full detail of racial reporting; that is, the number of people reporting in each single race category and the number reporting each of the possible combinations of races, which would add to the total population. Depending on the judgment of users, the combinations of multiple responses could be collapsed. One method would be to provide separate totals for those reporting in the most common multiple race combinations and to collapse the data for other less frequently reported combinations. The specifics of the collapsed distributions must await the results of particular data collections. A

second method would be to report the total selecting each particular race, whether alone or in combination with other races. These totals would represent upper bounds on the size of the populations who identified with each of the racial categories. In some cases, this latter method could be used for comparing data collected under the old standards with data collected under the new standards. It is important that users with the same or closely related responsibilities adopt the same tabulation method. Regardless of the method chosen for collapsing multiple race responses, the total number reporting more than one race must be made available, if confidentiality and data quality requirements can be met, in order to ensure that any changes in response patterns resulting from the new standards can be monitored over time.

Meeting the needs of the second group (those producing and analyzing statistical data to monitor economic and social conditions and trends), as well as some additional needs of the first group, may require different tabulation procedures. More research must be completed before guidelines that will meet the requirements of these users can be developed. A group of statistical and policy experts will review a number of alternative procedures and provide recommendations to OMB concerning these tabulation requirements by Spring 1998. Four of the areas in which further exploration is needed are outlined below.

- Equal employment opportunity and other anti-discrimination programs have traditionally provided the numbers of people in the population by selected characteristics, including racial categories, for business, academic, and government organizations to use in evaluating conformance with program objectives. Because of the potentially large number of categories that may result from application of the new standards, many with very small numbers, it is not clear how this need for data will be best satisfied in the future.

- The numbers of people in distinct groups based on decennial census results are used in developing sample designs and survey controls for major demographic surveys. For example, the National Health Interview Survey uses census data to increase samples for certain population groups, adjust for survey non-response, and provide weights for estimating health outcomes at the national level. The impact of having data for many small population groups with multiple racial heritages must be explored.

- Vital statistics data include birth and death rates for various population groups. Typically the numerator (number of births or deaths) is derived from administrative records, while the denominator comes from intercensal population estimates. Birth certificate data on race are likely to have been self reported by the mother. Over time, these data may become comparable to data collected under the new standards. Death certificate data, however, frequently are filled out by an observer, such as a mortician, physician, or funeral director. These data, particularly for the population with multiple racial heritages, are likely to be quite different from the information obtained when respondents report about themselves. Research to define comparable categories to be used in both numerators and denominators is needed to assure that vital statistics are as accurate and useful as possible.

- More generally, statistical indicators are often used to measure change over time. Procedures that will permit meaningful comparisons of data collected under the previous standards with those that will be collected under the new standards need to be developed.

The methodology for tabulating data on race and ethnicity must be carefully developed and coordinated among the statistical agencies and other Federal data users. Moreover, just as OMB's review and decision processes have benefited during the past four years from extensive public participation, we expect to discuss tabulation methods with data users within and outside the Federal Government. OMB expects to issue additional guidance with respect to tabulating data on race and ethnicity by Fall 1998.

**Sally Katzen,**

*Administrator, Office of Information and Regulatory Affairs.*

### **Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity**

This classification provides a minimum standard for maintaining, collecting, and presenting data on race and ethnicity for all Federal reporting purposes. The categories in this classification are social-political constructs and should not be interpreted as being scientific or anthropological in nature. They are not to be used as determinants of eligibility for participation in any Federal program. The standards have been developed to provide a common language for uniformity and comparability in the collection and use of data on race and ethnicity by Federal agencies.

The standards have five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. There are two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino."

### 1. Categories and Definitions

The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

*American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

*Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

*Black or African American.* A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

*Hispanic or Latino.* A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

*Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*White.* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Respondents shall be offered the option of selecting one or more racial designations. Recommended forms for the instruction accompanying the multiple response question are "Mark one or more" and "Select one or more."

### 2. Data Formats

The standards provide two formats that may be used for data on race and ethnicity. Self-reporting or self-identification using two separate questions is the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, the combined format may be used.

In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way that the additional categories can be

aggregated into these minimum categories for data on race and ethnicity.

With respect to tabulation, the procedures used by Federal agencies shall result in the production of as much detailed information on race and ethnicity as possible. However, Federal agencies shall not present data on detailed categories if doing so would compromise data quality or confidentiality standards.

#### a. Two-Question Format

To provide flexibility and ensure data quality, separate questions shall be used wherever feasible for reporting race and ethnicity. When race and ethnicity are collected separately, ethnicity shall be collected first. If race and ethnicity are collected separately, the minimum designations are:

#### Race:

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

#### Ethnicity:

- Hispanic or Latino
- Not Hispanic or Latino

When data on race and ethnicity are collected separately, provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino.

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the five racial categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses to the race question. If data on multiple responses are collapsed, at a minimum the total number of respondents reporting "more than one race" shall be made available.

#### b. Combined Format

The combined format may be used, if necessary, for observer-collected data on race and ethnicity. Both race (including multiple responses) and ethnicity shall be collected when appropriate and feasible, although the selection of one category in the combined format is acceptable. If a combined format is used, there are six minimum categories:

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander

—White

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the six categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses. In cases where data on multiple responses are collapsed, the total number of respondents reporting "Hispanic or Latino and one or more races" and the total number of respondents reporting "more than one race" (regardless of ethnicity) shall be provided.

### 3. Use of the Standards for Record Keeping and Reporting

The minimum standard categories shall be used for reporting as follows:

#### a. Statistical Reporting

These standards shall be used at a minimum for all federally sponsored statistical data collections that include data on race and/or ethnicity, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. Any other variation will have to be specifically authorized by the Office of Management and Budget (OMB) through the information collection clearance process. In those cases where the data collection is not subject to the information collection clearance process, a direct request for a variance shall be made to OMB.

#### b. General Program Administrative and Grant Reporting

These standards shall be used for all Federal administrative reporting or record keeping requirements that include data on race and ethnicity. Agencies that cannot follow these standards must request a variance from OMB. Variances will be considered if the agency can demonstrate that it is not reasonable for the primary reporter to determine racial or ethnic background in terms of the specified categories, that determination of racial or ethnic background is not critical to the administration of the program in question, or that the specific program is directed to only one or a limited number of racial or ethnic groups.

#### c. Civil Rights and Other Compliance Reporting

These standards shall be used by all Federal agencies in either the separate or combined format for civil rights and

other compliance reporting from the public and private sectors and all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories must be specifically approved by OMB for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

#### *4. Presentation of Data on Race and Ethnicity*

Displays of statistical, administrative, and compliance data on race and ethnicity shall use the categories listed above. The term "nonwhite" is not acceptable for use in the presentation of Federal Government data. It shall not be used in any publication or in the text of any report.

In cases where the standard categories are considered inappropriate for presentation of data on particular

programs or for particular regional areas, the sponsoring agency may use:

a. The designations "Black or African American and Other Races" or "All Other Races" as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

b. The designations "White," "Black or African American," and "All Other Races" when the distinction among the majority race, the principal minority race, and other races is appropriate; or

c. The designation of a particular minority race or races, and the inclusion of "Whites" with "All Other Races" when such a collective description is appropriate.

In displaying detailed information that represents a combination of race and ethnicity, the description of the data being displayed shall clearly indicate that both bases of classification are being used.

When the primary focus of a report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

#### *5. Effective Date*

The provisions of these standards are effective immediately for all *new* and *revised* record keeping or reporting requirements that include racial and/or ethnic information. All *existing* record keeping or reporting requirements shall be made consistent with these standards at the time they are submitted for extension, or not later than January 1, 2003.

[FR Doc. 97-28653 Filed 10-29-97; 8:45 am]

BILLING CODE 3110-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity

**58,782 Federal Register** / Vol. 62, No. 210 / Thursday, October 30, 1997 / Notices

#### *1. Categories and Definitions*

The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

*American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

*Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

*Black or African American.* A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to “Black or African American.”

*Hispanic or Latino.* A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, “Spanish origin,” can be used in addition to “Hispanic or Latino.”

*Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*White.* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. Respondents shall be offered the option of selecting one or more racial designations.

Recommended forms for the instruction accompanying the multiple response question are “Mark one or more” and “Select one or more.”

#### *2. Data Formats*

The standards provide two formats that may be used for data on race and ethnicity. Self-reporting or self-identification using two separate questions is the preferred method for collecting data on race and ethnicity. In situations where self-reporting is not practicable or feasible, the combined format may be used.

In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way that the additional categories can be aggregated into these minimum categories for data on race and ethnicity.



With respect to tabulation, the procedures used by Federal agencies shall result in the production of as much detailed information on race and ethnicity as possible. However, Federal agencies shall not present data on detailed categories if doing so would compromise data quality or confidentiality standards.

a. Two-Question Format

To provide flexibility and ensure data quality, separate questions shall be used wherever feasible for reporting race and ethnicity. When race and ethnicity are collected separately, ethnicity shall be collected first. If race and ethnicity are collected separately, the minimum designations are:

*Race:*

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

*Ethnicity:*

- Hispanic or Latino
- Not Hispanic or Latino

When data on race and ethnicity are collected separately, provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino. When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the five racial categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses to the race question.

If data on multiple responses are collapsed, at a minimum the total number of respondents reporting “**more than one race**” shall be made available.

b. Combined Format

The combined format may be used, if necessary, for **observer-collected data** on race and ethnicity. Both race (including multiple responses) and ethnicity shall be collected when appropriate and feasible, although the selection of one category in the combined format is acceptable. If a combined format is used, there are six minimum categories:

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander
- White

When aggregate data are presented, data producers shall provide the number of respondents who marked (or selected) only one category, separately for each of the six categories. In addition to these numbers, data producers are strongly encouraged to provide the detailed distributions, including all possible combinations, of multiple responses. In cases where data on multiple responses are collapsed, the total number of respondents reporting “Hispanic or Latino and one or more races” and the total number of respondents reporting “more than one race” (regardless of ethnicity) shall be provided.

### *3. Use of the Standards for Record Keeping and Reporting*

The minimum standard categories shall be used for reporting as follows:

#### *a. Statistical Reporting*

These standards shall be used at a minimum for all federally sponsored statistical data collections that include data on race and/or ethnicity, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. Any other variation will have to be specifically authorized by the Office of Management and Budget (OMB) through the information collection clearance process. In those cases where the data collection is not subject to the information collection clearance process, a direct request for a variance shall be made to OMB.

#### *b. General Program Administrative and Grant Reporting*

These standards shall be used for all Federal administrative reporting or record keeping requirements that include data on race and ethnicity. Agencies that cannot follow these standards must request a variance from OMB. Variances will be considered if the agency can demonstrate that it is not reasonable for the primary reporter to determine racial or ethnic background in terms of the specified categories, that determination of racial or ethnic background is not critical to the administration of the program in question, or that the specific program is directed to only one or a limited number of racial or ethnic groups.

#### *c. Civil Rights and Other Compliance Reporting*

These standards shall be used by all Federal agencies in either the separate or combined format for civil rights and other compliance reporting from the public and private sectors and all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories must be specifically approved by OMB for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

### *4. Presentation of Data on Race and Ethnicity*

Displays of statistical, administrative, and compliance data on race and ethnicity shall use the categories listed above. The term “nonwhite” is not acceptable for use in the presentation of Federal Government data. It shall not be used in any publication or in the text of any report. In cases where the standard categories are considered inappropriate for presentation of data on particular programs or for particular regional areas, the sponsoring agency may use:

a. The designations “Black or African American and Other Races” or “All Other Races” as collective descriptions of minority races when the most summary distinction between the

majority and minority races is appropriate;

- b. The designations “White,” “Black or African American,” and “All Other Races” when the distinction among the majority race, the principal minority race, and other races is appropriate; or
- c. The designation of a particular minority race or races, and the inclusion of “Whites” with “All Other Races” when such a collective description is appropriate.

In displaying detailed information that represents a combination of race and ethnicity, the description of the data being displayed shall clearly indicate that both bases of classification are being used. When the primary focus of a report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

*5. Effective Date* The provisions of these standards are effective immediately for all *new* and *revised* record keeping or reporting requirements that include racial and/or ethnic information. All *existing* record keeping or reporting requirements shall be made consistent with these standards at the time they are submitted for extension, or not later than January 1, 2003.

### III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Construction Standards on Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503). OSHA is requesting a 31,264 burden hour reduction, from 457,108 hours to 425,844 based on the Agency's determinations that fewer employers are required to comply with the Standard's collection of information requirements and that information exchanged during an OSHA compliance inspection is not covered by the PRA. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Construction Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503).

*OMB Control Number:* 1218-0197.

*Affected Public:* Business or other for-profits; Federal Government; State, Local, or Tribal Government.

*Number of Responses:* 5,314,317.

*Frequency of Record Keeping:* On occasion, annually.

*Average Time per Response:* Time per response ranges from 5 minutes (.08 hour) to certify a safety net to 1 hour to develop a fall protection plan.

*Estimated Total Burden Hours:* 425,844.

*Estimated Cost (Operation and Maintenance):* \$0.

### IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA-2010-0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your full name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

### V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on September 27, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016-23667 Filed 9-29-16; 8:45 am]

**BILLING CODE 4510-26-P**

### OFFICE OF MANAGEMENT AND BUDGET

#### Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB).

**ACTION:** Review and Possible Limited Revision of OMB's Statistical Policy Directive on Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.

**SUMMARY:** The Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity were last revised in 1997 (62 FR 58782, Oct. 30, 1997; see [https://www.whitehouse.gov/omb/fedreg\\_1997standards](https://www.whitehouse.gov/omb/fedreg_1997standards)). Since these revisions were implemented, much has been learned about how these standards have improved the quality of Federal information collected and presented on race and ethnicity. At the same time, some areas may benefit from further refinement. Accordingly, OMB currently is undertaking a review of particular components of the 1997 standard: The use of separate questions measuring race and ethnicity and question phrasing; the classification of a Middle Eastern and North African group and reporting category; the description of the intended use of minimum reporting categories; and terminology used for race and ethnicity classifications. OMB's current review of the standard is limited to these areas. Specific questions appear under the section, "Issues for Comment."

**DATES:** Comments on the review and possible limited revisions to OMB's Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity detailed in this notice must be in writing. To ensure consideration of comments, they must be received no later than [30 days from the publication of this notice]. Please be aware of delays in mail processing at Federal facilities due to increased security. Respondents are encouraged to send comments electronically via email, or <http://www.regulations.gov> (discussed in **ADDRESSES** below).

**ADDRESSES:** Written comments on these issues may be addressed to Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 1800 G St., 9th Floor, Washington, DC 20503. You may also send comments or questions via Email to [Race-ethnicity@omb.eop.gov](mailto:Race-ethnicity@omb.eop.gov) or to <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type, "Race-ethnicity" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary

information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**Electronic Availability:** This document is available on the Internet on the OMB Web site at: [https://www.whitehouse.gov/sites/default/files/omb/inforeg/directive15/race-ethnicity\\_directive\\_2016FRN1.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/directive15/race-ethnicity_directive_2016FRN1.pdf).

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Park, Senior Statistician, 1800 G St., 9th Floor, Washington, DC 20503, Email address: [Race-ethnicity@omb.eop.gov](mailto:Race-ethnicity@omb.eop.gov), telephone number: (202) 395-9046.

**SUPPLEMENTARY INFORMATION:**

**Background:** Development work on the standards for classification of Federal data on race and ethnicity originated in the activities of the Federal Interagency Committee on Education (FICE), which was originally established by Executive Order 11185 in 1964. The FICE Subcommittee on Minority Education completed a report in April 1973 on higher education for Chicanos, Puerto Ricans, and American Indians, which noted in particular the lack of comparable data on racial and ethnic groups. Accordingly, the report called for the coordinated development of common definitions for racial and ethnic groups, and the Federal collection of racial and ethnic enrollment and other educational data on a compatible and nonduplicative basis.

In June 1974, FICE created an Ad Hoc Committee on Racial and Ethnic Definitions whose 25 members came from Federal agencies with major responsibilities for the collection or use of racial and ethnic data. It took on the task of determining and describing the major groups to be identified by Federal agencies when collecting and reporting racial and ethnic data. The Ad Hoc Committee wanted to ensure that whatever categories the various agencies used could be aggregated, disaggregated, or otherwise combined so that the data developed by one agency could be used in conjunction with the data developed by another agency. In addition, the Ad Hoc Committee recommended that the categories could be subdivided into more detailed ethnic groups to meet users' needs, but that to maintain comparability, such detail data should

aggregate into the minimum racial and ethnic categories.

Following testing of proposed categories, and the receipt of comments and incorporation of suggested modifications, OMB on May 12, 1977, promulgated for use by all Federal agencies minimum standard categories for the collection and presentation of data on race and ethnicity. (See 42 FR 1926 May 12, 1977.) (Although OMB required the agencies to use these racial and ethnic categories at a minimum, it should be emphasized that the standard permitted collection of additional detail if the more detailed categories could be aggregated into the minimum racial and ethnic categories to allow comparability of data.)

In 1994, OMB published a notice of proposed review and possible revision of the standard. (See [https://www.whitehouse.gov/omb/fedreg\\_notice\\_15](https://www.whitehouse.gov/omb/fedreg_notice_15).) It requested comments on the adequacy of then current categories. Specifically, it asked for comments on the addition of a "multiracial" category; the addition of an "Other Race" category; use of an open-ended question to solicit information on race and ethnicity; the names of the "Black" category and the "American Indian or Alaska Native" category; including "Native Hawaiians" as a separate reporting category from the "Asian or Pacific Islander" category; adding Hispanic as a racial designation rather than ethnicity; and adding an "Arab or Middle Eastern" category as an ethnicity. OMB established an Interagency Committee for the Review of the Racial and Ethnic Standards, whose members represented the many and diverse Federal needs for racial and ethnic data, including statutory requirements for such data.

In 1997, OMB published the recommendations of the Interagency Committee in its notice of decision. (See [https://www.whitehouse.gov/omb/fedreg\\_1997standards](https://www.whitehouse.gov/omb/fedreg_1997standards).) Drawing from stakeholder input, Interagency Committee statistical analysis, and public comment, the standard was revised in several ways. It required separate measures of race and ethnicity, with the "Hispanic or Latino" ethnicity presented first. Respondents were offered the option of selecting one or more racial designations, with the use of the instructions "Mark one or more" and "Select one or more." "AfricanAmerican" was added to the category of "Black." "Native Hawaiian or Other Pacific Islander" was created as a separate category from "Asian or Pacific Islander." However, agreement could not be reached regarding the composition of an "Arab/Middle

Eastern" category, and no classification or category was therefore defined.

**Current Review:** Since the 1997 revision, the U.S. population has continued to become more racially and ethnically diverse. Additionally, much has been learned about the implementation of these standards since they were issued approximately two decades ago. In accordance with good statistical practice, several Federal agencies have conducted methodological research to better understand how use of the revised standard informs the quality of Federal statistics on race and ethnicity.

In 2014, OMB formed an Interagency Working Group for Research on Race and Ethnicity to exchange research findings, identify implementation issues, and collaborate on a shared research agenda to improve Federal data on race and ethnicity. The Working Group comprises representatives from ten cabinet departments and three other agencies engaged in the collection or use of Federal race and ethnicity data.

Through its systematic review of the implementation of the 1997 revision and stakeholder feedback, the Working Group identified four particular areas where further revisions to the standard might improve the quality of race and ethnicity information collected and presented by Federal agencies. Specifically, these four areas include:

1. The use of separate questions versus a combined question to measure race and ethnicity and question phrasing;
2. the classification of a Middle Eastern and North African group and distinct reporting category;
3. the description of the intended use of minimum reporting categories; and
4. the salience of terminology used for race and ethnicity classifications and other language in the standard.

**Issues for Comment:** With this Notice, OMB is seeking comments from the public on: (1) The adequacy of the current standard in the areas identified for focused review (see detailed descriptions below); (2) specific suggestions for the identified areas that have been offered; and (3) principles that should govern any proposed revisions to the standards in the identified areas.

**Question Format & Nonresponse:** Although many respondents report within the race and ethnicity categories specified by the standard, recent censuses, surveys, and experimental tests have shown that its implementation is not well understood and/or is considered inadequate by some respondents. This results in respondents' inability and/or

unwillingness to self-identify as the standard intends.

For a growing segment of respondents, this situation arises because of the conceptual complexity that is rooted in the standard's definitional distinction of race from ethnicity. Nearly half of Hispanic or Latino respondents do not identify within any of the standard's race categories (Rios et al. 2014; see <https://www.census.gov/population/www/documentation/twps0102/twps0102.pdf>). With the projected steady growth of the Hispanic or Latino population, the number of people who do not identify with any of the standard's race categories is expected to increase (Compton et al. 2012; see [https://www.census.gov/2010census/pdf/2010\\_Census\\_Race\\_HO\\_AQE.pdf](https://www.census.gov/2010census/pdf/2010_Census_Race_HO_AQE.pdf); Rios et al. 2014). Additionally, although the reporting of multiple races is permitted according to the current standard, reporting multiple Hispanic origins or a mixed Hispanic/non-Hispanic heritage in the current Hispanic ethnicity question is not permitted. (Please note: The terms 'Hispanic or Latino' and 'Hispanic' are used interchangeably in this Notice.)

To explore this issue further, the U.S. Census Bureau conducted the 2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment (AQE). Among its most notable findings was that a combined question design (rather than the current standard of separate questions) yielded a substantially increased use of OMB standard categories among Hispanic or Latino respondents, signaling that a combined question approach may better reflect how Hispanic or Latino respondents view themselves (see [https://www.census.gov/2010census/pdf/2010\\_Census\\_Race\\_HO\\_AQE.pdf](https://www.census.gov/2010census/pdf/2010_Census_Race_HO_AQE.pdf)). Qualitative aspects of this research further supported this interpretation. The Federal Interagency Working Group for Research on Race and Ethnicity continues to examine this proposal. If a combined measure were to be used outside of a limited, methodological experiment, it would be necessary for OMB to revise the current standard.

**Middle Eastern or North African:** According to the current standard, the aggregate reporting category of "White" race includes people having origins in any of the original peoples of Europe, the Middle East, or North Africa. During the periodic review preceding the 1997 revision, OMB's Interagency Committee for the Review of the Racial and Ethnic Standards considered suggestions to require an additional, distinct minimum reporting category for respondents identifying as "Arabs or Middle

Easterners." At the conclusion of the review, agreement could not be reached among public stakeholders on the intended measurement concept (*i.e.*, whether the category should be based on language, geography, etc.) nor, accordingly, a definition for this category. The Committee took this public disagreement into consideration and thus did not issue a definition nor an additional, minimum reporting category for this group. Instead, OMB encouraged further research be done to determine the best way to improve data for "Arabs/Middle Easterners." The Federal Interagency Working Group for Research on Race and Ethnicity continues to examine this proposal, with input from multiple stakeholders. If consensus upon a definition for Middle Eastern or North African can be reached, with or without the requirement of an additional, separate, aggregate reporting category, OMB would need to revise the current standard to clarify the classification instructions. This would address potential inconsistencies across data collections where data describing a Middle Eastern or North African group could be reported separately for detailed analyses (for example, where sample size permits), but otherwise could be aggregated into the "White" reporting category to facilitate comparability across information collections that would not have large enough samples to permit separate, detailed reporting.

**Intent of Minimum Categories:** The standard provides a minimum set of racial and ethnic categories for use when Federal agencies are collecting and presenting such information for statistical, administrative, or compliance purposes. However, it does not preclude the collection and presentation of additional detailed categories for statistical, administrative, or compliance purposes, provided that the additional detailed categories can be aggregated into the minimum set to permit comparisons. Specifically, the current standard advises, "In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged . . ."

There are numerous examples of Federal agencies collecting detailed race and ethnicity data in their statistical reporting; these are not limited to decennial censuses or extremely large surveys, such as the American Community Survey (ACS). Nonetheless, OMB has learned that the minimum reporting categories as described in the current standard are often misinterpreted as the only permissible

reporting categories. Accordingly, OMB has asked the Federal Interagency Working Group for Research on Race and Ethnicity to examine the language in the current standard in order to improve the understanding of the intended use of minimum categories, that is, to facilitate comparison across information collections, rather than to limit detailed race and ethnic group information collection and presentation.

**Terminology:** As the diversity of the U.S. continues to increase, it becomes more important for people to understand the racial and ethnic terminology included in Federal data collection systems. The language used to describe race and ethnicity changes over time, and while some terminology continues to resonate with group members, other expressions may fall out of favor or take on other meanings.

For example, the standard currently designates "Black or African American" as the "principal minority race." This designation provides an option, in certain circumstances, for presentation of the "White" category, the "Black or African American" category (as the 'principal minority race') and the "All Other Races" category, without the requirement of also presenting other minimum reporting categories. The designation may warrant revision for several reasons. First, certain definitions of "minority" as including Hispanic (*i.e.*, HR 4238; see <https://www.congress.gov/bills/114/house-bill/4238>), and the relative prevalence of the Hispanic or Latino population compared with the Black or African American population, suggest potential revision of the "principal minority race" designation, or the use of alternative terms (*e.g.*, "principal minority race/ethnicity"). Perhaps most broadly, the utility of presenting a category of "All Other Races," given the diversity of experience among other race/ethnicity groups, and the salience of designating a "principal minority" for presentation purposes, suggests further review. The Federal Interagency Working Group for Research on Race and Ethnicity is examining such terminology for possible revision to the standard.

#### **Guidance for Review:**

**Federal Uses of Race and Ethnicity Data:** When providing comment regarding proposed areas for possible revision, it may be helpful to keep in mind how the standard is used. The standard not only guides information collected and presented from the decennial census and numerous other statistical collections, but also is used by Federal agencies for civil rights enforcement and for program



administrative reporting. These include, among others:

- Enforcing the requirements of the Voting Rights Act;
- reviewing State congressional redistricting plans;
- collecting and presenting population and population characteristics data, labor force data, education data, and vital and health statistics;
- establishing and evaluating Federal affirmative action plans and evaluating affirmative action and discrimination in employment in the private sector;
- monitoring the access of minorities to home mortgage loans under the Home Mortgage Disclosure Act;
- enforcing the Equal Credit Opportunity Act;
- monitoring and enforcing desegregation plans in the public schools;
- assisting minority businesses under the minority business development programs; and
- monitoring and enforcing the Fair Housing Act.

To most effectively promote information quality, the intended uses of data on race and ethnicity should be considered when changes to the standards are contemplated. Additionally, the possible effects of any proposed changes on the quality and utility of the resulting data must be considered.

*General Principles for the Review of the Racial and Ethnic Data Categories:* When providing comment on particular areas of the current standard, it also may be helpful to consult the principles that framed the 1977 and 1997 revisions. Comments on these principles are welcomed.

1. The racial and ethnic categories set forth in the standard should not be interpreted as being scientific or anthropological in nature.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; respondent self-identification should be facilitated to the greatest extent possible.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicated, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis, program administration and

assessment, and enforcement of existing laws and judicial decisions, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any Federal program.

6. While Federal data needs for racial and ethnic data are of primary importance, consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, as determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents and the cost to agencies and respondents to implement the revisions.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

OMB recognizes that these principles may in some cases represent competing goals for the standard. Through the review process, it will be necessary to balance statistical issues, needs for data, and social concerns. The application of these principles to guide the review and possible revision of the standard ultimately should result in consistent, publicly accepted data on race and ethnicity that will meet the needs of the government and the public while recognizing the diversity of the population and respecting the individual's dignity.

**Howard A. Shelanski,**  
*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 2016-23672 Filed 9-29-16; 8:45 am]

**BILLING CODE 3110-01-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16-069)]

### NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Tuesday, October 25, 2016, 10:00 a.m.–4:00 p.m., Eastern Time.

#### FOR FURTHER INFORMATION CONTACT:

KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355, fax (202) 358-2779, or [khenderson@nasa.gov](mailto:khenderson@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public telephonically and via WebEx. Any interested person may call the USA toll free conference call number 1-888-625-1623, passcode 5538265, to participate in this meeting by telephone. The WebEx link is <https://nasa.webex.com/>; the meeting number is 999 356 448 and the password is HPS2016!. The agenda for the meeting includes the following topics:

- Living With a Star (LWS) Vision
- LWS Focus Topics for Research Opportunities in Space and Earth Sciences (ROSES) 2017

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2016-23657 Filed 9-29-16; 8:45 am]

**BILLING CODE 7510-13-P**



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE  
IN THE ARMED FORCES

MANPOWER AND  
RESERVE AFFAIRS  
(Equal Opportunity)

November 30, 1972

Honorable Melvin R. Laird  
Secretary of Defense  
Washington, D. C. 20301

Dear Mr. Secretary:

Submitted herewith is a report of the Task Force on the Administration of Military Justice in the Armed Forces which you commissioned on April 5, 1972.

Our recommendations are set forth concisely at pages 112-127. The deliberations and findings upon which those recommendations are based are necessarily lengthy, and we, therefore, summarize them here.

We were asked:

- To determine the nature and extent of racial discrimination in the administration of military justice
- To assess the impact of factors contributing to disparate punishment
- To judge the impact of racially-related practices on the administration of military justice and respect for law, and
- To recommend ways to strengthen the military justice system and "enhance the opportunity for equal justice for every American service man and woman."

Assumed as facts, based upon your charge to us, were the existence of racial and ethnic discrimination in military justice, and the disparity in punishment rates between minority and majority servicemen.

To accomplish our assignment, your Task Force, a diverse collection of civilians and military officers, held numerous hearings during the past eight months, visited military installations throughout the world, and interviewed service men and women of all ranks.

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B.S. Ray



The Task Force concluded that the military services are influenced by broad societal practices, including racial discrimination. Military justice was viewed as an integral component of the whole military system.

Since 1949 the armed services have been in the forefront of efforts to eliminate unlawful discrimination, and the services have made notable strides toward the achievement of equal opportunity within their ranks. We know of few other institutions which have equaled their record. These strides are worthy of note in view of the degree to which segregation was historically entrenched in the military institution.

Although desegregation of the armed services was decreed by the 1948 Presidential Order, the Task Force affirms that vestiges of discrimination remain in the military system. Two types of racial discrimination were identified -- intentional and systemic.

The first, intentional discrimination, the Task Force defines as the policy of a military authority or action of an individual or group of individuals which is intended to have a negative effect on minority individuals or groups without having such an effect on others.

The second, systemic discrimination, the Task Force defines as neutral practices or policies which disproportionately impact harmfully or negatively on minorities. The Task Force believes that even though no major segment of military society is free from the effect of systemic discrimination, the latter is capable of being eliminated by the Secretary of Defense and the Service Secretaries through the vigorous implementation of established policies all along the line.

The Task Force report identifies and discusses preservice and service environmental practices and factors which contribute to disparity in punishment rates (but not in quantum of punishment) between majority and minority servicemen. Greater societal racism was identified as the most potent preservice factor affecting the administration of justice and respect for law by minority servicemen. The Task Force finds that racial discrimination in the military system is not specifically a Negro, Mexican-American, Puerto Rican, or white problem. Rather it is also a problem of a racist society. Minority and majority preservice racial and ethnic attitudes are enormously important factors. Fear, mistrust and suspicion influence the fair administration of military justice and do contribute to racial animosity and tension. Other preservice factors identified by the Task Force include educational, economic, and language disadvantages, as well as coerced induction in lieu of a civilian jail term.

Post-entry or military environment factors which are correctable include unfairness in testing, assignment and promotion practices, minority

officer shortage, insufficient funding and support for DoD equal opportunity and human relations' programs, unfairness and the perception of unfairness concerning military justice.

Other practices which adversely influence military minority attitudes include off-base housing and recreation segregation, over-regulation of individual personal appearance and group expression, policies which unnecessarily limit communication to the English language, peer group pressure resulting in social polarization and "reverse discrimination."

The Task Force found that, despite their differing perspectives on military life and the system of military justice, there was a pattern of agreement in the attitudes of many enlisted men of all races and ethnic identities toward the essential fairness or unfairness of the system. These attitudes reflected a need for further and continuing education in the military justice system.

We view this as being due to both "actual" and "perceived" discrimination in the military society and its related system of justice. It is seen that the perceptions of unfairness are as corrosive an influence on the attitudes of servicemen toward the military justice system as is actual unfairness, and must be cured. At the same time, the nation has a right to expect compliance and obedience to lawful authority by men and women charged with the country's defense.

There does exist a need in the armed forces for a system of justice which is administered fairly. Justice and discipline are inextricable, and the latter cannot exist without the former. A country that fails to require its military forces to preserve discipline and obedience to lawful authority could soon find itself defenseless. Thus, this report should not be construed as compromising the necessary high standards of discipline and performance to which all service men and women must adhere. This, the Task Force is persuaded, can be achieved without the sacrifice of justice.

The achievement of a fair and just administration of law in the armed forces is a delicate task but an absolutely vital one. Discrimination or unfair treatment has no place in the armed forces.

Because of the broad scope of our inquiry and the differing perspective of individual Task Force members, we do not suggest that there is complete unanimity on all matters in this report. Reflected in addenda statements, set out at pages 129-132, are views of several members, which were considered by the Task Force but not accepted.

Despite our lack of unanimity on a relatively few aspects of this study, we are able to report broad consensus on substantially every

recommendation. We do not summarize our recommendations here, for they should be read in the context of our findings. They all have a bearing on racial discrimination, or perceptions thereof, in the military system. They are designed to remove conditions giving rise to perceptions of unfairness and to eliminate discrimination and the opportunity to discriminate. Our recommendations go to the overall fairness of treatment without regard to racial or ethnic identity.

We sincerely trust that our efforts, reflected in the report, will assist the military community and society at large to more effectively direct their efforts toward the elimination of discrimination from our land.

Respectfully submitted,

*Nathaniel R. Jones*  
NATHANIEL R. JONES

Co-Chairmen

*C. E. Hutchin, Jr.*  
C. E. HUTCHIN, JR.

# TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES

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General Counsel  
National Association for the  
Advancement of Colored People



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Chairman  
Judicial Council  
National Bar Association



Patricia Ann King  
Deputy Director  
Office for Civil Rights  
Department of Health, Education  
and Welfare



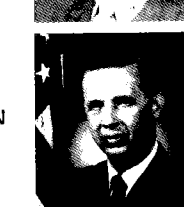
Brigadier General Clyde R. Mann, USMC  
Director, Judge Advocate Division  
Headquarters  
United States Marine Corps



Major General George S. Prugh, USA  
The Judge Advocate General  
United States Army



Rear Admiral Merlin H. Staring, USN  
The Judge Advocate General  
United States Navy



Lt Colonel Matthew B. O'Donnell, JAGC  
United States Army  
Executive Secretary

**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 accompanying this section of the FY 2020 NDAA:*

*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.*



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

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November 6, 2020 Public Meeting  
DAC-IPAD Staff Presentation:

**The Joint Explanatory Statement accompanying  
the National Defense Authorization Act  
for Fiscal Year 2020**



# Joint Explanatory Statement Overview

- Congress passed the National Defense Authorization Act for Fiscal Year 2020 into law on December 20, 2019
- In the accompanying Joint Explanatory Statement, Congress requested that the DAC-IPAD examine two topics:
  - (1) Whether restorative justice programs could be used in the military justice system; and**
  - (2) Whether victim impact statements are being limited at presentencing proceedings.**



# Joint Explanatory Statement Restorative Justice

*“**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.”***



# Restorative Justice

- An alternative to a traditional retributive criminal justice model.
- The principles of restorative justice:
  - Crime causes harm and justice should focus on healing and repairing that harm.
  - The people most affected by the crime should be able to participate in its resolution.
  - The responsibility of the government is to maintain order and of the community to build peace.



# Presentation by Dr. Mary P. Koss, PhD

- DAC-IPAD staff has brought an expert on restorative justice programs to educate the Committee on the mechanics and benefits of a program based on quantitative data.
- RESTORE: Restorative justice program specifically used for sexual assault crimes in Arizona (2003-2007).





# Assessment by the DAC-IPAD on Restorative Justice

- Deliberate and determine whether the DAC-IPAD has the expertise, or what information would be necessary, to assess whether a restorative justice program "could be employed" or "modified to assist the victim of an alleged sexual assault or the alleged offender" for DoD.
  - Goal of MJ system is to maintain good order and discipline
  - Are there other organizations better equipped to assess the value for the DoD community to further the goals of restorative justice
- The JES asks the DAC-IPAD to assess whether Restorative Justice should apply in cases where the evidence is not sufficient to take judicial, non-judicial, or administrative action - is that an appropriate use of the restorative justice model?



# Joint Explanatory Statement Victim Impact Statements

*“...[T]he conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. **The conferees are concerned by reports that some military judges have interpreted 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.**”*



# Victim Rights Contained in Article 6b, UCMJ

Section 1701 of the FY14 NDAA, as amended by subsequent NDAAAs, establishes the following eight (8) rights of victims:

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any public hearing.
3. The right not to be excluded from any public hearing unless testimony would be materially altered.
4. **The right to be reasonably heard** at a hearing concerning confinement of the accused, **at a sentencing hearing relating to the offense**, or at a public proceeding of the service clemency and parole board.
5. The reasonable right to confer with counsel representing the government.
6. The right to receive restitution as provided by law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense.



# Manual for Courts-Martial (2019 edition)

Rule for Courts-Martial [R.C.M.] 1001(c) implements Art. 6b:

“After presentation by trial counsel, a crime victim of an offense of which the accused has been found guilty has the right to be reasonably heard at the presentencing proceeding relating to that offense.”



## R.C.M. 1001(c)

Crime victim, defined, for the specific purpose of exercising the victim's right to be reasonably heard at sentencing:

“An individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty or the individual's lawful representative or designee appointed by the military judge under these rules [see R.C.M. 801(a)(6)].”



# Victim Participation in Sentencing Proceedings

1. Prosecution witness pursuant to R.C.M. 1001(b)
  - Evidence in aggravation, including evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense of which the accused has been found guilty.
  - Witness testimony must be sworn, subject to cross-examination, and follow the rules of evidence.
2. Victim exercises the independent right to be reasonably heard at a sentencing hearing pursuant to R.C.M. 1001(c)



## R.C.M. 1001(c)

Crime victim statements, generally:

- May be made orally or in writing
- Sworn or unsworn (must be sworn in a capital case)
- Must relate to victim impact or mitigation

Crime victim unsworn statements:

- Not subject to cross-examination by defense or examination by the court-martial
- After findings, the victim shall provide the parties with a written proffer of the matters that will be addressed in the statement
- Upon good cause shown, the military judge may permit the crime victim's counsel to deliver the statement
- The military judge shall take corrective action if victim's statement raises new matters
- Parties may rebut statements of fact in the victim's unsworn statement



# Public Comment received by the DAC-IPAD

- Restrictions are placed on victims at sentencing by judge's which **"severely limit"** what a victim may include in their impact statements as well as **how those statements are delivered**. Specific examples cited:
  - redlining of statements before presentation
  - not being allowed to complete the statement
  - inability to say anything about preference or desire for sentencing





# Information Provided to the DAC-IPAD by Military Judges

- One military judge said he did not limit victims' statements
- Some military Judges excluded portions of victim's statement that:
  - Commented on, or referenced evidence previously excluded for being "unfairly prejudicial" or for some other reason.
  - Referenced a specific sentence. Military case law establishes that a witness cannot recommend a specific sentence.



# Military Case Law

- The right is personal to the victim, and therefore requires either the presence or request of the victim.

## Caveats:

- Military judge may, if the victim is under 18 years of age, appoint a designee to assume the rights of the victim, including the right to be heard at sentencing
- SVC may, upon a showing of good cause, deliver the victim impact statement
- Trial counsel cannot submit a victim impact statement as part of its presentencing case.
- Trial counsel and defense counsel must receive the victim's statement, or a proffer, in advance.



# Joint Explanatory Statement

*“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.”*



# Assessment by the DAC-IPAD of Victim Impact Statements

**Step 1:** Determine, from discussions with SVCs and other practitioners, whether victim impact statements—oral and written—are being inappropriately limited.

**Step 2:** Review the records of trial of penetrative sex offense cases that the DAC-IPAD collects for its Case Review project in order to determine the extent of the problem(s) regarding the admission of victim impact statements at military presentencing proceedings, and identify potential recommendations for improvement.

# Journal of Interpersonal Violence

<http://jiv.sagepub.com/>

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## **The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes**

Mary P. Koss

*J Interpers Violence* published online 24 December 2013

DOI: 10.1177/0886260513511537

The online version of this article can be found at:

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# The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes

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Mary P. Koss, PhD<sup>1</sup>

## Abstract

The article reports empirical evaluation of RESTORE, a restorative justice (RJ) conferencing program adapted to prosecutor-referred adult misdemeanor and felony sexual assaults. RESTORE conferences included voluntary enrollment, preparation, and a face-to-face meeting where primary and secondary victims voice impacts, and responsible persons acknowledge their acts and together develop a re-dress plan that is supervised for 1 year. Process data included referral and consent rates, participant characteristics, observational ratings of conferences compared with program design, services delivered, and safety monitoring. Outcome evaluation used 22 cases to assess (a) pre–post reasons for choosing RESTORE, (b) preparation and conference experiences, (c) overall program and justice satisfaction, and (d) completion rates. This is the first peer-reviewed quantitative evaluation of RJ conferencing for adult sexual assault. Although the data have limitations, the results support cautious optimism regarding feasibility, safety, and satisfactory outcomes. They help envision how conferencing could expand and individualize justice options for sexual assault.

## Keywords

restorative justice, sexual assault, rape, sexual crime, criminology, victimology, law and justice, offender treatment, victim–offender dialogue, violence prevention

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The term *restorative justice* (RJ) subsumes a variety of approaches to wrongdoing including crimes and student misconduct. RJ approaches share the viewpoint that violation of law and conduct codes causes negative impacts beyond those to the direct victim (for reviews, see McGlynn, Westmarland, & Godden, 2012) ; Naylor, 2010; Umbreit, Vos, Coates, & Lightfoot, 2006; for a short article aimed at general readers, see Koss & Achilles, 2008). From an RJ perspective, there are multiple victim constituencies including (a) direct victims, (b) family and friends of victims who suffer distress along with their loved ones, (c) family and friends of perpetrators who may experience shame, anger, and other emotions stemming from being part of an interpersonal relationship out of which the offense arose, and (d) community members who experience less safety and social connection when they perceive high levels of crime and low deterrence. RJ strives to balance fulfilling the justice expectations of victims with imposing perpetrator accountability.

Many RJ program formats exist such as sharing circles, victim–offender dialogue, victim impact panels, community reparation boards, circles of support, sentencing circles, and conferencing. The previously cited references provide more detail on these approaches as applied to a variety of juvenile and adult crimes including sexual assault. RJ programs are generally present and future oriented because they are intended for persons who acknowledge perpetration of wrong acts. Thus, RJ excludes processes that weigh evidence and deliberate fault. Instead, the emphasis is on opportunities for victims to make decisions about how their case proceeds, to express how the wrongdoing affected them, to experience acknowledgment of the wrongful act imposed on them, and to individualize the accountability that is imposed. RJ also aims to facilitate community affirmation of the norm violation and condemnation of the wrongdoers' acts. Finally, RJ assumes that desistance from future offending is facilitated by maintaining wrongdoers' connection with law-abiding citizens and supporting community re-integration if a period of exclusion has occurred.

RJ may be offered in various settings and at multiple time points. Within the criminal justice system, RJ approaches have been implemented at completion of police investigation, as pre-charging diversion, as components of post-charging plea agreements, post-conviction, during incarceration, immediately prior to or following release, and throughout the reintegration of the offender who has been returned to the community. The point where RJ options are offered is significant because progressively fewer victims are eligible as processing moves from crime occurrence through police report, law enforcement investigation, judicial review, and correctional supervision (prosecutor review, issuance of charges, plea negotiations, trials, sentencing, incarceration, and post-release). To date, RJ programs for adult sex crime

have typically adopted victim–offender dialogue models. These interventions are offered when victims voluntarily request a meeting with their convicted or incarcerated offender (e.g., Miller, 2011; Patrissi, 2010; Umbreit, Coates, Vos, & Brown, 2002). Victim–offender dialogue programs have not intentionally excluded sexual offenses, but inspection of the evaluation studies reveals that few such crimes were included and program designs were rarely adapted to the unique nature of sexual violation (reviewed in McGlynn, 2012; Naylor, 2010).

In contrast to methods for prison settings, RJ conferencing is typically conducted in law enforcement or community settings. It involves a face-to-face meeting where victims express harm, the perpetrator accepts responsibility, and participants develop an accountability plan. In the process of imposing accountability, conferencing strives to minimize negative social reactions and re-traumatization that may distance victims from their social network. Conferences have most often been used with juvenile crime (e.g., Daly, 2011; and for sexual abuse in therapeutic settings (e.g., <http://www.brief-therapy.net/FinalRJreport.pdf>). Search of scientific journals reveals few programs that focus on sex crimes involving adult victims and offenders. Those that do include the RESTORE Program in Pima County, Arizona, which is the focus of this article, Jülich and colleagues implementation of Project Restore-NZ in Auckland (2010), and Sten Madsen's work in Copenhagen (2004, 2006).

Scholarly discourse on RJ for sexual assault has been hindered by lack of empirical data and is predominately conceptual and dialectic. Many commentators have raised concerns about the potential to reduce gender-based power dynamics, function safely, and exact sufficient accountability for wrongdoing (e.g., Cossins, 2008; Herman, 2005; Hudson, 2002; Matsui, 2011; Stubbs, 2007). A notable characteristic of this literature is the disproportionate focus on domestic violence or youth sex offending with inadequate attention to differences in crime characteristics from adult sexual assault (Hopkins, Koss, & Bachar, 2004). Other scholars have balanced risks with potential benefits (e.g., Curtis-Fawley & Daly, 2005; Daly, 2008a, 2008b, 2011; Daly & Curtis-Fawley, 2006; Daly & Stubbs, 2006; Jülich, Battle, Cummins, & Freeborn, 2010; Jülich, McGregor, et al., 2010; Koss, Bachar, & Hopkins, 2003; Koss, Bachar, Hopkins, & Carlson, 2004; McGlynn, 2011; McGlynn, Westmarland, & Godden, 2012; Nancarrow, 2010; Naylor, 2010; Stubbs, 2010; Vanseveren, 2010).

Just as there are few conferencing programs designed for sexual assault, published evaluations are scarce. The paucity of data has hindered the progression of dialogue from hypothetical to examination informed by program experience. The most extensive findings on RJ and gendered violence are



based on archival analyses of the South Australia Juvenile Justice and Criminal Justice XXX on Conferencing and Sentencing and the and the South Australia Archival Study (Daly, 2006; Daly & Curtis-Fawley, 2006; Daly & Nancarrow, 2010; Daly & Wade, 2012; Daly, Bouhours, & Curtis-Fawley, 2007; Daly, Bouhours, Curtis-Fawley, Weber, & Scholl, 2007; Profetti, Scifoni, & Daly, 2011). BouhoursBouhoursThese projects involved youth conferencing programs that were not specific to sex crimes. The subset of sexual assault cases was often unique to youths such as sibling or peer abuse. Not reviewed here are unpublished evaluations of programs for familial sexual abuse or adult survivors of childhood victimization (e.g., <http://www.brief-therapy.net/FinalRJreport.pdf>). Published evaluations of adult conferencing programs to date have used qualitative data from case studies or file reviews to which quantitative methods have been applied (Bletzer & Koss, 2012, 2013; Jülich et al., 2010). A consistent limitation of this literature is small sample sizes ranging from approximately 5 to 10 cases.

This article contributes data from a quantitative process and outcome evaluation of RESTORE, a community-based RJ conferencing program for prosecutor-referred sex crimes involving adults. Process data include examination of recruitment flow and consent rates, conformance of conference components to the written guide book specifying how the program was designed to be delivered, and physical and psychological safety monitoring. Outcome data focus on participants' self-reported reasons for choosing RJ, satisfaction with program components, procedural fairness, and completion rates. Henceforth in this article, RESTORE terminology will be used. The term *survivor victim* retains the empowerment conveyed by the word survivor and the outrage implied by the word victim. The term *responsible person* designates someone who committed an act that has been reported to police and viewed as a sex crime by prosecutors regardless of whether an arrest has been made or charges issued. Admitting responsibility is acknowledgment that the act occurred and is not synonymous with entering a guilty plea of guilty or self-identification as a rapist. By intention, designation of a survivor victim and a responsible person distributes power unequally to address concerns about deleterious influences of power dynamics. The term *redress plan* refers to the formal document of accountability that results from the conference and summarizes the activities that the responsible person will undertake to repair harm and rehabilitate.

RESTORE received referrals only from prosecutors. No self-referrals were permitted in this evaluation. Referrals included both misdemeanor and felony sex crimes. *Felony* crimes are sexual assaults, defined in Arizona statutes as oral, anal, or vaginal penetration against consent, forcibly or when incapacitated. *Misdemeanor* crimes are primarily indecent exposure with or

without public masturbation. A primary rationale for implementing RESTORE was to provide an additional avenue that might reduce attrition in the criminal justice system. The term *attrition* refers to the large numbers of sexual assault cases that are closed at each stage of the justice system, cutting off survivor victims' search for acknowledgment of their harm and a concrete response to it. It has been documented in every country that has been studied. Only 13% of reported rapes in the United States result in a finding of guilt (e.g., Daly & Bouhours, 2010). Even among this minority, many find the process re-traumatizing (Seidman & Pokorak, 2011; Seidman & Vickers, 2005). Survivor victims say that they desire a justice process that validates their status as legitimate victims, focuses on the offender's behavior and not on theirs, provides a forum to voice the harm done to them, accords them influence over decisions about their case, and incorporates their input into the consequences imposed (Monroe, Kinney, Weist, Spriggs-Dafeamekpor, Dantzer, & Reynolds, 2005). Herman described the marginal role of sexual assault victims in the criminal justice system where their experiences constitute "humiliation reminiscent of the original crime" (p. 574). With reservations, she recommends that sexual assault advocates envision justice where survivor victims are "protagonists" rather than "peripheral actors" (Herman, 2005, p. 574).

RESTORE was intended as a justice process that expanded on justice options and responded in the ways survivor victims say they would like to be treated. The RESTORE Program is discussed in depth elsewhere (Koss, 2010). The following brief overview is provided to contextualize the present evaluation. RESTORE has four stages. They are presented as a flow model in Figure 1. Stage 1 is referral by prosecutors and informed consent to participate. Only on survivor victim consent is the program offered to the responsible person. Both parties are provided free access to legal counsel if desired to reach a decision. For the survivor victim, the choices include remaining in criminal justice, exploring civil justice options, or opting into RESTORE. For the responsible person, the decision is whether to participate in RESTORE or continue with standard criminal justice. Final enrollment is contingent on forensic assessment of the responsible person by an independent provider certified for this role in state and federal courts. Even while assessment is pending, stay away orders are implemented immediately. The purpose of forensic assessment is to exclude perpetrators whose undetected prior offenses or psychological characteristics make them unsuitable for a community-based program. Assessment consists of a guided clinical interview covering psychological symptoms and psychosexual life history. Widely used standard inventories are also administered including the Multiphasic Sex Inventory (Nichols & Molinder, 1996), the Millon Clinical Multitaxial Inventory–III

### Stage 1 Referral and Intake

- All referrals come from the Pima County Attorney's Office (PCAO) or Tucson City Attorney's Office (TCAO). Program personnel make all contacts with the Survivor/Victim (SV). A telephone call script is used to introduce the RESTORE Program and options available. The SV is given a deadline for response only when mandated by requirements to preserve prosecution options.
- The initial meeting with the SV can take place at the RESTORE office or an alternate location if required and/or needed by the SV. At this meeting the SV is given a program manual and questions are answered. Consultation with a civil attorney free of charge is offered to the SV. All documents requiring signatures are gone over carefully and the consent form is signed along with other documents. The SV is provided additional time to decide if needed with a deadline given.
- After the SV consents, RESTORE personnel contacts the Responsible Person (RP) and/or their legal counsel regarding RESTORE as an option. Information is sent to the RP's counsel for review prior to the initial meeting. The RP is given 10 days to respond regarding participation.
- The initial meeting with the RP takes place at the RESTORE office where the RP's counsel can attend. If counsel for the RP requests this meeting can take place in their office. The RP is given a manual and all program requirements are gone over and documents signed along with the consent form. The RP is provided additional time to decide if needed with a deadline given.
- Additional meetings may be scheduled with either the SV or the RP for additional information or explanation.



#### **If RESTORE is accepted by the Responsible Person:**

- The RP meets with a forensic evaluator and undergoes a psychosexual evaluation.
- If the evaluator has concerns about the appropriateness of the RP's participation in RESTORE, these concerns are shared with the Program. If these concerns cannot be addressed prior to conference, a team decision is made to refer the case back to PCAO or TCAO.



If the psychosexual forensic evaluator approves the RP's participation in **RESTORE**, the case continues on to stage 2.

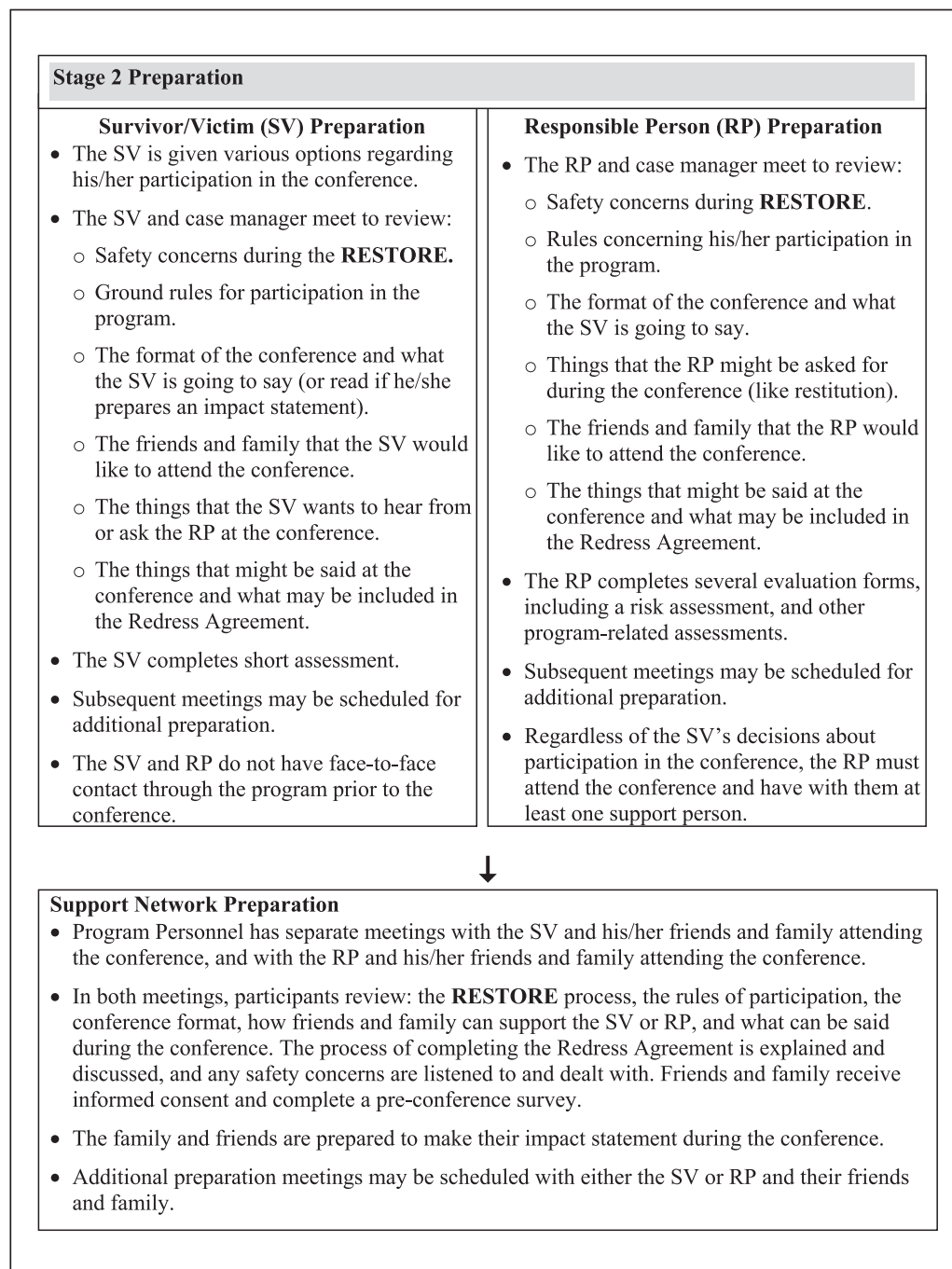


#### **IF RESTORE is declined by survivor victim or responsible person**

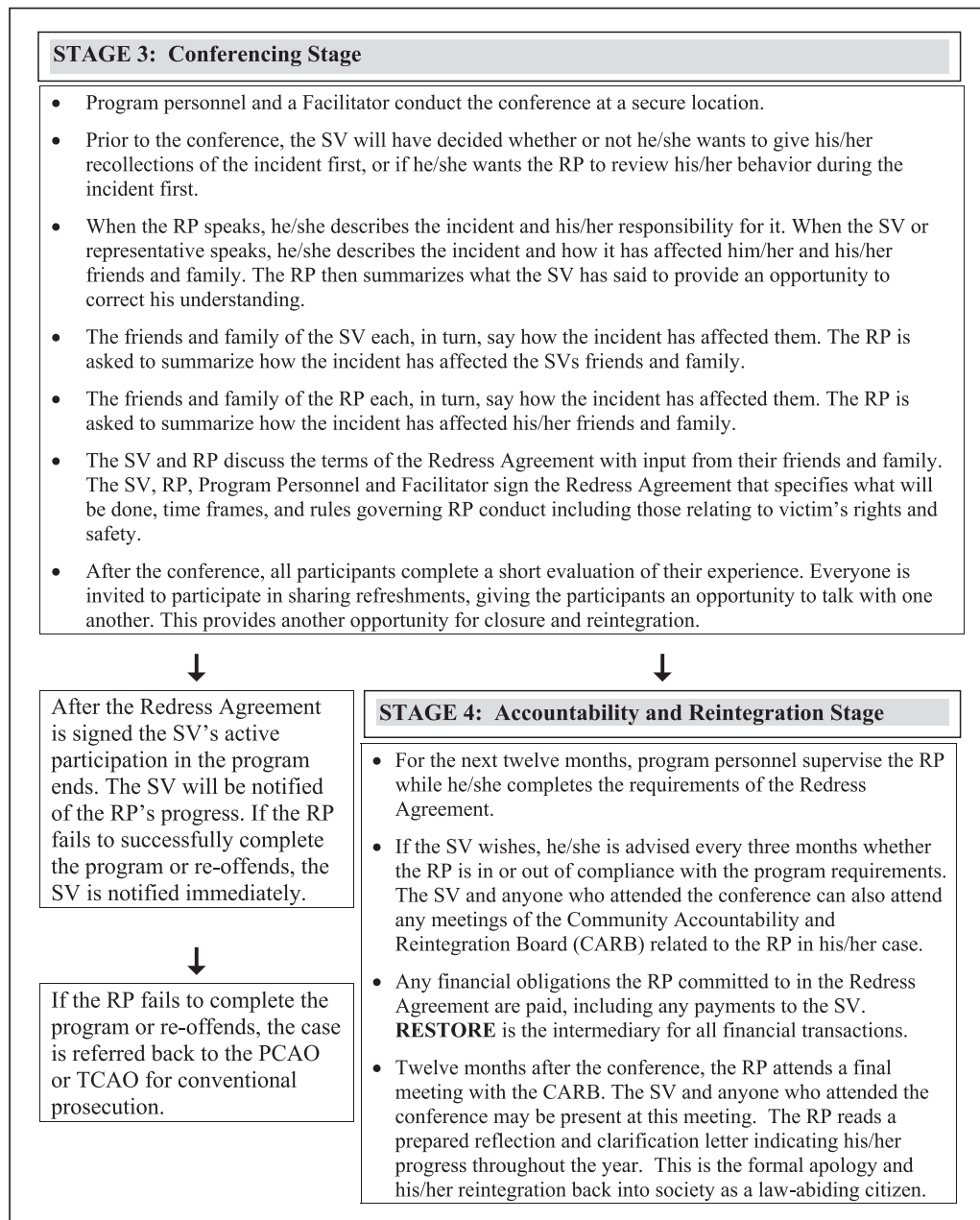
The case will be referred back to the PCAO or TCAO for conventional prosecution.

(continued)

Figure 1. (continued)



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**Figure 1.** Operational process of RESTORE.

(Millon, Millon, Davis, & Grossman, 2009), and the Sex Offenders Risk Appraisal Guide (Hanson & Thornton, 1999). Risk assessment after enrollment continued quarterly by the RESTORE staff using the Static-2002 (Hanson & Thornton, 1999; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012).

The second stage of Figure 1 is conference preparation. Here the goal is to ready all participants to meet face-to-face in a safe and constructive conference. Preparation consists of describing what will happen at a conference, answering questions, helping plan what to say, and guiding decisions about redress. The length of the second stage varies by each participant because survivor victims each have their own timetable to recover from initial trauma before they are able to speak and to contain their distress without humiliating loss of control. Responsible persons must achieve sufficient understanding of their acts to participate without traumatizing others through denial or blame. Finally, they must be familiar with the requirements that comprise their 12-month commitment to redress to avoid counter-productive resistance. The RESTORE redress plan consists of survivor victim-driven and program-imposed components. Required accountability and reparation includes sex offender therapy and any other intervention recommended by the forensic assessment (e.g., alcohol, anger management), monthly face-to-face meetings with a case manager, weekly check-up phone calls, quarterly meeting with the Community Accountability and Reintegration Board, community service, and compliance with stay away orders. Survivor victim-added activities are those with individual significance and constitute their input into accountability. Examples include selection of the type of community service, replacement of damaged property, contributions to charity in the survivor victim's name, input into rehabilitative activities required of the responsible person, and payment of expenses for survivor victim therapeutic or reparative interventions.

The third stage in Figure 1 is the face-to-face conference. It is professionally facilitated by screened, trained, and compensated persons from various professions such as social work, law enforcement, counseling, and probation. Conferences are conducted according to a standard agenda but do not follow a script. Clear rules are stated and imposed to equalize communication opportunities, to prevent re-abuse of survivor victims, and to avoid excessive verbal shaming of responsible persons that might elicit dangerous or counter-productive anger and aggression (Massaro, 1997). Responsible persons begin the conference by describing their acts in sufficient detail to portray their offense. Survivor victims then speak about the distress and other impacts they experienced as a result of the responsible person's acts. Next,



their family and friends speak about their reactions followed by comments from those persons attending with the responsible person. Conferences conclude by finalizing the redress plan for the responsible person. Not all survivor victims desire a face-to-face meeting. When they prefer *minimal participation* and contingent on their consent, RESTORE proceeds using a *surrogate victim*. These are persons designated by the survivor victim or recruited by staff to attend conferences as a spokesperson for the direct victim including delivering an impact statement and participating in planning redress.

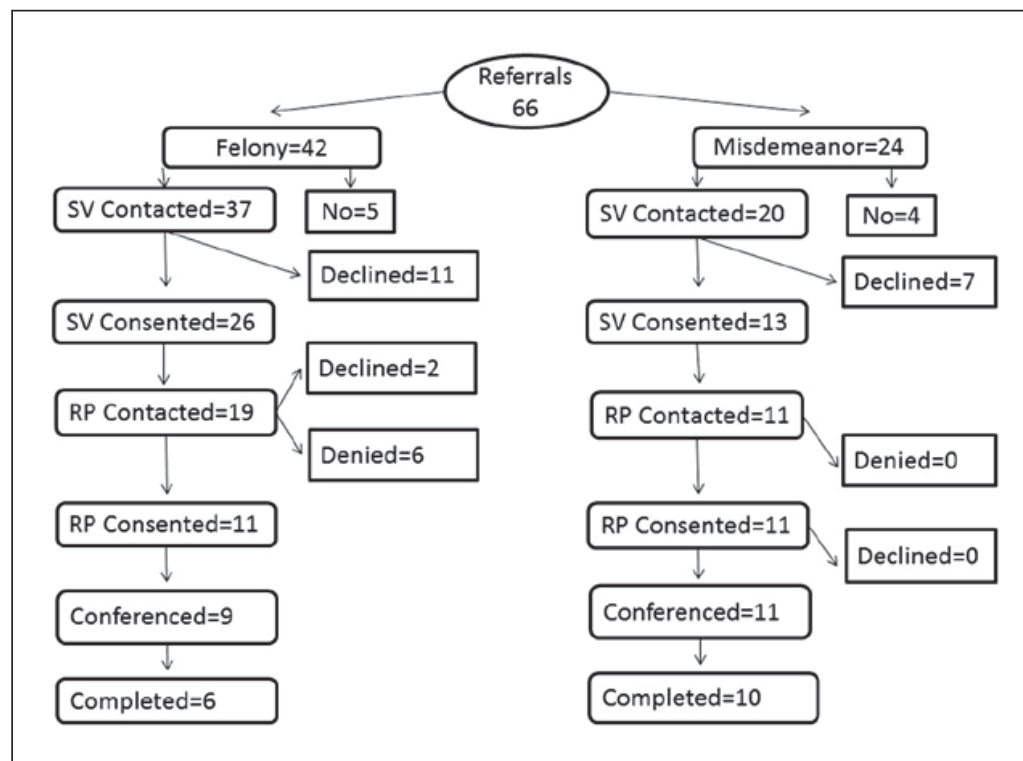
The final stage is monitoring of the responsible person's redress plan fulfillment. Monitoring includes weekly phone contact and monthly face-to-face meetings with the RESTORE staff as well as and quarterly appearances before the Community Accountability and Re-Integration Board. This board consists of volunteers who represent the community in supporting the responsible person's progress or in the case of non-compliance, terminating participation. RESTORE concludes with an exit meeting with the board where the responsible person presents a *statement of accountability and reintegration* that summarizes lessons learned and constitutes their formal apology.

## Method

RESTORE was conducted in Pima County, Arizona (with a population of 989,569 people) by a collaboration of law enforcement, prosecution, sexual assault advocates, and public health professionals. Referrals were made by county and city prosecutors. Prosecutors' referral criteria excluded repeat sexual offenders, persons with police reports for domestic violence, or individuals with arrests for any crimes involving non-sexual forms of physical assault. Enrollment criteria were subject to policies of the University of Arizona Institutional Review Board. The adult justice system often processes the cases of youths aged 15 to 17 years. Although they are adults from the justice perspective, under human subjects' protection policy, they are viewed as children. The institutional review board deemed the safety record of restorative conferencing with juvenile offenders insufficient to outweigh the risks of including these youths. Therefore, all victims and offenders in the present study were 18 years or older.

## Sample

**Recruitment and consent.** The flow of survivor victims and responsible persons through RESTORE is illustrated in Figure 2. The program operated from March, 2003, to August, 2007, and closed at the end of federal funding.



**Figure 2.** Participant flow from referral to program exit by crime type.

Note. SV = survivor victim; RP = responsible person.

Referrals were accepted during 2.5 years of this time due to two 6-month periods when all activities except supervision were suspended awaiting funding decisions. No new referrals were accepted in the last year to ensure completion of supervision. Figure 2 illustrates the progression of survivor victims and responsible persons from referral to program exit for both felonies and misdemeanors. This figure demonstrates the multiple steps involved in arriving at a consented case and provides raw numbers to estimate consent rates. Figure 2 illustrates that 64% of the 66 referrals were felonies and 36% were misdemeanors. Most referrals were pre-charging although five misdemeanors were post-plea. This article is based on the 22 cases where both survivor victim and responsible person consented to RESTORE. Each case involved multiple participants. A total of 109 individuals provided data at intake and 100 at post-conference (92% retention). Sample sizes for the subgroups of case participants at intake and post-conference were as follows: responsible persons,  $n = 20, 20$ ; survivor victims,  $n = 11, 7$ ; surrogate victims,  $n = 11, 11$ ; minimal participation victims,  $n = 15, 13$ ; responsible person family and friends,  $n = 23, 20$ ; survivor victim family and friends,  $n = 19, 18$ , and volunteers,  $n = 10, 11$ , respectively.



The first step after prosecutor referral was contacting survivor victims. Most could be reached (88% for felonies, 87% for misdemeanors). Among those contacted, the survivor victim consent rate was 63% for felonies and 70% for misdemeanors. The most common options selected by survivor victims who declined were standard criminal justice (38%) and civil justice (7%). Other reasons included lost desire for any form of criminal justice or the belief that too much time had passed. Responsible persons were contacted only after survivor victims' consent was obtained. Lacking consent, responsible persons remained in criminal justice. The consent rate was 100% for misdemeanors and 90% for felonies among those responsible persons whose survivor victim consented, who could be reached, and met inclusion criteria. The felony consent rate would be 57% if calculations included the offenders who were not offered RESTORE because they denied responsibility for the incident. These persons maintained their lack of responsibility even though they did not have to use the word "guilty" or label the incident as "rape." Deniers were excluded out of concern that they might pose safety risks to survivor victims including potential intimidation, verbal abuse, and/or retaliation.

*Demographic characteristics.* Table 1 displays the demographic characteristics of both referrals from prosecutors ( $n = 66$ ) and consented cases ( $n = 22$ ). The first section of Table 1 contains data on *referrals*. The data show that 4% of felony and 24% of misdemeanor survivor victims were men. One third of the male survivor victims were security guards who witnessed crimes on video surveillance. All but one referred offender was male (99%). Racial/ethnic data demonstrate that Caucasians comprised half or more of the referrals (54% of responsible persons and 64% of survivor victims). Responsible persons referred for felonies were younger ( $M = 31$  years, range = 19-67 years) than those referred for misdemeanors ( $M = 39$  years, range = 18-65 years). Regardless of crime type, survivor victims were younger than responsible persons (felony,  $M = 28$  years, range = 18-49 years; misdemeanor,  $M = 31$  years, range = 18-56 years). The percentage of youthful responsible persons aged 18 to 25 was 59% for felonies and 20% for misdemeanors. Survivor victim referrals in the 18 to 25 year age group were similar for felonies (62%) but approximately twice as high for misdemeanors (38%). Felonies as contrasted to misdemeanors were more likely to occur when the responsible person was drinking alcohol (50% vs. 21%). Felonies also more often involved friends or romantic partners than misdemeanors (57% vs. 21%). Among misdemeanors, however, acquaintances were limited to people such as a handyman, body worker, and school crossing guard. Few referrals involved intimate

**Table 1.** Demographics of Referrals and Cases by Crime Type in Numbers and Percentages.

Descriptor	No.			% <sup>a</sup>		
	Felony	Misdemeanor	Sample	Felony	Misdemeanor	Sample
Referrals, <i>n</i> = 66						
Gender						
SV male/71 SVs <sup>b</sup>	2	6	8	4	24	11
RP male/70 RPs <sup>c</sup>	42	27	69	98	100	99
RP age 18-25 years	17	5	22	59	20	43
SV age 18-25 years	26	9	35	62	38	53
RP race/ethnicity						
White, non-Hispanic	17	20	37	40	74	54
Hispanic of any race	10	7	17	24	26	25
African American	6	0	6	14	0	9
American Indian	0	0	0	0	0	0
Unknown/did not say	9	0	9	21	0	13
SV race/ethnicity						
White, non-Hispanic	31	15	46	63	65	64
Hispanic of any race	10	5	15	20	22	21
African American	1	0	1	1	0	1
American Indian	0	0	0	0	0	0
Unknown/did not say	7	3	10	14	13	14
RP and SV were acquaintances	24	5	29	57	21	44
RP was drinking before offense	21	5	26	50	21	39
Cases, <i>n</i> = 22						
SV male	0	6	6	0	55	27
RP male	11	11	22	100	100	100

(continued)

Table 1. (continued)

Descriptor	No.			% <sup>a</sup>		
	Felony	Misdemeanor	Sample	Felony	Misdemeanor	Sample
RP age 18-25 years	9	2	11	82	18	50
SV age 18-25 years	6	2	8	55	18	36
RP race/ethnicity						
White, non-Hispanic	9	8	17	82	83	77
Hispanic of any race	0	3	3	0	17	14
African American	2	0	2	18	0	9
American Indian	0	0	0	0	0	0
SV race/ethnicity						
White, non-Hispanic	13	8	21	100	72	88
Hispanic of any race	0	3	3	0	27	13
African American	0	0	0	0	0	0
American Indian	0	0	0	0	0	0
RP and SV were acquaintances	11	0	11	100	0	50
RP was drinking before offense	8	2	10	83	20	46

Note. SV = survivor victim; RP = responsible person.

<sup>a</sup>Some percentages do not total to 100 because only one response option is included in the table.

<sup>b</sup>Includes two multi-victim felonies and one multi-victim misdemeanor were included. Excepting gender, the data represent the primary survivor-victim and responsible person for each referral or case.

<sup>c</sup>Includes one multi-offender misdemeanor.

relationships between the survivor victim and responsible person (15% of felonies and 13% of misdemeanors).

The second section of Table 1 describes the 22 consented *cases*. All felonies involved female survivor victims but men comprised half of those victimized by misdemeanors. All responsible persons were men. As in the referral sample, a wide range of ages were served by RESTORE (range = 18-66 years). Likewise, felony survivor victims were slightly younger ( $M = 28$  years) than responsible persons ( $M = 31$  years) and the age difference was more notable in misdemeanor cases where survivor victims were on average 10 years younger ( $M = 32$  years) than responsible persons ( $M = 42$  years).

Young men were more highly represented among felony cases than they were in the referral sample (82% of cases vs. 59% of referrals). This trend was not observed for misdemeanors and the reverse was seen for survivor victims. RESTORE cases involved somewhat fewer young survivor victims than the referrals. The difference was small for felonies but pronounced for misdemeanors (38% of referrals vs. 18% of cases).

Acquaintance, intimate partnership, and alcohol use by the perpetrator before the crime were all higher among felony cases compared with misdemeanors. All felony cases involved acquaintances or romantic partners whereas all misdemeanor cases involved strangers. The representation of acquaintance crime among referrals compared with cases differed both with and between crimes. RESTORE participation compared with cases reveals that the program was selectively more attractive to acquaintances for felony crimes (57% of referrals, 100% of cases) and progressively less appealing for misdemeanors (21% of referrals, 0% of cases). Alcohol use preceded the crime more often in felonies than misdemeanors (83% vs. 20%). Program participation appeared to be selected by more responsible persons who had been drinking before the offense (83%) compared with the percentage among referrals (50%). There was no difference among misdemeanors. Most responsible persons had completed high school and 14% were higher education students. Many (45%) were unemployed and 14% were disabled. Forty percent were married and 60% were separated, divorced, or never married. Racial/ethnic data identify show that most RESTORE cases involved Caucasians (77% of responsible persons and 88% of survivor victims).

### ***Process Monitoring***

Process monitoring is intended to ensure that services are accorded equably, the assets required for implementation in staff time and community capacity are estimated, and the interventions are delivered as designed. Without a formal manual stipulating the components of the intervention and a method for

assessing compliance, outcomes might be internally invalid because individual staff could deliver services idiosyncratically.

**Service delivery.** Data sources for process evaluation included clinical and research files, and nonparticipant observation of conferences. Variables extracted from files included demographics and service characteristics such as time delay from police report to referral, duration of each RESTORE stage, length of conferences, and number of staff hours devoted to each case. Variables assessed through conference observation included (a) implementation of specified physical arrangements (8 items), (b) facilitator conformance with stipulated behaviors and procedures (20 items), and (c) facilitator enforcement of rules for participant behavior (15 items). Training for data extraction and observational ratings consisted of written manuals, didactic presentations, role-playing, and observed practice. Inter-rater reliability was not obtained as the checklists involved minimal subjectivity. Raters included six persons (staff members = 3; graduate students = 3). Each individual rated a mean of three conferences.

Observer ratings demonstrated that the stipulated conference design was followed closely. Physical arrangements were virtually 100% in conformance with minor exceptions. For example, 3 of 20 conferences lacked a pre-arranged seating plan, seat labels, or tissues. Conference procedures also revealed close to 100% compliance. Among the exceptions were 9 of 104 conference attendees who were rated as lacking input into the redress plan. Facilitator compliance was also close to 100% including items such as covering all points on the agenda, guiding discussion of reparation, refraining from intimidation of participants, and avoiding reprimands of responsible persons or survivor victims. In a few instances, facilitators exhibited annoying mannerisms or failed to redirect discussion. They were coached or not included again.

**Safety.** Case managers' clinical notes and conference observations were used to identify incidents of verbal re-abuse, intimidation, or physical danger. Psychological safety for survivor victims was monitored at intake and post-conference with the 17-item Post-Traumatic Symptoms Scale (PSS; Foa, Riggs, Dancu, & Rothbaum, 1993). This scale was developed with assault survivor victims. It yields a total score and a dichotomous classification of whether formal diagnostic criteria for post-traumatic stress disorder (PTSD) are met. Respondents reported the frequency of various symptoms during the prior month on the 4-point scale used by the original authors (0 = *not at all*, 1 = *a little bit*, 2 = *somewhat*, and 3 = *very much*). Examples of item content are "having bad dreams or nightmares about the trauma," "trying not to think

about, talk about, or have feelings about the trauma,” and “having trouble falling asleep.” The full scale score that was used in the present study had a Cronbach’s alpha of .91 and test–retest reliability over 1 month of .74 (Foa et al., 1993). Diagnosis of PTSD based on PSS scores was compared with clinical interview and concurrent validity was established. PTSD diagnosis was assigned in this study using the authors’ criteria (Foa et al., 1993). These include the requirement that the trauma occurred 3 months or more before assessment and endorsement at a level of 1 (“a little bit”) or higher with at least one re-experiencing symptom, three avoidance symptoms, and two arousal symptoms. Foa and colleagues (1993) reported that 94% of rape victims met diagnostic criteria for PTSD at 2 to 3 weeks after rape and 65% still did so 3 months post-assault (Rothbaum, Foa, Riggs, & Murdock, 1992). Psychological and physical health were also monitored at intake and post-conference among responsible persons and survivor victims using author-constructed scales for which internal consistency data are not available. The number of items and sample wording included mental distress (four items, “sudden tearfulness”), arousal (seven items, “problems concentrating”), physical symptoms (three items, “loss of appetite”), and avoidance (three items, “feeling like you wanted to hide from family and friends”).

### Outcome Assessment

Data collection was done by self-report with measurement points at intake and immediately post-conference except for survivor victims and responsible persons. They provided post-conference data 1 week later at the RESTORE office. In addition to data collection, this meeting allowed clinical assessment of any negative effects. Respondents provided ratings that represented how they felt at the moment with the exception of psychological assessment where the recall period was 1 week. Measurement from the South Australia Juvenile Justice project is acknowledged for guidance in developing the item content that is described next (Daly et al., 2006).

*Reasons for choosing Rj.* These variables were assessed by five items at intake and nine post-conference. Each item was preceded by the question “How important were each of the following issues when deciding to participate in RESTORE?” Participants responded by selecting *strongly disagree* (1), *disagree* (2), *agree* (3), or *strongly agree* (4). Item content is provided in an abbreviated form in Table 3. There were a few differences in wording for responsible persons. For example, most groups were asked if they selected RESTORE to hear an apology. Responsible persons were asked if they

participated because they felt they should apologize. The alternative wordings are separated by a slash in Table 3.

*Satisfaction with preparation and conference experiences.* Preparation experiences were measured with eight items covering the extent to which participants perceived that staff had readied them to meet face-to-face. The response scale was *strongly disagree* (1), *disagree* (2), *agree* (3), or *strongly agree* (4). Item content is provided in an abbreviated form in Table 4. Table 5 contains the same information for the 13 items that assessed conference experiences. Question format and response scale were the same as for preparation ratings. Four items in Table 5 are expressed in the negative so that higher numbers throughout the table uniformly represent desirable outcomes. These items are indicated by the presence of the word “NOT” in several Table 5 items. That word was not present in actual administration. *Satisfaction* data were obtained by six items that focused on the individual components of RESTORE as well as assessments of the overall justice experience. The response format was *very dissatisfied* (1), *dissatisfied* (2), *satisfied* (3), and *very satisfied* (4). The abbreviated text is found in Table 6.

*Completion rates.* Two types of completion rates were obtained from clinical files. The first was the percentage of cases that resulted in a conference being held. The second was the percentage of responsible persons who successfully completed all components of their redress plan and supervision and did not re-offend during the 12 months they were monitored by RESTORE.

### Data Analysis

The items analyzed in the present study are those that were asked in a virtually identical form across participants. No data replacement was done. Daly (2006) reported disaggregated findings on satisfaction for misdemeanors and felonies but found no differences. Therefore, except for demographics, the present data were not disaggregated by crime type. Dependent *t* tests were conducted on the four psychological distress scales. Tests were two-tailed to allow for either positive or negative change. The probability level of  $p < .05$  was adopted. All other results are descriptive. The data presented in Tables 3 through 5 collapse the percentage of respondents selecting ratings of 1 and 2 (any degree of dissatisfaction or disagreement) and separately present ratings of 3 (agree or satisfied) and 4 (strongly agree or very satisfied). The intent is to present the results conservatively by allowing the reader to use one percentage to note any degree of negative reaction and to highlight positive ratings that were not maximal.



## Results

### *Process Monitoring*

*Service delivery.* Figure 1 illustrates that the yield of RESTORE cases that resulted from prosecutor referrals, including all persons regardless of whether they could be found and qualified, was 46% for misdemeanors and 26% for felonies. More than 3 months elapsed from police report to RESTORE referral ( $M = 107$  days, range = 21-220 days). Overall, 55% of cases were referred in the same year as the police report, 35% were referred within 12 to 24 months, and 10% of cases were referred after more than 2 years. On receipt of referral, the mean number of days to secure survivor victims' consent was 11 (range = 1-37). Locating, screening, consenting, and forensic examination of responsible persons required a mean of 24 days (range = 5-73). The preparation of conference attendees lasted approximately 2 months ( $M = 67$  days, range = 25-156). The length of the RESTORE Program from referral to conference for survivor victims was close to 3 months (95 days, range = 25-253). It was slightly shorter for felonies (95 days, range = 25-170) than misdemeanors ( $M = 117$  days, range = 31-253). The mandatory 12 months of supervision for responsible persons began on the day of the conference. Conferences were approximately 45-min long (misdemeanors,  $M = 40$  min, range = 20-68; felonies,  $M = 47$  min, range = 27-64). The case manager effort involved in each case averaged 48 hr or the equivalent of 6 workdays (range = 3-7).

### *Safety*

The PSS administered to survivor victims revealed a decrease in PTSD symptoms from intake to post-conference. At intake, 82% of survivor victims met diagnostic criteria for PTSD compared with 66% post-conference. The results from dependent  $t$  tests of pre-post psychological and physical symptoms for survivor victims and responsible persons are summarized in Table 2. No comparisons among survivor victims achieved or approached significance. Pre-post comparisons among responsible persons revealed two symptom scores that approached but did not meet the pre-specified significance criterion ( $p < .05$ ). These included mental distress ( $M = 7.17$  at intake, and  $M = 6.50$ , post-conference;  $t = 2.06$ ,  $p = .55$ ) and arousal ( $M = 9.22$ , at intake, and  $M = 8.22$ , post-conference;  $t = 1.98$ ,  $p = .064$ ). Case notes and conference observations revealed no physical safety issues before, during, or after the conferences. Across all conferences, a punitive statement was made by a responsible person for a survivor victim only once. However, punitive or



**Table 2.** Pre to Post Monitoring of Psychological Status.

Scale	Intake <i>M</i>	<i>SD</i>	Post-conference <i>M</i>	<i>SD</i>	<i>df</i>	Dependent <i>t</i> test ( <i>t</i> )	<i>p</i> Value
Survivor victims <sup>a</sup>							
Mental distress	8.40	4.50	9.20	3.56	4	-0.825	.456
Arousal	18.50	7.89	15.75	8.57	4	1.33	.340
Physical symptoms	7.00	3.67	6.40	3.13	4	0.418	.697
Avoidance	5.60	3.97	5.40	3.78	4	0.196	.854
Responsible persons							
Mental distress	7.17	2.54	6.50	2.93	18	2.06	.055
Arousal	9.22	3.40	8.22	3.00	18	1.98	.064
Physical symptoms	5.33	2.42	4.83	1.91	18	0.94	.360
Avoidance	5.17	2.20	4.67	2.45	18	1.14	.269

<sup>a</sup>Survivor victims who elected not to participate in a conference were not asked to complete the psychological status measures. In addition, six survivor victims chose not to provide psychological status information.

blaming comments toward responsible persons occurred in half the conferences and were made by their own supporters as well as by survivor victims and their family and friends.

### *Outcome Evaluation*

**Reasons for choosing RESTORE.** Table 3 shows that the highest consensus reason at intake was “to make the responsible person accountable” (>93% agreement). All responsible persons agreed with the comparable wording they received (“taking direct responsibility for making things right”). Most groups agreed that they selected RESTORE to have an alternative to court (>75%). The most likely groups to disagree were survivor victims and their family and friends. Across groups, 20% to 50% of respondents disagreed that apology was important. The exception was surrogate victims who all agreed that apology was significant to them. Virtually all (95%) responsible persons agreed or strongly agreed that “apologizing to the person I harmed” was a major reason they chose RESTORE.

At the post-conference measurement, two items achieved consensus. They were “making sure the responsible person doesn’t do what he did to anyone else” (>92% agreement) and “making sure the responsible person gets help” (>85% agreement). Many survivor victims agreed that having input into punishment was important (66% of survivor victims attending conferences, 61% of those with minimal participation). Surrogate victims more often disagreed (58%). Comparing intake with post-conference ratings revealed one reason

**Table 3. Reasons for Choosing Restorative Justice in Percentages by Participant Type.**

	Item Responses (%) <sup>a</sup>																													
	SV Present <sup>b</sup> (n = 11)					SV Absent <sup>b</sup> (n = 15)					SV Surrogate <sup>b</sup> (n = 11)					SV Family/Friends <sup>b</sup> (n = 19)					RP <sup>b</sup> (n = 20)					RP Family/ Friends <sup>b</sup> (n = 23)				
	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4			
Item: Please rate your agreement																														
Baseline reasons for participating in RESTORE																														
Say how I was affected/explain my side																														
Making the RP accountable/taking responsibility to make things right <sup>d</sup>																														
Have input into punishment/getting punished																														
Hear an apology/apologize																														
Participate in an alternative to court																														
Post-conference reasons for participating in RESTORE																														
Say how I was affected/explain my side																														
Making the RP accountable/taking responsibility to make things right																														
Have input into punishment/getting punished																														
Hear an apology/apologize																														
Participate in an alternative to court																														
Make sure the RP gets help/to understand what happened																														
Making sure that the RP doesn't do this to anyone else																														
Put this behind me																														
Take back my power																														

Note. SV = survivor victim; RP = responsible person.

<sup>a</sup>Percentages reflect the proportions within each participant type who selected 1 = strongly disagree, 2 = disagree, 3 = agree, and 4 = strongly agree.

<sup>b</sup>SV present are those who attended their conference. SV Absent are those selecting minimal participation. SV Surrogates are volunteers who represented survivor victims with their consent at conference. Family and friends are support persons. The sample size at intake was n = 109. Data for 10 community volunteers are omitted but available.

<sup>c</sup>This item was not asked among this group of participants.

<sup>d</sup>Alternative RP wordings are separated by a slash.

for choosing RESTORE that became more important than what respondents had initially perceived. The item was “having the opportunity to express how the incident affected me.” Disagreement with this item fell from 9% to 0% in survivor victims, 46% to 7% in surrogate victims, 30% to 0% in their supporters, and 40% to 11% in responsible person supporters.

*Preparation and conference experiences.* Table 4 contains the responses in percentages to the items that solicited opinions on the preparation activities that preceded the conference. Most participants (>90%) agreed or strongly agreed that the preparation achieved its intended goals. An exception was survivor victims who participated in their conference. They either strongly agreed that their preparation was good (83%) or they strongly disagreed (17%). The weak area in preparation identified by these items was that 1 in 6 (17%) of responsible person family and friends disagreed that they received help in figuring out what to say.

Table 5 presents the data on participants’ experiences during the conference. Across all groups, more than 90% of the participants agreed or strongly agreed that they felt safe, listened to, supported, treated fairly, treated with respect, and not expected to do more than they anticipated. A clear consensus emerged that the conference was a success (>90% agreement across participants) with the exception of community volunteers. No survivor victims felt blamed but some responsible persons did (21%) as did some family and friends of both survivor victims and responsible persons (15% and 17%, respectively). Among all groups, survivor victims who attended their conference most often disagreed or strongly disagreed with items based on the envisioned aims of the RESTORE conference. However, required disagreement was on only 4 of 14 items for this distinction. Three of the four items on which survivor victims expressed negative opinions focused on the sincerity, genuineness, and likelihood of re-offending by the responsible person. Survivor victim reactions were mirrored to a somewhat lesser degree by their family and friends. Those viewing the conference from the survivor victim perspective clearly differed from the opinions of responsible persons. All responsible persons indicated that “I felt sincerely sorry for what happened.” However, 50% of survivor victims and 26% of their supporters disagreed. Likewise, several groups disagreed that responsible persons accepted responsibility (33% of survivor victims, 25% of surrogate victims, and 15% of their family and friends, and 12% of responsible person supporters). There were also variable opinions about the fairness of the redress plan. Those who most agreed that it was fair to everyone included survivor victims attending their conference (100%), their family and friends (95%), and volunteers (100%). The largest percentage of disagreement over redress fairness occurred among

**Table 4.** Preparation Experiences in Percentages by Participant Type.

	Item Responses in Percentages <sup>a</sup>																			
	SV Present (n = 7) <sup>b</sup>				SV Absent (n = 13)				SV Surrogate (n = 11)				SV Family/ Friends (n = 18)				RP (n = 20)			
	1-2	3	4		1-2	3	4		1-2	3	4		1-2	3	4		1-2	3	4	
Please Rate Your Agreement	1-2	3	4		1-2	3	4		1-2	3	4		1-2	3	4		1-2	3	4	
Listened to me express feelings	0	0	100	8	23	69	7	31	62	0	40	60	0	55	45	10	45	45	0	20
Answered all my questions about participation	0	33	67	8	46	46	0	29	71	0	30	70	0	53	47	10	35	55	— <sup>c</sup>	—
Answered my questions about RESTORE	0	0	100	8	23	69	0	15	85	0	25	75	5	30	65	5	42	53	0	40
Explained the purpose of the redress plan	0	17	83	8	38	54	0	31	69	0	20	80	0	40	60	10	35	55	0	30
Explained how the redress plan would be developed	0	17	83	8	46	46	7	23	69	0	30	70	0	45	55	10	45	45	0	30
Helped in figuring out what to say	0	0	100	—	—	—	—	9	46	46	5	40	55	0	35	65	17	50	33	—
Received good preparation	17	0	83	—	—	—	—	0	15	85	0	10	90	0	30	70	0	30	70	0
Treated me with respect	0	0	100	8	8	85	0	0	100	0	5	95	10	30	60	0	20	80	0	20

Note. SV = survivor victim; RP = responsible person.

<sup>a</sup>Percentages reflect the proportions within each participant type who selected 1 = strongly disagree, 2 = disagree, 3 = agree, and 4 = strongly agree.

<sup>b</sup>The sample sizes provided are from the post-conference assessment point that reflects 92% retention of the intake sample.

<sup>c</sup>This item was not asked among this group of participants.

**Table 5.** Conference Experiences in Percentages by Participant Type.

Item: Please Rate Your Agreement	Item Responses (%) <sup>a,b</sup>															
	SV Present				SV Surrogate				SV Supporters				RP			
	1-2	3	4		1-2	3	4		1-2	3	4		1-2	3	4	
Felt safe	0	33	67	8	0	92	0	20	80	5	50	45	5	33	61	0
Felt listened to	0	16	83	— <sup>c</sup>	—	—	0	15	85	0	60	40	5	37	58	10
Support during conference	0	17	83	—	—	—	0	40	60	0	42	58	6	50	44	—
Everyone was treated fairly	0	50	50	0	27	73	0	17	83	5	53	42	0	33	67	0
RP seemed to accept responsibility	33	0	66	25	50	25	15	45	40	—	—	—	12	35	53	0
RP seemed sincerely sorry/felt sincerely sorry	50	16	33	14	46	36	26	47	26	0	74	26	6	41	53	10
RP (DID NOT) <sup>d</sup> apologize due to group pressure/felt group pressure	16	16	67	0	0	100	11	47	42	5	10	85	11	17	72	0
RP will (NOT) hurt again/I will not hurt someone again	17	33	50	0	18	82	5	5	90	5	10	85	0	5	95	0
It was (NOT) hard to talk openly	16	16	67	25	25	50	35	30	35	30	40	30	0	33	67	0
Felt like I was (NOT) blamed	0	0	100	0	0	100	15	20	65	21	26	53	17	11	72	0
Was (NOT) expected to do more than I should have	0	0	100	0	0	100	10	10	80	5	30	65	11	6	83	0
Was treated with respect	0	33	67	0	8	92	5	20	75	0	55	45	0	28	72	0
Redress plan was fair	0	40	60	33	25	42	5	40	55	32	37	32	16	37	47	0
The conference was a success	0	66	33	8	50	42	0	76	24	0	38	62	5	53	42	20

Note. SV = survivor victim; RP = responsible person.

<sup>a</sup>Percentages reflect the proportions within each participant type who selected 1 = strongly disagree, 2 = disagree, 3 = agree, and 4 = strongly agree.

<sup>b</sup>The group sizes are the same as presented in Table 4.

<sup>c</sup>This item was not asked among this group of participants

<sup>d</sup>Parentheses (NOT) indicate items that were reverse scored so that higher scores on all items represented positive experiences.

surrogate victims (33%), and responsible persons (32%) and 16% of their supporters. Some conference attendees found it difficult to speak openly (16% of survivor victims attending their conference, 25% of victim surrogates, 35% of survivor victim supporters, and 20% of responsible persons). Although 17% of responsible person supporters disagreed that their preparation equipped them to speak, none reported actual difficulty in speaking openly once they were in the conference.

**Satisfaction.** Table 6 contains satisfaction ratings for each of the RESTORE stages. More than 90% of participants were satisfied with their preparation, the conference, and the redress plan. The most satisfied group was survivor victims who attended their conference (100% satisfied or very satisfied on five of six items) and their supporters (100% satisfied or very satisfied on four of five items). All participants except 21% of responsible persons were satisfied with how RESTORE handled their case. Some disagreed that justice was done including 17% of survivor victims, 30% of surrogate victims, 16% of survivor victim supporters, and 20% of community volunteers. Nevertheless, more than 90% of all participants and 84% of surrogate victims would recommend RESTORE to others.

### **Completion Rates**

Once consented, virtually all cases led to a conference ( $n = 20$  of 22, 91%). From the 20 conferences that were held, 10 of 11 misdemeanor and 6 of 9 felony responsible persons completed RESTORE (80%). The two terminations and one withdrawal were all felonies. The terminations were for non-compliance related to alcoholism, financial distress, or homelessness. The withdrawal occurred when the offender recanted responsibility. The sole rearrest was an elderly person arrested for exposure who was in declining health throughout his enrollment. At the time of the re-offense, he was beginning to show symptoms suggestive of dementia.

### **Discussion**

Consideration of RJ for crimes against women has focused primarily its use in domestic violence cases. This article contributes empirical data on sexual assault to augment the dialogue. The following discussion begins with an examination of the *feasibility, fairness, and safety* of RESTORE. Following these comments, participants' *experiences* are compared with the program vision. Next, *service delivery* is reviewed to aid planners to better anticipate the demands of program implementation. Subsequently, *outcome evidence* is

**Table 6.** Overall Satisfaction in Percentages by Participant Group.

	Item Responses (%) <sup>a,b</sup>																							
	SV Present				SV Absent				SV Surrogate				SV Supporters				RP Supporters				Volunteer Supporters			
	1-2		3-4		1-2		3-4		1-2		3-4		1-2		3-4		1-2		3-4		1-2		3-4	
	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4	1-2	3	4
Preparation	0	17	83	0	62	38	0	25	75	0	38	62	0	55	45	5	50	45	0	40	60			
Conference	0	17	83	—	—	—	0	17	83	0	33	67	0	55	45	5	40	55	0	40	60			
Redress plan	0	33	67	0	56	46	0	33	67	0	24	76	10	40	50	10	45	45	0	40	60			
How RESTORE handled the case	0	0	100	0	39	62	0	33	67	— <sup>c</sup>	—	—	0	26	74	—	—	—	0	30	70			
I feel justice was done <sup>d</sup>	17	33	50	—	—	—	30	20	50	16	53	32	5	68	26	10	40	50	20	10	70			
I would recommend RESTORE <sup>d</sup>	0	0	100	8	31	62	16	50	33	0	33	67	0	50	50	5	47	47	0	30	70			

Note. SV = survivor victim; RP = responsible person.

Percentages reflect the proportions within each participant type who selected 1 = very dissatisfied, 2 = somewhat dissatisfied, 3 = satisfied, and 4 = very satisfied.

<sup>b</sup>The group sizes are the same as Tables 4 and 5.

<sup>c</sup>This item was not asked in this group.

<sup>d</sup>These two items were scored 1 = strongly disagree, 2 = disagree, 3 = agree, 4 = strongly agree.



scrutinized to reach conclusions about the extent to which the program achieved its aims. Finally, lessons learned are reviewed.

### *Feasibility*

RJ conferencing for sex crimes would be infeasible unless certain pre-conditions were present. RESTORE-type programs depend on assumptions that (a) survivor victims desire face-to-face contact with their perpetrator and (b) responsible persons will accept an alternative to standard justice given the low likelihood of prosecution. The existing literature including studies that did and did not include sexual assault suggests that three quarters of victims agree to meet (Sherman et al., 2005; Umbreit et al., 2002). Herman's (2005) study is an exception where many adult survivors of *child abuse* did not want face-to-face time with their perpetrator. In RESTORE among felony survivor victims, the desire to meet was consistent with earlier findings across crime types. Three quarters of the felony sexual assault survivors wished to meet face-to-face and this figure dropped only slightly when attention was limited to those cases where the survivor victim and responsible person were romantic partners (67%). The opposite was true for misdemeanors where four of five survivor victims did not wish to meet the responsible persons who were all strangers. Thus, the appeal of the RESTORE option increased as relationships became more intimate.

Responsible persons were willing to enter RESTORE at very high rates (85% of felonies and 100% of misdemeanors). The consent rate for felonies dropped to 57% if calculations included felony offenders who denied responsibility and were excluded from eligibility. This decision was justified on safety grounds, but it is an empirical question whether preparation time could have moved them to a point where they could have participated constructively in a conference. The inclusion of youthful offenders aged 15 to 17 years who were in the adult system would have boosted the number of referrals and potentially left out people who could have benefited from RESTORE. Hopefully, this exclusion on the grounds of human subject policy will prove specific to the site of the present study. Taken overall, the feasibility data were encouraging.

### *Fairness of Allocation of RJ*

Equity has been a significant concern in the RJ literature generally. The findings present sobering data on potential bias in how RESTORE was allocated. Tasca, Rodriquez, Spohn, and Koss (2012) collected ethnicity/race data from all sexual assault reports processed by the largest police department in



RESTORE's jurisdiction during the calendar year prior to opening. These data allow for the estimation of racial/ethnic composition as justice progressed from police report to RESTORE consent. Disturbing racial/ethnic trends occurred. Caucasian responsible persons comprised 33% of police reports, 54% of prosecutor referrals, and 77% of RESTORE cases. In contrast, African Americans offenders constituted 25% of police reports, 9% of referrals, and 9% of cases. The comparable figures for persons of Hispanic ethnicity were 42% of police reports, 25% of referrals, and 14% of cases. The patterns among survivor victims were similar. For example, Caucasian survivor victims comprised 64% of police reports, 64% of prosecutor referrals, and 88% of RESTORE cases. Readers should note that RESTORE staff could not directly control the race/ethnic makeup of consented cases because the referred persons themselves selected or declined the program. Care was taken to make RESTORE attractive to diverse groups by soliciting input from focus groups, nurturing partnerships with community agencies representing minority groups, arranging physical accessibility of facilities, and staffing the program ethnically and linguistically to reflect the community (Sniffen, Sisco, Bachar, & Koss, 2004). In addition, the initial presentation of the RESTORE option was guided by standard procedures and formal documents. Nevertheless, minority persons could have been discouraged by verbal or nonverbal staff behavior. However, it is more likely that the program was less attractive for minority groups for the cultural reasons that key informants had anticipated. Explanations for non-participation include norms about disclosure of negative information and reluctance to discuss what some may perceive as intimate matters. Structural factors could also have impacted consent. For example, immigration documentation practices in the state of Arizona might encourage Hispanic persons to avoid enlarging their exposure to institutional systems, especially if there are persons without papers in their extended families. The findings suggest that future programs should enhance cultural competence training among those who investigate and prosecute sexual assaults and implement ongoing monitoring of referral and consent demographics to correct imbalances as soon as they are documented.

There is also a concern that disproportionate access might result from bias against low-income persons. The demographics of RESTORE participants suggest the opposite. Prosecutors disclosed to an independent evaluator (Stubbs, 2009) that they selectively referred responsible persons who lacked resources. Half of them were unemployed non-students, and one in seven was disabled. If economically privileged offenders were less likely to be offered RESTORE, further research should document whether the criminal justice system was imposing any accountability on them at all.

## *Safety*

Case notes and observational data from RESTORE conferences documented one isolated incident of survivor victim re-abuse that was stopped in mid-stream by the facilitator. The psychometric assessment of survivor victims revealed that many had symptoms of PTSD on entry. Symptoms did not exacerbate during participation and fewer met PTSD criteria at post-conference 3 months later. This reduction in symptom severity is consistent with data on survivor victims seen at sexual assault service centers. The decrease has been attributed to the natural recovery course of PTSD (Rothbaum et al., 1992). Statistical pre-post comparisons revealed no significant negative or positive impact on survivor victims' emotional or physical health. Responsible persons had trend level evidence of symptom reduction. The mean scores of responsible persons were in the direction of improvement on half of the health outcomes. These analyses must be interpreted cautiously because of low power. Differences might have been detected with larger samples.

Many modifications of standard RJ conferencing models were incorporated into RESTORE in the interest of safety. These included focusing on prosecutor referral of offenders deemed safe for community-based resolution, using clinical risk assessment prior to enrollment, during preparation, and throughout supervision, determining that parties were ready before placing them face-to-face, holding conferences in police stations, establishing conduct rules for conferences, employing trained facilitators, supervising responsible persons for 12 months with either help or prodding as needed to complete the redress plan, and enforcing stay away orders. With these stipulations, RESTORE was conducted safely. RESTORE planners proceeded cautiously to avoid outcomes that would damage the prospects of future programs. Replication of identical procedures may be unnecessary. However, without greater attention to safety than is typical in conferencing programs, their use for sex crimes would be ill-advised.

## *Justice Experience Compared With Program Vision*

Survivor victims say that they want justice that validates the legitimacy of their victimization, gives voice to their harm, empowers them to influence how their case is conducted, focuses on offender behavior and not on theirs, and involves them in determining the consequences imposed on the responsible person. RESTORE was envisioned as a justice process that responded to their expectations. The findings suggest that victim survivors did select RESTORE for many of these reasons. However, there were also unanticipated results. For example, RESTORE was described in brochures as "Justice

That Heals.” Yet, the findings reveal that one third of survivor victims disagreed that they selected the program to put the experience behind them. It may be that some survivor victims feel that closure after sexual assault is not something one seeks from RJ, is not likely with any justice model, or is not possible under any circumstances because the impact of rape is life changing and lifelong. The data cannot weigh these alternatives.

The vision to empower survivor victims was better validated. All survivor victims strongly agreed that taking back their power was a major reason to select RESTORE over other justice options. Most also agreed that it was particularly important to have input into the consequences for the responsible person. Scholars have expressed fears that the accountability imposed by RJ is insufficient in comparison with criminal penalties. Participants knew that some forms of punishment could not be achieved through RESTORE, yet they still elected to enroll. Thus, it is unlikely that participants themselves devalued the forms of accountability offered.

Apology is thought to be an integral component of both accountability and healing (reviewed in Blecher, 2011). A meta-analysis of juvenile conferencing across crime types concluded that apologies are “extremely important” to victims and that RJ conferences produce sincere apologies (Sherman et al., 2005, p. 388). The RESTORE findings differed. Almost one third of survivor victims disagreed that they selected RESTORE to hear an apology. RESTORE actively discouraged apology until program exit where it would constitute an earned opportunity for responsible persons. Nevertheless, many responsible persons apologized at conferences. Survivor victims and supporters often viewed their apologies as insincere. Only one person was observed to forgive. Program designs that mandate apology at conferences are common in the literature. Forcing apology may be misguided with sexual assault survivors.

Contrary to expectations that a public apology is validating, no survivor victims chose to attend the exit meeting where the responsible person presented a letter he had written expressing his reflections over his acts, the harm he caused, and the changes he had made to avoid hurting others in the future. RESTORE case managers were in contact with survivor victims throughout the year following the conference to maintain compliance with Arizona victims’ rights statutes and check for the delayed negative impact. Survivor victims received updates on their responsible persons’ progress and notification of all public meetings of the community board involving him. No survivor victims asked to suspend contact, and so alienation from RESTORE is unlikely to explain their absence from these events that were intended to contribute to their recovery. Limits on the capacity to forgive have been hypothesized to constrain what any justice response may achieve (Blecher,

2011). Bletzer and Koss (2012) suggested that the survivor victims' may prefer private closure. In any case, their choice not to attend precludes critics' concern that survivor victims may be ill-used in RJ as absorbents of apologies who primarily serve the needs of responsible persons to feel better about themselves.

### *Service Delivery*

The service delivery data may be helpful to future program planners including anticipating what the caseload might be. In RESTORE, prosecutorial case disposition was the single most important determinant of referral flow, although the high rate of police case closure was also problematic. Prosecutors disclosed to an independent evaluator (Stubbs, 2009) that they had used a "provable at trial" standard to select referrals. Given the average conviction rate for rape in the United States is approximately 13% of reported cases (Daly & Bouhours, 2010), offering restorative options only in those cases deemed likely to prevail at trial could not achieve the intent of RESTORE to enlarge the pool of offenders who are held accountable. In retrospect, a conversation should have occurred about the standard of evidence that would be applied. Possibly, other standards are legally defensible and would have produced a genuine expansion of justice options.

The present data also highlight the time that survivor victims are kept waiting for a justice response and the likelihood of achieving a justice outcome that they perceive as fair and responsive to their needs. The existing literature establishes that the juvenile sex offense court process is longer than RJ conferencing. For example, the South Australia Archival Study found that court process was 6 months from police report to finalization compared with 2.5 to 3 months for conferences (Daly, 2006). Likewise, RESTORE conferences also occurred approximately 3 months after receiving referrals. Prior to referral however, nearly half of the cases had languished more than a year after the crime before prosecutors referred them. From the survivor victim perspective, this delay is dismaying but it is actually an improvement over the data for victim-offender dialogue in prisons. Marshall found that the average time lapse between crime commission and victim-offender dialogue was 9.5 years (as quoted in Naylor, 2010). Miller (2011) asserted that post-conviction victim-offender dialogue is the only acceptable RJ approach for rape. However, premising RJ on conviction restricts it to a small number of cases where guilt is established. Many of these cases involve child abuse or stranger rape and therefore are not reflective of the greater prevalence of acquaintance rape. In addition, Miller's (2011) proposal fails to consider the trauma of adversarial process and would not shorten law enforcement delay.

## Outcomes

Among the consented cases, 91% resulted in a completed conference. Jülich et al. (2010) found that in Restore-NZ, only 25% of self-referred adult survivors of child sexual abuse proceeded to conferences. One must be cautious in comparing these figures because it is unclear if their use of the term *referral* is equivalent to what was labeled a consented case in the present study. What appear to be stark differences in progression to conference may illustrate the extent to which elapsed time since offense, survivor victim expectations, crime type, and criminal justice system involvement may motivate or deter offenders' participation.

In addition to completed conferences, successful program exit is another important justice outcome. Two thirds of felony and 91% of misdemeanor responsible persons fulfilled all re-dress plans and supervision requirements and exited RESTORE successfully. Each success offered a survivor victim the opportunity to experience validation and achieve accountability. In comparison with RESTORE outcomes, three quarters of the cases retained in the prosecution pipeline were closed without any consequences. Satisfaction with conferencing alternatives is typically high (Sherman et al., 2005). RESTORE was also well received. The most satisfied group was survivor victims who attended their conference. Responsible person supporters were the most dissatisfied group across all indicators. Even so, 90% were satisfied that justice was done and 95% would recommend RESTORE. Surrogate victims were least satisfied with the justice outcome. Most surrogate victims were advocates at local sexual assault centers. In Nancarrow's study (2006), victim advocates including persons of both indigenous and non-indigenous heritage were ambivalent about RJ conferencing for crimes against women in general and especially when the crime was sexual. Although lower than those of other participants, surrogates' satisfaction with RESTORE was actually encouraging. All of them felt that the conference was a success, 66% said the redress plan was fair, 70% believed that justice was done, and 84% would recommend RESTORE to others. Daly and colleagues (2007) concluded that RJ conferences would be seen as more advantageous for victims than court. In particular, conferences were more likely than court to result admission of responsibility and raised the likelihood that offenders would receive counseling. Although the results of the present study do not permit a direct comparison with court outcomes, these two advantages were clearly demonstrated because RESTORE conferences did not proceed without the acceptance of responsibility, and psychological evaluation and treatment were mandatory.



### *Limitations and Lessons Learned*

RESTORE was a demonstration project and represents what was possible as a pioneering effort in its setting and with available resources. The most obvious limitation of the evaluation is the small sample size. However, the number of cases is actually large in the context of the available literature. The usefulness of the findings to the literature that is primarily archival or anecdotal is enhanced by including multiple participant viewpoints and supplementing self-report with observational and objective data. The data would be difficult to replicate in the United States today without substantial local funding. That is because RJ conferencing is now specifically forbidden by many U.S. government entities. For example, the document known as the “Dear Colleague Letter,” which is the U.S. Office of Civil Rights guidelines for higher education institutional response to sexual discrimination, harassment, and sexual assault, may be read to preclude RJ (U.S. Department of Education, 2011). This document as well as the funding guidelines of other federal agencies that respond to sexual assault confuses RJ with mediation. In practice, it is traditional mediation, especially the type used in divorce courts where participation is ordered without consent that is the basis for animus and prohibitions against face-to-face justice outside the courtroom. Heroic efforts were made to sustain funding for RESTORE through local, state, federal, and private philanthropy but they ultimately proved futile in the face of institutionalized opposition. More encouraging is that Restore-NZ in Auckland has received government funding and appears sustainable (S. Jülich, private communication, July 25, 2013).

With the limitations and cautions previously expressed, the findings of the present study demonstrate that a conferencing program like RESTORE is feasible, can be conducted safely, achieves acceptable levels of satisfaction, and attains many of the envisioned outcomes. However, the broader conversation about RJ for sexual assault is all too often about whether it should be done at all and not about how to do it (Matsui, 2011). Readers of this article are all undoubtedly deeply committed to the welfare of survivor victims and to ending sexual assault. Most of us are quite aware of the performance of criminal justice and the treatment accorded to sexual assault survivors. For these reasons, it is not productive to continue “oppositional contrasting” of programs like RESTORE and adversarial justice (Stubbs, 2010, p. 104). The sexual assault response agenda might be energized by planning a listening project to renew our understanding of the justice desires and interests of survivor victims so that we can align our priorities with theirs. RJ can be approached slowly and thoughtfully, recognizing that there are many forms and points in time where its principles are applicable. Insights may be

incorporated into existing process or developed as freestanding alternatives. We can innovate within the comfort zone of individual settings. Taking more ownership of the justice response could be empowering for the anti-sexual-violence movement.

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### Author Biography

**Mary P. Koss**, PhD, is a Regents' Professor in the Mel and Enid Zuckerman College of Public Health at the University of Arizona. She is co-editor of a two-book series for the American Psychological Association, *Violence Against Women and Children* (2011; American Psychological Association). She was the principal investigator of the RESTORE Program, a restorative justice option for selected sex crimes among adults. In 2010, she was the eighth recipient of the Visionary Award from the law enforcement training and technical assistance organization, Ending Violence Against Women International. Recently she has contributed to surveys of sexual assault prevalence and response conducted by the U.S. Air Force and participated in the documentary film, *The Invisible War: Military Sexual Assault*.



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

## **Policy Subcommittee Update**

Presentation by the DAC-IPAD Staff  
at the November, 6, 2020  
DAC-IPAD Public Meeting



# Agenda

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1. Summary of interviews with civilian prosecutors and defense counsel
2. Update on staff's collection of data concerning no-probable cause determinations at Article 32, UCMJ, preliminary hearings
3. Next steps and proposed report timeline
4. The PSC's preliminary assessment regarding Article 32, UCMJ



# Policy Subcommittee Interviews

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- Purpose
  - Collect background information on civilian criminal justice systems, pretrial processes and practices applicable to the prosecution of penetrative sexual assault offenses.
  - Inform the PSC's review of Article 32, UCMJ, preliminary hearings and potential recommendations regarding the military justice pretrial process.



# Policy Subcommittee Interviews

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- Overview
  - 10 Prosecutors interviewed
  - 7 Defense counsel interviewed
  - Victims' counsel interviews pending
  - Subcommittee members approved a standard list of topics and questions
  - 1 or more Subcommittee members participated
  - 1 hour or longer in duration
  - Staff took notes during the interview, wrote a summary, and circulated the summary to the entire PSC



# Interviews with Prosecutors

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- Total interviews completed: 10
- Jurisdictions represented: 9
  - Includes state and federal jurisdictions, particularly districts that prosecute cases arising in Indian Country
- Topics:
  - Charging decisions and applicable standards
  - Frequency of grand juries vs. preliminary hearings
  - Rules applicable to preliminary hearings
  - Plea negotiations





# Interviews with Prosecutors

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- Takeaways

- A majority of the state prosecutors who spoke with the PSC said investigators may close a case without a prosecutor's approval. Practices vary depending on the DA and the relationship with investigators.
- Most prosecutors said only the SVU Chief or Deputy Chief had authority to decline to charge a sexual assault case. Practices vary as to whether prosecutors produce a written explanation for the declination decision.
- Prosecutors who spoke with the PSC tend to apply a sufficient evidence to convict standard at charging, or ask whether there is a reasonable likelihood of conviction.
  - State prosecutors did not have mandatory guidelines or standards.
  - Federal prosecutors apply the standards in the Justice Manual.
  - Whether sufficient evidence exists to charge is a subjective assessment.



# Interviews with Prosecutors

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- Takeaways – continued
  - Overall, relatively few of the prosecutors whom the PSC interviewed use preliminary hearings (Note: preliminary hearings are common in California).
  - These prosecutors, when given a choice whether to charge by indictment or by complaint and preliminary hearing, tend to seek indictment by grand jury.
  - Most of those prosecutors interviewed avoid putting the victim on the witness stand at a grand jury or preliminary hearing, with some exceptions, particularly in jurisdictions in which hearsay is prohibited.
  - Presentation to the grand jury most often involved the testimony of the investigator, and could last anywhere from 15 minutes to a few hours in duration.
  - Overall, prosecutors said in most cases, case-vetting should not take place at the grand jury or preliminary hearing stage. Cases should be vetted prior to charging, even though the legal standard to charge is relatively low.



# Interviews with Defense Counsel

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- Total interviews completed: 7
- Jurisdictions represented: 8
  - State and federal jurisdictions, particularly districts encompassing Indian Country
- Topics:
  - Pretrial goals and strategies
  - Frequency of grand jury vs. preliminary hearing
  - Rules applicable to preliminary hearings
  - Plea negotiations



# Interviews with Defense Counsel

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- Takeaways

- The defense counsel who spoke with the PSC opined that prosecutors should believe they have proof beyond a reasonable doubt before charging, but some do not apply that standard when deciding to charge someone with a felony.
- Often the defense is aware of the weaknesses in a case, and defense counsel have to make strategic decisions regarding whether and when to share mitigating and exculpatory evidence over the life of a case.
- In the federal system, grand juries occur more frequently than preliminary hearings, but their relative frequency varies across federal districts.
- In some state jurisdictions, such as California, preliminary hearings occur regularly and may involve victim testimony.
  - At those preliminary hearings, the victim provides sworn testimony, subject to cross examination, including on credibility-related issues such as motive to lie.
- A decision to waive a preliminary hearing is not a bargaining chip in plea negotiations.
- At a preliminary hearing, both sides may benefit from seeing the evidence, and this can facilitate a prompt resolution, whether by plea bargain or dismissal.



# Interviews with Defense Counsel

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- Takeaways – continued
  - Defense counsel interviewed by the PSC said that they rarely advise a client to plead to the lead charge in a penetrative sexual offense case.
  - High mandatory minimum punishments and, more broadly, the severity of the punishment for a criminal offense—including sex offender registration requirements—can influence plea bargains. Defendants tend to plead to lesser offenses in order to avoid exposure to the harsher punishment associated with the lead charge; defendants may also enter into a plea arrangement in order to avoid a more punitive outcome at trial (aka “the trial penalty”).
  - The high volume of cases in state and federal courts influences prosecutor discretion to try the most serious cases, and, where possible, to resolve cases through plea bargain. In other words, the high volume of cases, and the small number of cases that are actually tried, promotes resolving cases by plea bargains.
  - Two defense counsel with experience trying courts-martial said the military tries cases that a civilian prosecutor would likely not charge, or take to trial.



Data collected concerning Article 32 preliminary hearings in  
which the PHO found no probable cause to support one or more  
penetrative sexual offenses

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- Overview of staff project
- 2019: The staff briefed the Committee regarding FY17-18 preliminary hearing data
- 2020: The staff and PSC have completed a review of FY14 – 18 preliminary hearing data
- 2020-2021: The staff and PSC will review FY19 cases
  - Purpose: Examine pretrial documents to see whether any changes to law and procedure since Jan. 1, 2019, have had an impact on practice around Art. 32 preliminary hearings and referral decisions.



## Other sources of information for the PSC's review

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- The Policy Subcommittee's review of military pretrial processes from preferral to referral will continue to use information developed by the DAC-IPAD Subcommittees and the full Committee. Examples:
  - Case Review Subcommittee data and findings regarding FY17 penetrative sexual offense cases
  - Case Review Report directives and recommendation
  - Public meeting testimony and DAC-IPAD Requests for Information



# Future Plans

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- December 3, 2020, PSC meeting: PSC will hear from a panel of preliminary hearing officers and a panel of staff judge advocates from across the military Services.
- The PSC will seek input from general courts-martial convening authorities.
- The PSC aims to present findings and recommendations to the DAC-IPAD for deliberation at the August 2021 DAC-IPAD Public Meeting.





# The PSC's preliminary assessment regarding Article 32, UCMJ

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A determination of no probable cause by a preliminary hearing officer should be binding on the staff judge advocate and convening authority.\*

\*This assessment presumes that a military judge or magistrate serves as the preliminary hearing officer or, under exceptional circumstances, another judge advocate with extensive military justice experience serves as the preliminary hearing officer.

\*The no-probable cause determination should be made without prejudice to the government's ability to seek another hearing with new evidence.



# The PSC will continue to review the following issues:

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- Whether the preliminary hearing officer should have the authority to call witnesses or request evidence at the Article 32, UCMJ, hearing.
- Whether the preliminary hearing officer should comment on the sufficiency of the evidence to obtain and sustain a conviction in the Article 32, UCMJ, report.
- Whether the Article 33, UCMJ, disposition guidance has had an impact on the prosecution of sexual assault offenses.
- Whether the staff judge advocate's pretrial advice to the convening authority should contain a written analysis of the Article 33, UCMJ, disposition factors.
- Whether the staff judge advocate's pretrial advice to the convening authority should be shielded from disclosure to the defense.



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

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**MINUTES OF AUGUST 21, 2020, 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 eighteenth public meeting on August 21, 2020, from 11:00 a.m. to 3:00 p.m. At this meeting the Committee conducted final deliberations on the DAC-IPAD *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017*. The Committee received updates regarding the status of the review and assessment of racial and ethnic disparities in the investigation, prosecution, and conviction of Service members for sexual offenses involving adult victims within the military justice system as required by section 540I of the National Defense Authorization Act for Fiscal year 2020. Finally, the Committee received an update from the DAC-IPAD Policy Subcommittee.

**LOCATION**

The meeting was held via teleconference with dial-in access information provided to the public in the Federal Register and on the DAC-IPAD’s website.

**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  
Ms. Kathleen B. Cannon  
Ms. Margaret A. Garvin  
The Honorable Paul W. Grimm  
Mr. A. J. Kramer  
Ms. Jennifer G. Long  
Mr. James P. Markey  
Dr. Jenifer Markowitz

Chief Master Sergeant of the Air Force  
Rodney J. McKinley, U.S. Air Force,  
Retired  
Brigadier General James R. Schwenk, U.S.  
Marine Corps, Retired  
Dr. Cassia C. Spohn  
Ms. Meghan A. Tokash  
The Honorable Reggie B. Walton

### Committee Staff

Colonel Steven Weir, U.S. Army, Staff  
Director  
Colonel Laura Calese, U.S. Army, Incoming  
Staff Director  
Ms. Julie Carson, Deputy Staff Director  
Dr. Alice Falk, Technical Editor  
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  
Mr. Chuck Mason, Attorney-Advisor  
Ms. Marguerite McKinney, Analyst  
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  
Ms. Eleanor Vuono, Attorney-Advisor

### Service Representatives

Major Ryan C. Lipton, U.S. Marine Corps, Military Justice Policy and Legislation Officer, Judge  
Advocate Division  
Ms. Janet K. Mansfield, Chief, Programs Branch, Army Criminal Law Division  
Mr. James S. Martinson, HQE, Navy Criminal Law Division  
Captain Vasilios Tasikas, U.S. Coast Guard, Chief, Office of Military Justice  
Ms. Asha Vaghela, Senior Civilian Military Justice Attorney, Air Force Legal Operations  
Agency  
Major Marquita Ricks, U.S. Air Force, Chief, Victim and Witness Policy

### Other Participant

Mr. Dwight Sullivan, Designated Federal Officer (DFO)

## MEETING MINUTES

Mr. Dwight Sullivan, Designated Federal Officer, opened the public meeting at 11:00 a.m. Ms. Martha Bashford, Chair of the DAC-IPAD, provided opening remarks welcoming those in attendance, explaining the purpose of the meeting and outlining the agenda. By voice roll call, she established quorum and introduced the Case Review Subcommittee staff to lead the Committee's deliberations on the draft *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017*.

DAC-IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the Draft Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017

Colonel Steven Weir introduced the report deliberations by providing an overview of the three-year case review project. He explained that the CRSC developed a strategy for reviewing 1,904 cases based on investigations conducted by the Military Services' criminal investigative organizations (MCIOs) and closed between October 1, 2016 and September 30, 2017, that involved an allegation that a Service member on active duty committed a penetrative sexual offense against an adult victim.

Ms. Teresa Gallagher, DAC-IPAD Attorney-Advisor, explained that the Committee reviewed the report at an administrative session the previous day in order to make technical edits and identify substantive questions for deliberation at the public meeting. She stated that the report includes 47 findings and 10 recommendations, but that the Committee would be focusing on the specific findings and directives highlighted by the members at the administrative session for deliberation at the public meeting. She presented the findings, recommendation, and directives to the Committee for deliberation.

**Proposed Finding 24 –(page 65 of the report reviewed by members)**

*There (may be) (is) a systemic problem with the referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction on the charged offense.*

The Committee discussed Proposed Finding 24 and addressed the member-proposed amendment to change the language from “may be” to “is.” CRSC Chair Jim Schwenk explained that the reasoning for the proposed change was based on the data which indicates there is a systemic problem with the referral of penetrative sexual offense charges (Finding 15).

The motion passed with a majority of Committee members in favor of the amendment to use the word “is” rather than “may be” for Finding 24. There were two votes in opposition to the amendment.

**Proposed Finding 13 (page 58 of the report):**

*While all Services consider whether there is sufficient admissible evidence to obtain and sustain a conviction on the charged penetrative sexual offense, in military prosecutions, unlike in federal civilian prosecutions, there is no policy requirement to do so before either preferral or referral of those charges to trial by general court-martial.*

General Schwenk reviewed Proposed Finding 13 stating that the recommendation is to eliminate the language “of those charges to trial by general court-martial,” as unnecessary. There was no opposition to the proposed editorial change.

**Proposed Finding 15 (at page 58 of the report):**

*The data clearly indicate that no penetrative sexual offense charge should be referred to trial by general court-martial without sufficient admissible evidence to obtain and sustain a conviction on the charged offense, and Article 34, UCMJ, should incorporate this requirement.*

**Proposed Directive 6 to Policy Subcommittee (page 66 of the report):**

*The Policy Subcommittee develop proposals, as part of their findings and recommendations regarding Articles 30, 32, 33, and 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on the charged offenses before a convening authority may refer a charge and specification to trial by general court-martial.*

Based on the amendment to Proposed Finding 24, Ms. Gallagher asked if there were any proposed amendments to Proposed Directive 6. The Committee deliberated on Proposed Directive 6 and agreed unanimously that a recommendation be added to the report that Congress amend Article 34 to require the staff judge advocate to advise the convening authority about the sufficiency of the evidence. Additionally, the Committee agreed that this recommendation eliminates Proposed Directive 6.

Ms. Gallagher explained that the proposed recommendation language would be taken from Proposed Directive 6, and that the draft amendment to Article 34 would be made an appendix to the report and the proposed amendment to the corresponding Rules for Court-Martial.

**Proposed Directive 4 to Case Review Subcommittee (page 60 of the report):**

*In light of the data demonstrating that in 50.7% of cases resulting in acquittal of a penetrative sexual offense charge, the materials reviewed contained sufficient admissible evidence to obtain a conviction on the charged offense and in 49.3% of cases such evidence is not present, the CRSC consider whether controllable factors are contributing to acquittals in these cases or if there are common characteristics in the cases that might help explain the conviction and acquittal rates for these offenses.*

**Alternative Proposed Directive 4 to Case Review Subcommittee (proposed by Ms. Bashford):**

*The Committee recognizes that not all cases with sufficient admissible evidence to obtain a conviction will, in fact, result in a verdict of guilty. Moreover, this assessment was made in the absence of any evidence presented by the defense at trial. However, in light of the data demonstrating that in just over half (50.7%) of cases resulting in acquittal of a penetrative sexual offense charge, the materials reviewed contained sufficient admissible evidence to obtain a conviction on the charged offense and in 49.3% of cases such evidence was not present, the CRSC should consider if there are common characteristics in the cases that might help explain the conviction and acquittal rates for these offenses. Part of the CRSC's assessment and consideration of these matters should involve observation of courts-martial.*

*These data raise the issues of why cases lacking sufficient admissible evidence to obtain and sustain a conviction are being referred and why cases with sufficient admissible evidence to obtain and sustain a conviction are resulting in acquittals.*

Ms. Gallagher advised that in order to alleviate some concerns about possible misinterpretation of Proposed Directive 4, Chair Bashford proposed an alternative directive. Chair Bashford explained that the original language left the impression that the assessment was that every case that had sufficient admissible evidence would bring a verdict of guilty.

The Committee agreed unanimously to adopt the Alternative Proposed Directive 4.

**Proposed Directive 3 to Case Review Subcommittee (page 51 of the report):**

*The CRSC continue to review and assess victim statements to law enforcement regarding allegations of penetrative sexual offenses, both to determine what factors contribute to these statements not providing a factual basis to establish that the subject committed the alleged penetrative sexual offense and to determine how to improve the efficacy of such statements.*

**Alternative Proposed Directive 3 to Case Review Subcommittee (flagged for discussion by a Committee Member):**

*In light of the Committee's determination that 41.3% of victim statements to law enforcement do not establish probable cause that the subject committed the alleged penetrative sexual offense, the CRSC continue to review and assess such statements in order to examine the factors that may contribute to this result, and make appropriate findings and recommendations.*

Ms. Gallagher presented an alternative directive 3 for the Committee's consideration. The Committee briefly discussed the options provided and unanimously agreed to adopt "Alternative Proposed Directive 3 to Case Review Subcommittee".

**Proposed Directive 2 to Case Review Subcommittee (page 51 of the report):**

The CRSC conduct a review of a random sample of MCIO investigations of penetrative sexual offenses within 5 years, to further assess the quality of investigations and the progress made in light of statutory and regulatory modifications as well as implementation of previous DAC-IPAD recommendations.

Ms. Gallagher directed the Committee to consider Proposed Directive 2 and discuss the amended language. The Committee was in agreement with the proposed amendment. Ms. Gallagher reviewed the Executive Summary and highlighted the proposed edits and amendments. All were unanimously accepted.

Ms. Kate Tagert, DAC-IPAD Attorney-Advisor, and Dr. William Wells, Criminologist, provided the Committee with a briefing of the data portion of the report. They described the methodology for developing the data analysis through univariate, bivariate and multivariate models and explained the relationships and the associated outcomes.

**Directive 7 to Case Review Subcommittee:**

*The CRSC examine the law, policy, and practices concerning DNA collection and testing and sexual assault forensic examinations in penetrative sexual offense cases and make appropriate findings and recommendations.*

**Directive 8 to Case Review Subcommittee:**

*The CRSC examine penetrative sexual offense cases in which the victim reported being impaired in order to assess MCIO interview and investigative techniques utilized in such cases and make appropriate findings and recommendations.*

**Directive 9 to Case Review Subcommittee:**

*The CRSC examine penetrative sexual offense investigative files in which the victim reports both no impairment and no use of physical force or the threat of force in order to further assess how the facts in these cases influence the initial disposition decision to prefer a penetrative sexual offense charge or take no action on that offense, and, in cases resulting in a preferred penetrative sexual offense charge, the post-referral outcomes for those offenses.*

**Proposed Directive 10 to Case Review Subcommittee:**

*The CRSC examine factors that may contribute to the relationship between conviction and acquittal rates and the victim's representation by counsel.*

Ms. Tagert presented the Committee with the four data-related directives that were developed for the members to consider directing to the CRSC for additional research and investigation. The Committee unanimously agreed that the CRSC should conduct additional research and investigation of each of the proposed directives as stated.

Chair Bashford summarized the report deliberations and made the motion that the report be approved as amended. The motion passed by unanimous vote.

**Status of the Committee's Review and Assessment of Racial and Ethnic Disparities in the Investigation, Prosecution, and Conviction of Service Members for Sexual Offenses Involving Adult Victims within the Military Justice System as Required by Section 540I of the National Defense Authorization Act for Fiscal Year 2020**

Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor, provided the Committee with a briefing of the congressionally mandated report to conduct a review and assessment of the race and ethnicity of Service members accused of a penetrative or contact sexual offense; the race and ethnicity of each service member against whom a penetrative or contact sexual offense were preferred; and the race and ethnicity of each service member convicted of one of those offenses. She explained the organization and timeline of the project, and stated that the report is due to Congress December 19, 2020. She advised that a draft report would be provided to the Committee for deliberation at the November public meeting.

**Policy Subcommittee Update**

Ms. Meghan Peters, DAC-IPAD Attorney-Advisor, provided the Committee with an update of the Policy Subcommittee's (PSC) continuing review of Articles 32, 33 and 34. She stated that in order to compare military and civilian preliminary hearings and pretrial procedures, the PSC has been conducting interviews with prosecutors from various state and federal jurisdictions. She stated the goal is to provide background that will inform the subcommittee and the Committee's future analysis and future report development. Ms. Peters added that in the coming months the



Subcommittee will pivot to interviewing defense counsel, victims' counsel and magistrates. She stated that PSC would also take up the directive received from the CRSC. She concluded her briefing stating that the PSC will assess all aspects of the pretrial phase of the military justice process before advancing the subcommittee's final findings and recommendations

#### Meeting Wrap-Up and Public Comment

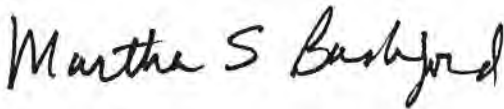
Colonel Weir provided closing remarks and thanked the members and staff for their commitment to the work of the DAC-IPAD. He reported that the next scheduled public meeting for the DAC-IPAD is November 6, 2020.

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

The DFO closed the public meeting at 3:07 p.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 August 21, 2020, Committee Public Meeting, prepared by Neal R. Gross and Co., Inc.

#### Read Ahead Materials Provided Prior to and at the Public Meeting

1. PowerPoint Slide Presentation Prepared by DAC-IPAD Staff Providing an Overview of DAC-IPAD *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal year 2017*
2. Draft Potential *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal year 2017* Findings and Directives for DAC-IPAD Committee Deliberations
3. Draft *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal year 2017* Executive Summary
4. Draft *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal year 2017*

5. Index of Tables for *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal year 2017*
6. FY20 NDAA Provision Sec. 540I. Assessment of Racial, Ethnic, and Gender Disparities in the Military Justice System
7. DAC-IPAD August 7, 2020, Request for Information 18A, Assessment of Racial, Ethnic, and Gender Disparities in the Military Justice System



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

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**IN THE NEWS – OCTOBER 2020**

**U.S. MILITARY SEXUAL ASSAULT NEWS**

**DACIPAD In The News**

**[If the Military Can't Handle Its Sexual Assault Problem, Congress Needs to Step In](#)**

*(October 1, 2020) Military.com, Katie Galgano and Emma Moore*

Congress can also use its power of the purse to ensure that the Defense Advisory Committee on Women in the Services (DACOWITS) and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) continue to be funded at levels sufficient to complete their work and that the services take recommendations seriously.

**[A New Pentagon Report on Sexual Assault in the Military is a Wakeup Call to a 'Systemic' Problem](#)**

*(October 30, 2020) Task and Purpose, Haley Britzky*

The report from the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, which advises the Secretary of Defense, says there is a "systemic" problem in the military of referring sexual assault cases to trial when there isn't enough evidence available to get a conviction.

**[DoD Advisory Committee's Report on Sexual Assault](#)**

*(November 2, 2020) CAAFlog*

The Committee's conclusions after studying one year of cases.

**Department of Defense**

**[In Supreme Court Hearing, Justice Department says Military Appeals Court Was Wrong to Dismiss Three Rape Cases](#)**

*(October 13, 2020) The Washington Post, Shayna Jacobs*

The Justice Department, in a rare challenge to the military's legal processes, argued to the Supreme Court on Tuesday that three rape convictions secured years after the offenses were committed should be reinstated despite recent rulings that the statute of limitations apply in the cases.

**U.S. Air Force**

**[In Rare Move, U.S. Federal Court Allows Military Sexual Assault Case to Continue](#)**

*(October 23, 2020) Reuters*

A federal court on Thursday allowed a sexual assault case against the second-highest-ranking military official to proceed, a rare move that legal experts say could potentially chip away at such cases usually staying in the military justice system.

### [Misawa Airman's Instagram Post About Sexual Harassment Gets Senior Enlisted Leader's Attention](#)

(October 22, 2020) *Stars & Stripes*, Seth Robson

The chief master sergeant of the Air Force has reached out to a female airman in Japan who said on Instagram that she experienced sexual harassment and retaliation.

### [Former Airman asks Federal Court to Review Sexual Assault Conviction](#)

(October 14, 2020) *Alamogordo Daily News*, Nicole Maxwell

In 2016, members of the Judicial Proceedings Panel Subcommittee investigated barriers to the fairness of sexual assault cases within the United States military.

## **U.S. Army**

### [Fort Bragg Reverses Stance: Administrator Responsible for Sexual Posts From its Twitter Account](#)

(October 22, 2020) *Army Times*, Kyle Rempfer

An authorized user who had access to the Fort Bragg garrison Twitter account came forward as the person who sent sexually charged tweets Wednesday, according to a new statement from the North Carolina military post.

### [Sex Scandal Calls into Question the US Army's Training System](#)

The debate has focused on the advisability of separating the training of recruits by sex, a theory rejected by various associations for the defense of women's rights, alleging that in the Marine Corps -the only one in the US Army in which women train outside of men- the number of complaints of sexual abuse is no less than in other branches of the Armed Forces. The California Democratic Rep. Jackie Speier, has urged the House of Representatives Committee on Military Services to hold a series of hearings on this case, much like the Aberdeen scandal did 16 years ago.

## **U.S. Navy**

### [5 Sailors Granted Immunity to Testify in Navy SEAL Sexual Assault Trial](#)

(October 8, 2020) *The San Diego Union-Tribune*, Andrew Dyer

Special Warfare Operator 1st Class Adel Enayat, in his dress blue uniform, was in a Naval Base San Diego courtroom Tuesday for a hearing in his ongoing court-martial. His legal team, led by civilian attorney Jeremiah Sullivan, argued that previous SEAL cases involving Enayat's SEAL Team 7 have tainted the Navy legal community and the investigative process.

### [Former Navy Chief Convicted for Bahrain Sex Crimes Faces New Rape Allegations](#)

(October 28, 2020)

A former U.S. Navy chief convicted as part of a rash of [sailor sex crimes in Bahrain](#) is facing new stateside sexual assault charges, according to charge sheets obtained by Navy Times.

## **U.S. Marine Corps**

### **[Marines Charging Virginia Beach Corporal with Attempted Murder; Family Says She has PTSD After Sexual Assault](#)**

*(October 28, 2020) The Virginian-Pilot, Katherine Hafner*

Cpl. Thae Ohu, 27, has struggled with PTSD and other conditions following a sexual assault by a fellow Marine years ago — trauma that led to a psychological break this spring, her family contends.

## **Service Academies**

### **[Air Force Academy Cadet Acquitted of Rape Charge, Found Guilty of Assault](#)**

*(October 21, 2020) The Gazette, O'Dell Isaac*

Cadet First Class Allan Brown was brought before the military court on rape and “assault consummated by battery” charges, the release reported. The panel, which consisted of eight officers, ruled Brown was not guilty of rape, but found him guilty of the lesser charge, according to the academy.

## **Federal Advisory Committee Act (FACA)**

### **[Judge Blocks Trump's Police Commission Meetings and Says Law Requires 'Fairly Balanced Membership'](#)**

*(October 1, 2020) American Military News, Ryan Morgan*

In his decision, Judge Bates wrote, “The Court is hard pressed to think of a starker example of non-compliance with [Federal Advisory Committee Act]’s fair and balance requirement than a commission charged with examining broad issues of policing in today’s America that is composed entirely of past and present law enforcement officials.”

## **INTERNATIONAL MILITARY SEXUAL ASSAULT NEWS**

### **Canada**

#### **[Military Members Who Report Sexual Misconduct Still Say They're Being Dismissed By Chain of Command: Report](#)**

*(October 22, 2020) CBC News, Murray Brewster*

Five years into drive to eliminate sexual misconduct from the military, victims report feeling abandoned