

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

Meeting Materials

December 4, 2020

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
21st Public Meeting**

**December 4, 2020
Public Meeting Preparatory Materials
of
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**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces (DAC-IPAD)
21st PUBLIC MEETING AGENDA**

December 4, 2020

Teleconference

Dial-In: 410-874-6300, Web Pin: 428 926 205

URL: <https://conference.apps.mil/webconf/DACIPAD-PublicMtg-20201204>

- 11:00 a.m. – 11:05 a.m. Public Meeting Begins – Welcome and Introduction**
- *Designated Federal Officer Opens Meeting*
 - *Remarks of the Chair*
- 11:05 a.m. – 11:25 a.m. Committee Vote on the Final Draft DAC-IPAD Report on *Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military***
(20 minutes)
- *Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor*
 - *Mr. Chuck Mason, DAC-IPAD Attorney-Advisor*
 - *Ms. Nalini Gupta, DAC-IPAD Attorney-Advisor*
 - *Ms. Marguerite McKinney, Analyst*
- 11:25 a.m. – 11:30 a.m. Meeting Wrap-Up, and Public Comment**
(5 minutes)
- *Colonel Laura Calese, U.S. Army, DAC-IPAD Staff Director*
- 11:30 a.m. Public Meeting Adjourns**



DAC-IPAD Public Meeting

Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military

December 4, 2020



Draft Recommendations

- **Recommendation 1:** The Secretary of Defense designate the military personnel system as the primary data 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

- **Recommendation 2:** The Secretary of Defense direct each Military Department to record race and ethnicity in military criminal investigative organization databases, military justice databases, and military personnel databases using the same racial and ethnic categories. The Secretary of Defense should direct each Military Department to report race using the following six categories: *American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, More Than One Race/Other*, and *White*, and to report ethnicity using the following two categories: *Hispanic or Latino* and *Not Hispanic or Latino*.

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Draft Recommendations

- **Recommendation 3:** Congress authorize and appropriate funds for the Secretary of Defense to establish a pilot program operating one uniform, document-based data system for collecting and reporting contact and penetrative sexual offenses across all of the Military Services. The pilot program, which 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), will record case data from standardized source documents provided to the pilot program by the Military Services and will include demographic data pertaining to each victim and accused—including race and ethnicity.

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Draft Recommendations

- **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 investigation initiated by military law enforcement in which a Service member is identified as a subject through the final disposition within the military justice system.

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Draft Recommendations

- **Recommendation 5:** The Secretary of Defense direct the Military Departments to record, beginning in fiscal year 2022, the race and ethnicity of military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges involved in every case investigated by military law enforcement in which a Service member is the subject of an allegation of a contact or penetrative sexual offense. The source information for these data should be collected from the military personnel databases and maintained for future studies by the DAC-IPAD on racial and ethnic disparities in cases involving contact and penetrative sexual offenses.

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Draft Recommendations

- **Recommendation 6:** The Secretary of Defense direct the newly established Military Justice Review Panel to determine whether to review and assess, by functional roles and/or on an individual case basis, the race and ethnicity demographics of the various participants in the military justice process, including military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges.

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Draft Recommendations

- **Recommendation 7:** Once the Department of Defense implements new data collection processes as recommended in this report and as required pursuant to Article 140a, UCMJ, the Secretary of Defense direct the newly established Military Justice Review Panel to determine whether 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.

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Draft Recommendations

- **Recommendation 8:** The Secretary of Defense direct the Military Justice Review Panel to assess whether a uniform training system on explicit and implicit bias should be developed for all military personnel who perform duties in the military justice system, including military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate judges.



DAC-IPAD Public Meeting

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

November 6, 2020



Agenda

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



Draft Findings

- **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

- **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

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

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

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

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

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

- **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

- **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

- **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

- **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

- **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.