

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

Meeting Materials

April 21, 2022

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
22nd Public Meeting**

**April 21, 2022
Public Meeting Read-Ahead Materials**

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- *Memorandum from the Secretary of Defense directing a review of DoD advisory committees and the conclusion of service for advisory committee members subject to completion of the zero-based review.*
- Tab 3** Member Professional Biographies (8 pages)
- *This summary provides a brief introduction of the DAC-IPAD members for the Committee’s first meeting following completion of the DoD zero-based review.*
- Tab 4** Staff Professional Biographies. (7 pages)
- *A summary of the relevant professional experience of staff members.*
- Tab 5** DAC-IPAD Legislation (6 pages)
- *These NDAA provisions cover the establishment of the DAC-IPAD, its authorities and tasks. The DAC-IPAD held its first meeting in January 2017 and is scheduled to terminate in 2026.*
- Tab 6** DAC-IPAD Charter (4 pages)
- *Outlines the objectives, scope, duties, budget, and oversight of the Committee. The charter was prepared by the Department of Defense Office of General Counsel and filed with the U.S. General Services Agency (GSA) on February 16, 2022.*
- Tab 7** Terms of Reference (**Will provide separately**)
- *Describes the issues and policies to be analyzed by the DAC-IPAD and the authorities for Committee tasks. **Approval: Pending***
- Tab 8** Bylaws (Draft) (**Will provide separately**)
- *Draft prepared by the DAC-IPAD staff outlining the rules and principles governing how the DAC-IPAD will operate. The draft bylaws will be revised to conform to the Committee’s feedback or decisions.*

April 21, 2022
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- Tab 9** Excerpt from the *Report of the Fort Hood Independent Review Committee* (Nov. 6, 2020) (12 pages)
- *Provides an overview of a consequential commission appointed by the Secretary of the Army to address command climate issues at Army installation Fort Hood, Texas.*
 - *The full report may be found at https://dacipad.whs.mil/images/Public/10-Reading_Room/ReadingRoom_FortHood_IndependentReviewCommittee_Report_20201106.pdf*
- Tab 10** Excerpt from the *Recommendations of the Independent Review Commission on Sexual Assault in the Military* (IRC) (July 1, 2021) (8 pages)
- *Summarizes the IRC's assessment of the military's treatment of sexual assault and sexual harassment. The IRC's recommendations have had a significant effect on DoD policy and recent legislation.*
 - *The full report may be found at https://dacipad.whs.mil/images/Public/10-Reading_Room/ReadingRoom_IRC_Report_20210701.pdf*
- Tab 11** Secretary of Defense, *Memorandum for Senior Pentagon Leadership, Commanders, and Defense Agency and DoD Field Activities Directors: Commencing DoD Actions and Implementation to Address Sexual Assault and Sexual Harassment in the Military* (Sept. 22, 2021) (13 pages)
- *Provides a roadmap for DoD to implement the IRC's recommendations.*
- Tab 12** Provisions of the National Defense Authorization Act for FY21 and FY22 Regarding Sexual Assault in the Military (23 pages)
- *Provides the text of legislative provisions related to military justice and related reforms that affect sexual assault cases.*
- Tab 13** Department of Defense *Report on the DAC-IPAD* (March 2022) (48 pages)
- *DoD's fulfillment of the statutorily-required annual update to Congress concerning the activities of the DAC-IPAD.*

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

AGENDA

**April 21, 2022
Arlington, Virginia (Virtual)**

Administrative & Preparatory Session

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

- | | |
|-------------------------------|--|
| 12:30 p.m. – 1:00 p.m. | Committee Member & Staff Introductions /
General Counsel remarks
(30 minutes) <ul style="list-style-type: none">– Ms. Caroline Krass, General Counsel, Department of Defense– Mr. Dwight Sullivan, Designated Federal Officer |
| 1:00 p.m. – 2:25 p.m. | DAC-IPAD Charter, Bylaws, and Procedures Discussion
(1 hour, 25 minutes) <ul style="list-style-type: none">– Colonel Jeff Bovarnick, U.S. Army, Executive Director |
| 2:25 p.m. – 2:30 p.m. | Preview of Public Meeting
(5 minutes) <ul style="list-style-type: none">– Ms. Terri Saunders, Staff Attorney |
| 2:30 p.m. | Administrative and Preparatory Session Adjourns |

Public Meeting

- | | |
|------------------------------|---|
| 2:45 p.m. – 3:00 p.m. | Welcome and Introduction
(15 minutes)
<i>Designated Federal Official opens meeting</i>
<i>Chair's Remarks</i>
<i>Executive Director's Remarks</i> |
| 3:00 p.m. – 3:45 p.m. | Update and Summary of Events Since Last Meeting
(45 minutes) <ul style="list-style-type: none">– Ms. Eleanor Vuono, Staff Attorney– Mr. Dwight Sullivan, Designated Federal Officer |
| 3:45 p.m. – 4:00 p.m. | Update on DoD's March 2022 Report on the DAC-IPAD
(15 minutes) <ul style="list-style-type: none">– Ms. Julie Carson, DAC-IPAD Deputy Director– Ms. Nalini Gupta, DAC-IPAD Staff Attorney |
| 4:00 p.m. – 4:45 p.m. | Committee Deliberations and Planning Discussion
(45 minutes) |
| 4:45 p.m. – 5:00 p.m. | Public Comment |
| 5:00 p.m. | Public Meeting Adjourns |



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

1/30/21

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: DoD Advisory Committees — Zero-Based Review

Advisory committees have and will continue to provide an important role in shaping public policy within DoD. That said, our stewardship responsibilities require that we continually assess to ensure each advisory committee provides appropriate value today and in the future, as times and requirements change.

I am aware of and appreciate earlier review efforts to reshape how we use advisory committees and consider the tangible benefits they bring to the Department. Nevertheless, I am directing a zero-based review of all DoD advisory committees, to include any advisory committee that is not subject to the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix). This review will, by definition and intent, focus our advisory committee efforts to align with our most pressing strategic priorities and the National Defense Strategy.

The Interim Director of Administration and Management (DA&M), in consultation with the Acting General Counsel of the DoD (GC DoD) will lead this review, and I am asking for your personal attention in this effort. As an interim step, I am directing the immediate suspension of all advisory committee operations until the review is completed unless otherwise directed by myself or the Deputy Secretary of Defense. In addition, the DA&M, who exercises the Secretary of Defense statutory and regulatory authorities pertaining to the FACA, will not, for the duration of the review, establish or renew a DoD advisory committee unless authorized by myself or the Deputy Secretary of Defense.

I also direct, no later than February 16, 2021, the conclusion of service for all DoD advisory committee and subcommittee members currently serving on DoD advisory committees where the DoD approving authority is the Secretary of Defense or where statute authorizes another DoD civilian officer or employee, or Active Duty member of the Armed Services to act as the DoD approving authority. Each Component head ("DoD Sponsor") that sponsors a DoD advisory committee subject to this review, will ensure that appropriate letters are sent no later than February 26, 2021 to each advisory committee or subcommittee member thanking them for their service. The Interim DA&M will provide each component head the required letter that must be signed by the DoD Sponsor.

A list of the affected DoD advisory committees, to include those not subject to the FACA, is attached. Please note the only advisory committees and/or committee members not subject to the zero-based review or conclusion of service are described in the attachment. In addition, each Component head, no later than February 28, 2021, will certify to the Interim DA&M that no other advisory committee has been established and utilized within the Component where at least one advisory committee member is not a full-time or permanent part-



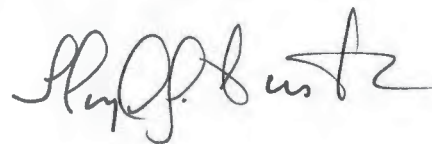
OSD000640-21/CMD001383-21

time Federal civilian officer or employee, or Active Duty member of the uniformed services. If the Component established or utilized such an advisory committee, then it will be suspended until the Interim DA&M, in consultation with the Acting GC DoD, determines the advisory committee's status. The Interim DA&M will notify me no later than March 15, 2021 of any such identified advisory committee and its status.

With regard to the zero-based review, each DoD Sponsor will conduct an in-depth business case of every sponsored advisory committee, supported by fact-based evidence for continued utilization of the advisory committee. Each business case should consider, but is not limited to: review of the committee's mission and function as it relates to DoD strategic priorities and National Defense Strategy; potential functional realignments to create a single cross-functional advisory committee; and potential legislative changes to non-discretionary advisory committees to properly align them with our strategic priorities. Each DoD Sponsor will provide his or her business case(s) to the Interim DA&M based on the tier-review schedule described in the attachment.

The Interim DA&M, in consultation with the Acting GC DoD and following the tier-review schedule, will review each DoD Sponsor's business case and make final recommendations to me on each DoD advisory committee, to include retention, realignment, termination, changes to mission or functions, membership balance, membership size, and possible legislative changes to non-discretionary advisory committees. Following appropriate discussions, I will take action on the Interim DA&M recommendations.

This process shall ensure that advisory committee and subcommittee member appointments comply with all applicable federal statutes and regulations, to include DoD policies and procedures. DoD Sponsors, in consultation with the Special Assistant to the Secretary of Defense for White House Liaison, will develop potential member candidates that conform to the advisory committee's membership balance plan or, in the case of those not subject to the FACA, statutory requirements. All member and subcommittee member appointments will be approved by me or the Deputy Secretary of Defense using the DoD Appointment Approval Instrument prepared by the DoD Advisory Committee Management Officer, in consultation with the Office of the GC DoD. In addition, all committee and subcommittee work will be based on written terms of reference unless otherwise provided for by statute or Presidential directive. No committee or subcommittee member will perform any work until properly appointed, unless they have an active appointment.

A handwritten signature in black ink, appearing to read "Allyson J. ...", is positioned to the right of the main text block.

Attachment:
As stated

Member Professional Biographies



Marcia Anderson was the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin starting in 1998 until her retirement in 2019. In this role she was responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson recently retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army’s Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman in the history of the U.S. Army to achieve the rank of major general. Her service culminated with an assignment at the Pentagon as the Deputy Chief, Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of \$8 billion that supported more than 225,000 Army Reserve soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.



Martha Bashford served in the New York County District Attorney’s Office starting in 1979 until her retirement in 2020. At the time of her retirement, she was the chief of the New York County District Attorney’s Office Sex Crimes Unit, which was the first of its kind in the country. She served in this role starting in 2011. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI’s Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (*summa cum laude*) and received her J.D. degree from Yale Law School in 1979. She is a Fellow in both the American College of Trial Lawyers and the American Academy of Forensic Sciences.



William E. Cassara is a former Army prosecutor, defense counsel and appellate counsel, with more than 30 years of military law experience. Mr. Cassara holds a law degree from University of Baltimore and an undergraduate degree in business administration from Florida State University. He is a former professor at the University of Baltimore School of Law and the University of South Carolina School of Law. Mr. Cassara has been in private military law practice since 1996 focusing on court-martial appeals, discharge upgrades, security clearance and all other administrative military law matters.



Margaret “Meg” Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the U.S. Department of Defense. She has served as co-chair of the American Bar Association’s Criminal Justice Section Victims Committee, as co-chair of the Oregon Attorney General’s Crime Victims’ Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General’s Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.



Suzanne Goldberg has served in the U.S. Department of Education’s Office for Civil Rights since day one of the Biden-Harris administration as Acting Assistant Secretary (January – October 2021) and Deputy Assistant Secretary for Strategic Operations and Outreach. Secretary Goldberg brings extensive experience in civil rights leadership, with expertise in gender and sexuality law, and many years as a university administrator and faculty member. Before joining the U.S. Department of Education, she was the inaugural Executive Vice President for University Life at Columbia University and on the faculty of Columbia Law School, where she is on a public service leave from her role as the Herbert and Doris Wechsler Clinical Professor of Law at Columbia Law School. She founded the Law School’s Sexuality and Gender Law Clinic, the first of its kind in the nation, and was co-founder and co-director of the Law School’s Center for Gender and Sexuality Law. She earlier served as a senior staff attorney with Lambda Legal, a national legal organization committed to the full recognition of the civil rights of LGBT people and people living with HIV. Secretary Goldberg holds a law degree with honors from Harvard University and a bachelor’s degree with honors from Brown University and was a Fulbright Fellow at the National University of Singapore.



Judge Paul W. Grimm serves as a District Judge for the United States District Court for the District of Maryland. He was appointed to the Court on December 10, 2012. Previously, he was appointed to the Court as a Magistrate Judge in February 1997 and served as Chief Magistrate Judge from 2006 through 2012. In September 2009, he was appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure. Additionally, Judge Grimm is an adjunct professor of law at the University of Maryland School of Law, where he teaches evidence, and also has taught trial evidence, pretrial civil procedure, and scientific evidence. He also has been an adjunct professor of law at the University of Baltimore School of Law, where he taught a course regarding the discovery of and pretrial practices associated with electronically stored evidence.

Before joining the Court, Judge Grimm was in private practice in Baltimore for thirteen years, during which time he handled commercial litigation. He also served as an Assistant Attorney General for the State of Maryland, an Assistant State's Attorney for Baltimore County, Maryland, and a Captain in the United States Army Judge Advocate General's Corps. While on active duty in the Army, Judge Grimm served as a defense attorney and prosecutor while assigned to the JAG Office at Aberdeen Proving Ground, Maryland, and thereafter as an action officer in the Office of the Judge Advocate General of the Army (Administrative Law Division), The Pentagon. In 2001, Judge Grimm retired as a Lieutenant Colonel from the United States Army Reserve.

Judge Grimm received his undergraduate degree from the University of California Davis (summa cum laude), his J.D. from the University of New Mexico School of Law (magna cum laude, Order of the Coif) and his LLM from Duke Law School.



A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., U.S. Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers. He is a member of the Judicial Conference of the United States' Advisory Committee on Evidence Rules and the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.



Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory Committee member of the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member of the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and Fels School of Government.



Jim Markey has over 30 years of law enforcement experience with the Phoenix Police Department. Serving in a variety of positions, Mr. Markey was recognized with more than 30 commendations and awards. For over 14 years, he directly supervised the sexual assault unit, which is part of a multidisciplinary sexual assault response team co-located in the City of Phoenix Family Advocacy Center. Mr. Markey oversaw the investigation of more than 7,000 sexual assaults, including more than 150 serial rape cases. In 2000, he was able to secure Violence Against Women grant funding to design, develop, and supervise a first-of-its-kind sexual assault cold case team with the City of Phoenix. This team has been successful in reviewing nearly 4,000 unsolved sexual assault cases dating back over 25 years. For the past 15 years Mr. Markey has been a certified and nationally recognized trainer, delivering in-person and online webinar training for numerous criminal justice organizations on sexual assault investigations and response. Currently, he is employed with the Research Triangle Institute (RTI) located in Durham North as a Senior Law Enforcement Specialist. His work in the Applied Justice Research Unit includes assistance for the DOJ Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI), providing technical assistance and training to 54 SAKI grantees across the United States. He also developed and directs the SAKI – Sexual Assault Unit Assessment (SAUA) Team; this team has conducted independent and comprehensive reviews for four major police agencies, assessing a range of areas in their response to sexual assault. In addition to the DAC-IPAD, Mr. Markey currently serves as a member of the National Institute of Justice (NIJ) Sexual Assault Forensic Evidence Reporting (SAFER) Working Group and Editorial Team, NIJ Cold Case Working Group, Arizona Commission on Victims in the Courts (COVIC), Arizona Forensic Science Advisory Committee, and Massage Envy Franchising's Safety Advisory Council. Jim continues to work as a trainer and facilitator in the area of sexual violence for the International Association of Chiefs of Police (IACP) and the International Association of College Law Enforcement Administrators (IACLEA).



Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical- forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.



Jennifer O'Connor is the Vice President, Associate General Counsel and Sector Counsel for Northrop Grumman's mission systems sector. Prior to joining Northrop Grumman, Ms. O'Connor served as the General Counsel for the Department of Defense. In that role, she was the chief legal officer of the Department and the principal legal advisor to the Secretary of Defense. Earlier in her career, she served in numerous positions and agencies throughout the federal government. Her past positions include service in the Obama administration as Deputy Assistant to the President and Deputy White House Counsel responsible for the litigation, oversight and investigations portfolios; Senior Counsel at the Department of Health and Human Services; and as Counselor to the Commissioner of the Internal Revenue Service. Ms. O'Connor also worked in the Clinton Administration as Deputy Assistant Secretary for Policy at the Department of Labor, Special Assistant to the President in the Office of the White House Deputy Chief of Staff; Special Assistant to the President in the Office of Cabinet Affairs; and as Deputy Director of the White House Office of Management and Administration. Ms. O'Connor received a Bachelor of Arts degree from Harvard University, a Masters in Public Administration from Columbia University's School of International Public Affairs, and a Juris Doctor degree from Georgetown University.



BGen James (Jim) Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of “don’t ask, don’t tell,” for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired in 2014 after 49 years of federal service.



Judge Karla N. Smith (Chair) was appointed to the Circuit Court for Montgomery County, Maryland in December 2014 by Governor Martin O’Malley. Judge Smith served on the District Court of Maryland from August 2012 until her appointment to the Circuit Court. In addition, Judge Smith serves as the Judiciary’s representative on the State Council on Child Abuse and Neglect; the Operations Subcommittee of the Judiciary Committee on Equal Justice; and she represents the Circuit Court on the Montgomery County Domestic Violence Coordinating Council (DVCC).

Prior to her appointment, Judge Smith worked as a prosecutor for over 15 years. For five years, Judge Smith served as the Chief of the Family Violence Division of the Montgomery County State’s Attorney’s Office. Additionally, she sat on the Montgomery County Child Fatality Review Team; the Multidisciplinary Case Review Team for Child Abuse and Neglect; the Elder and Vulnerable Adult Abuse Task Force, which she chaired; the Interagency Sex Offender Management Team; Domestic Violence Case Review Team; and the Montgomery County Teen Dating Taskforce. It was during this time that Judge Smith was integral to the development of the Montgomery County Family Justice Center and the drafting and passage of a criminal child neglect statute that was signed into law in 2011.

Judge Smith received her Bachelor of Arts degree from the University of Maryland and her Juris Doctor from the University of Virginia. A life-long resident of Montgomery County and a product of Montgomery County Public Schools, Judge Smith currently lives in Bethesda with her husband and three sons.



Cassia Spohn is a Regents Professor in the School of Criminology and Criminal Justice at Arizona State University and an Affiliate Professor of Law at ASU's Sandra Day O'Connor College of Law. She is a Fellow of the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Western Society of Criminology. She is the recipient of numerous academic awards, including the University of Nebraska Outstanding Research and Creative Activity Award, the W.E.B. DuBois Award for Contributions to Research on Crime and Race/Ethnicity, the Lifetime Achievement Award from the American Society of Criminology's Division on Corrections and Sentencing, and Arizona State University's Faculty Achievement Award for Defining-Edge Research in the Social Sciences. Dr. Spohn's research interests include the correlates of federal and state sentencing outcomes, prosecutorial decision making, the intersections of race, ethnicity, gender, crime and justice, and sexual assault case processing decisions. She is the author of eight books, including *How Do Judges Decide: The Search for Fairness and Justice in Punishment* and *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System*. She is the author of more than 140 peer-reviewed publications. Dr. Spohn currently is working on a National Science Foundation-funded project evaluating the impact of Arizona's recent ban on peremptory challenges and a series of papers on the imposition of life sentences in the U.S. District Courts.



Meghan Tokash is an Assistant United States Attorney at the Department of Justice. Previously, she served as a special victim prosecutor in the U.S. Army Judge Advocate General's Corps for eight years, litigating cases related to homicide, rape, sexual assault, domestic violence and child abuse. She worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office. She deployed to Iraq as the senior trial counsel for U.S. Forces Iraq, and prosecuted special victim cases across U.S. Army Europe and U.S. Army Central Command. Ms. Tokash was an attorney advisor for the Judicial Proceedings Panel prior to her 2017 appointment by Secretary of Defense Ash Carter to serve on the Defense Advisory Committee on the Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces. In 2021, Ms. Tokash served on the 90-day Independent Review Commission on Sexual Assault in the Military that was established by Secretary of Defense Lloyd Austin at the direction of President Biden.



Judge Walton was born in Donora, Pennsylvania. In 1971, he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007, Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management.

Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.

Staff Professional Biographies

Colonel Jeff A. Bovarnick, United States Army, Judge Advocate General's Corps, is the Executive Director for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Executive Director for the Military Justice Review Panel (MJRP). Colonel Bovarnick has served in numerous positions during his 28-year career on active duty, including three combat deployments. Some of his prior assignments include: Executive Officer to the Under Secretary of the Army; Executive Officer to the General Counsel of the Army; Staff Judge Advocate, U.S. Army Special Operations Command; Staff Judge Advocate, Combined Joint Task Force-101 (Afghanistan); Staff Judge Advocate, 101st Airborne Division (Air Assault); Deputy Staff Judge Advocate, 1st Infantry Division; Chair & Professor, International & Operational Law Department, U.S. Army JAG School; Chief, Investigative Judge Team (Iraq); Chief, Military Justice, 82nd Airborne Division; Chief, Operational Law, Combined Joint Task Force-180 (Afghanistan); and trial counsel and defense counsel. Colonel Bovarnick holds a Masters of Strategic Studies Degree from the U.S. Army War College and a Masters of Law from The Judge Advocate General's School (Army). He is a graduate of New England School of Law and is licensed to practice in Massachusetts.

Ms. Julie Carson is the Deputy Director for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Ms. Carson began her career with the Department of Defense in 2012 as the confidential assistant and scheduler for then-Deputy Secretary of Defense Ash Carter after relocating to the Washington D.C. area with her family. She began working in the field of military sexual assault policy in August 2013, joining the Response Systems to Adult Sexual Assault Crimes Panel (RSP) as an attorney-advisor shortly after it was established. Ms. Carson served for three years as an attorney-advisor for the follow-on Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP), taking on an additional responsibility as legislative liaison. Prior to her work at the Department of Defense, Ms. Carson was an attorney for MCI-WorldCom (now Verizon) for three years, and was in private law practice in Oklahoma for 10 years with a primary focus on representation of and advocacy for the rights of children and foster parents, and higher education policy. Ms. Carson was appointed by the Governor of Oklahoma in 2006 to serve a nine-year term as a State Regent on the Oklahoma State Regents for Higher Education, which oversees the state's higher education budget and policy. She served as chair in 2012. Ms. Carson is a graduate of Vanderbilt University and the University of Tulsa College of Law.

Mr. Dale Trexler is the Chief of Staff for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). As a senior leader, Mr. Trexler's duties and oversight include: leadership and management; human and financial resources; project and workflow management, information technology; logistics; and, administration. Previously he was Chief of Staff, Judicial Proceedings Panel (JPP) from June 2014 until June 2017, and the Response Systems Panel (RSP), from June 2013 until June 2014. Prior to these positions, Mr. Trexler spent nearly 28 years in the U.S. Army serving as a Legal Administrator and retiring as a Chief Warrant Officer Five. He served at every echelon of the Army to include assignments as the Command Legal Administrator at U.S. Forces Command and The Judge Advocate General's Legal Center & School, with multiple deployments. Mr. Trexler graduated from Excelsior College (summa cum laude) with a dual concentration in business and criminal justice.

Ms. Audrey Critchley is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Ms. Critchley previously served as senior staff attorney for the Chief Judge of the U.S. Court of Appeals for the Armed Forces (USCAAF) before becoming a staff attorney on USCAAF's central legal staff. Prior to her service at USCAAF, Ms. Critchley was an associate in the Washington, D.C.-based First Amendment and media law firm of Levine Sullivan Koch & Schulz, LLP. Ms. Critchley is a graduate of the University of Chicago and the Georgetown University Law Center.

Dr. Alice Falk is a technical writer-editor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). She has been a freelance copyeditor since 1993. With an academic background in English literature (Ph.D.) and Greek and Latin literature and philosophy (M.A.), she works primarily on scholarly manuscripts and government reports. Clients include Dumbarton Oaks, the Folger Shakespeare Library, W. W. Norton, St. Martin's Press, and numerous university presses; among the reports she has edited are The 9/11 Commission Report, The Financial Crisis Inquiry Report, Inspired to Serve (the report of the National Commission on Military, National, and Public Service), and all reports for the Commission on the National Guard and Reserves and the Cyberspace Solarium Commission. She was the staff editor for the Judicial Proceedings Panel (2014–17), and she has held the same position for the DAC-IPAD since its inception in 2017.

Ms. Theresa Gallagher is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). She first joined the professional staff in late 2016 to support the Judicial Proceedings Panel (JPP). Ms. Gallagher spent nearly 25 years on active duty in the U.S. Army Judge Advocate General's Corps before retiring as a Colonel. She served primarily in military justice positions including appellate judge on two courts of appeal, trial judge, appellate attorney, prosecutor, defense attorney, training attorney for prosecutors, Special Assistant U.S. Attorney for felony and misdemeanor offenses, and command legal advisor in Kuwait. She also supported independent, impartial, and confidential investigations as a legal advisor for the Army Inspector General's Office and as the Director of Special Investigations for the Department of Commerce Inspector General's Office. Her work at both these offices included whistleblower reprisal issues. Ms. Gallagher is a graduate of California State University, Fresno and University of the Pacific, McGeorge School of Law. She earned her master of law degree in military law at The Judge Advocate General's Legal Center and School, U.S. Army.

Ms. Nalini Gupta is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and Military Justice Review Panel (MJRP). Prior to this position, Ms. Gupta was a litigation associate in the New York and Washington, DC offices of the law firm Hughes Hubbard & Reed LLP. Ms. Gupta also teaches as an adjunct professor at Catholic University, Columbus School of Law. Ms. Gupta graduated from Princeton University (cum laude) and received a law degree from New York University School of Law.

Ms. Amanda Hagy is a senior paralegal for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). She previously served in the same capacity for the Judicial Proceedings Panel (JPP). Her duties and oversight include preparation of all public and subcommittee hearings, draft and review of public and subcommittee minutes and transcripts, archiving, managing statistical data regarding military adjudication of sexual assault offenses, and managing office administration processes. Ms. Hagy is currently serving in the United States Army Reserves as the Paralegal Non-Commissioned Officer in Charge (NCOIC) for the 38th Regional Support Group. She has been deployed to multiple CONUS and OCONUS locations. Ms. Hagy graduated from the University of Maryland with a Bachelor of Science in Environmental Management and is currently pursuing a Masters of Social Work from the Simmons School of Social Work.

Mr. Chuck Mason is an attorney-advisor (Data Team Lead) for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Prior to this position, he was a legislative attorney for the Congressional Research Service (CRS) at the Library of Congress, specializing in military and veterans' law. During his tenure at CRS, Mr. Mason testified before the U.S. House of Representatives, Committee on Foreign Affairs regarding status of forces agreements and the U.S. Senate, Committee on Veterans' Affairs on pending VA benefits legislation. Additionally, Mr. Mason served five years as a judge advocate in the U.S. Navy. Mr. Mason received his J.D. from the University of Toledo College of Law, Toledo, OH, and a Master of Science in Management from The Catholic University of America, Washington, D.C.

Ms. Marguerite McKinney is a management and program analyst for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Her duties include researching, compiling and analyzing policy, legislative and other issues as needed. She drafts summaries, information papers, correspondence, slides, charts, requests for information, and other written documents as required. Prior to this position, Ms. McKinney provided support to the Under Secretary of Defense for Personnel and Readiness and the Under Secretary of Defense for Acquisition and Sustainment. Additionally, Ms. McKinney served as a congressional staffer for the second district of Oklahoma. In addition to her federal service, she successfully served in several roles in the private sector. She received her bachelor of science in business administration from Northeastern State University.

Ms. Laurel Prucha Moran is a graphic designer for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). She creates visual order and cohesion from raw data and text. Laurel began designing for the U.S. government in 2013 for the National Commission on the Structure of the Air Force and was brought on board with the Response Systems Panel (RSP) and Judicial Proceedings Panel (JPP) in 2014. Other commissions Ms. Moran has designed for include the National Commission on the Future of the Army from 2015 to 2016, and the National Commission on Military Aviation Safety, the National Commission on Military, National, and Public Service, and the Cyberspace Solarium Commission all from 2019 to 2020. In addition to her ad hoc work for the government, she works with myriad associations including the Reserve Organization of America (formerly the Reserve Officers Association), the National Air Transportation Association, and the National Association of Professional Insurance Agents. Ms. Moran graduated from American University with a BA in international studies and worked on NAFTA at the U.S. Trade Representative from 1990-1993 before changing career paths.

Ms. Meghan Peters is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). From 2014 to 2017 she also served as an attorney-advisor for the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP). Prior to joining DoD as a civilian attorney, Ms. Peters was a judge advocate in the U.S. Army with multiple assignments as a prosecutor, and as a command legal advisor at the 82nd Airborne Division at Fort Bragg, North Carolina with oversight of all legal matters affecting the brigade. She left active duty in 2013 and entered private practice as a criminal defense attorney representing Service members from all branches at courts-martial and in other disciplinary matters. Ms. Peters remained in the U.S. Army Reserves until September 2020. Her Reserve service included appointment as an appellate attorney, and as a prosecutor for a military police command. Ms. Peters is a graduate of the University of Richmond and the University of Richmond School of Law in Virginia.

Ms. Stacy Powell is a senior paralegal for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Her duties and oversight include managing the statistical data regarding military adjudication of offenses under the Uniform Code of Military Justice (UCMJ), preparation of all public and subcommittee hearings, and reviews and drafts public and subcommittee minutes and transcripts. Prior to joining the DAC-IPAD, she worked as a paralegal for the Office of the State Attorney, First Judicial Circuit specializing in criminal acts against children. Ms. Powell also spent 20 years in the U.S. Air Force serving as a paralegal and retiring as a Master Sergeant. She served as both a prosecution and defense paralegal at the base level, an instructor and Career Development Course (CDC) writer at The Air Force Judge Advocate General's School, with her career culminating as a Law Office Superintendent at the base level.

Ms. Stayce Rozell is a senior paralegal for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). She also worked as a senior paralegal for the Judicial Proceedings Panel (JPP). Her duties and oversight include preparation of all public and subcommittee hearings, reviews and drafts public and subcommittee minutes and transcripts, and manages the statistical data regarding military adjudication of sexual assault and all other offenses. She has been a senior paralegal for the JPP since October 2014, and will continue in this role with the MJRP and DAC-IPAD. Prior to working in these positions, Ms. Rozell spent over 22 years on active duty in the U.S. Air Force as a paralegal and retired as a Master Sergeant. She served as a prosecution and defense paralegal at both the base and headquarters level and was the sole defense paralegal for one low level and one high level unlawful enemy combatant currently detained at Guantanamo Bay, Cuba. She has also been deployed to multiple locations in the Middle East.

Ms. Terri Saunders is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Ms. Saunders previously served as an attorney-advisor on the Judicial Proceedings Panel (JPP) and served as the Deputy Staff Director for the Response Systems to Adult Sexual Assault Crimes Panel, from July 2013 to June 2014. Prior to serving as a civilian attorney, Ms. Saunders served on active duty in the U.S. Air Force for 20 years, retiring in 2012. During her time in the Air Force, Ms. Saunders initially served as a logistics officer and was then selected for the Funded Legal Education Program to attend law school. Her staff assignments include serving as the deputy staff judge advocate at Charleston AFB, South Carolina; legal advisor to the Secretary of the Air Force Personnel Council; and Chief, Joint Service Policy and Legislation Branch of the Air Force Military Justice Division.

Ms. Kate Tagert is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Before joining the Department of Defense as a civilian Ms. Tagert served 8 years on active duty as an Army Judge Advocate practicing as both a prosecutor and defense counsel. She specializes in the area of criminal justice and public policy. In addition to Ms. Tagert's civilian professional experience she serves as an adjunct professor of criminal law in the U.S. Army Reserves at the Judge Advocate Legal School and Center specializing in evidence practice. Ms. Tagert is a graduate of American University in Washington, D.C. and New York Law School.

Ms. Eleanor Magers Vuono is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Ms. Vuono clerked in the Federal District Court for the Eastern District of Virginia before serving on active duty as an Army Judge Advocate and an Assistant to the Army General Counsel. She was the senior staff attorney for the Chief Judge of the U.S. Court of Appeals for the Armed Forces before launching a freelance brief writing practice, where she wrote trial and appellate briefs for small firms and solo practitioners. She served as an attorney-advisor for the Military Justice Review Group at the Department of Defense from 2014-2018 and then became the Senior Legal Advisor to the National Commission on Military, National, and Public Service. In addition to teaching as an adjunct at Georgetown University Law School and George Washington University, she teaches legal writing and analysis at Jagiellonian University in Krakow, Poland. She is a founding member and past president of the Military Spouse JD Network, a bar association for military spouse attorneys. Ms. Vuono is a Phi Beta Kappa graduate of Princeton University and attended the University of Virginia School of Law.

Dr. William Wells is a criminologist for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Additionally, he is Professor and Chair of the Department of Criminal Justice and Criminology at Sam Houston State University (SHSU) and also serves as Director of Research in the Law Enforcement Management Institute of Texas. In 2021 Dr. Wells received the SHSU Award for Excellence in Scholarly and Creative Accomplishments. Dr. Wells has been involved in several large-scale policing research projects in the United States and internationally since 1996. He is currently collaborating on a violence-reduction project with the U.S. Attorney's Office for the Southern District of Texas and multiple criminal justice agencies in the area. He is also a member of the research team that is assessing a Houston Police Department (HPD) initiative to reduce human trafficking. His published research has appeared in The Proceedings of the National Academy of Sciences, Injury Prevention, Journal of Quantitative Criminology, Journal of Interpersonal Violence, Criminology, Journal of Research in Crime & Delinquency, and American Journal of Public Health.

Mr. Pete Yob is an attorney-advisor for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Military Justice Review Panel (MJRP). Mr. Yob spent nearly 28 years in the U.S. Army Judge Advocate General's Corps before retiring in late 2019 as a Colonel. During his military career, he served primarily in military justice positions including Senior Appellate Judge on the U.S. Army Court of Criminal Appeals, Manager of the US Army Special Victim Counsel Program, Senior Army Representative and Team Leader to the Military Justice Review Group, Regional Defense Counsel for Iraq, Afghanistan, and Kuwait, Policy Branch Chief for the Army Criminal Law Division and Member of the Joint Service Committee, Legal Advisor to the Criminal Investigation Task Force (investigating detainees in the GWOT), lead attorney for military justice matters at US Central Command, Chief of Military Justice at Fort Sill, OK and Fort Belvoir, VA, Senior Defense Counsel for Southern European Task Force in Vicenza, Italy, and Special Assistant US Attorney in the Eastern District of Virginia. He also served for two years as Staff Judge Advocate at US Army Africa, as the legal advisor for the 501st Military Intelligence Brigade in the Republic of Korea, Ethics Counsel at Headquarters, Army Materiel Command, and as fires and effects cell legal advisor in Iraq. Mr. Yob graduated from the University of Colorado, Boulder, and received his J.D. degree from University of Notre Dame. He earned his masters of law degree in military law at The Judge Advocate General's Legal Center and School, U.S. Army.

DAC-IPAD Legislation

I. Creation of the DAC-IPAD (FY 2015 NDAA)

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES (PUB. L. 113-291, 128 STAT. 3374; 10 U.S.C. 1561 NOTE)

(a) ESTABLISHMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).

(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary 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.

(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

II. Acceleration of the start date for the DAC-IPAD (FY 2016 NDAA)

SEC. 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”.

III. Additional authority and tasks for the DAC-IPAD (FY 2019 NDAA)

SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

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

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) **AUTHORITIES.**—

“(1) **HEARINGS.**—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

“(2) **INFORMATION FROM FEDERAL AGENCIES.**—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.”.

SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS

(a) **REPORT.**—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

(1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.

(2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).

(3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

(b) **COVERED INDIVIDUAL DEFINED.**—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

H. Rept. 116-120 on H.R. 2500 (June 19, 2019)
Title V—Military Personnel Policy Items of Special Interest

Appointment of Guardian ad Litem for Minor Victims

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

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

IV. Extension and tasks for the DAC-IPAD (FY 2020 NDAA)

SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

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 Sec. 535 of the FY20 NDAA, Dec. 9, 2019):

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

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

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

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

- (a) **IN GENERAL.**—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.
- (b) **SECRETARY OF DEFENSE AND RELATED ACTIVITIES.**—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:
 - (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—
 - (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;
 - (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.
 - (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—
 - (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and
 - (B) describes how such a review should be conducted.
 - (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—
 - (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;
 - (B) take steps to address the causes of such disparities, as appropriate.
- (c) **DAC-IPAD ACTIVITIES.**—
 - (1) **IN GENERAL.**—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:
 - (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year addressed.
 - (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
 - (C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
 - (2) **INFORMATION FROM FEDERAL AGENCIES.**—
 - (A) **IN GENERAL.**—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigative files, charge sheets, records of trial, and personnel records.

- (B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.
- (3) REPORT.—Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.
- (4) DEFINITIONS.—In this subsection:
- (A) The term “independent committee DAC-IPAD” means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374), commonly known as the “DAC-IPAD”.
- (B) The term “case” means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.
- (C) The term “completed”, with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.
- (D) The term “contact sexual assault offense” means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.
- (E) The term “penetrative sexual assault offense” means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

IV. Modification of FY19 NDAA Sec. 547 task for the DAC-IPAD (FY 2021 NDAA)

SEC. 536. MODIFICATION OF REPORTING AND DATA COLLECTION ON VICTIMS OF SEXUAL OFFENSES.

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 1561 note) is amended—

- (1) in subsection (a)—
- (A) in paragraph (1)—
- (i) by striking “accused of” and inserting “suspected of”; and
- (ii) by striking “assault” and inserting “offense”;
- (B) in paragraph (2), by striking “accused of” and inserting “suspected of”; and
- (C) in paragraph (3)—
- (i) by striking “assaults” and inserting “offenses”; and
- (ii) by striking “an accusation” and inserting “suspicion of”;
- (2) by redesignating subsection (b) as subsection (c);

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

“(b) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance to ensure the uniformity of the data collected by each Armed Force for purposes of subsection (a). At a minimum, such guidance shall establish—

“(1) standardized methods for the collection of the data required to be reported under such subsection; and

“(2) standardized definitions for the terms ‘sexual offense’, ‘collateral misconduct’, and ‘adverse action’. ”; and

(4) by amending subsection (c), as redesignated by paragraph (2), to read as follows:

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces.

“(2) The term ‘suspected of’, when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”.

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

1. Committee's Official Designation: The committee shall be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Federal advisory committee.
3. Objectives and Scope of Activities: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations 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 ongoing review of cases.
4. Description of Duties: Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and the House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA. The DAC-IPAD will also focus on matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD, as the DAC-IPAD's sponsor.

Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- (1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual.
- (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- (3) The percentage of investigations of sexual offenses that involved suspicion of or adverse action against a covered individual as described in paragraphs (1) and (2).

The term "covered individual" means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term 'suspected of,' when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

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Pursuant to the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92) Joint Explanatory Statement, the conferees request the DAC-IPAD:

- (1) 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 when 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.
- (2) On a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under Rule for Courts-Martial (RCM) 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

The Joint Explanatory Statement summarized the conferees’ concern as follows: [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 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.

5. Agency or Official to Whom the Committee Reports: The DAC-IPAD reports to the Secretary of Defense and the Deputy Secretary of Defense, through the GC DoD, who may act upon the DAC-IPAD’s advice and recommendations in accordance with DoD policy and procedures.
6. Support: The DoD, through the Office of the GC DoD, provides support for the Committee’s functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act (“the Sunshine Act”) (5 U.S.C. § 552b), governing Federal statutes and regulations, and DoD policy and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs for the DAC-IPAD, to include travel, meetings, and contract support, are approximately \$2,600,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The DAC-IPAD’s Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD civilian officer or employee, or active duty member of the Armed Forces, designated in accordance with established DoD policy and procedures.

The DAC-IPAD’s DFO is required to attend all DAC-IPAD and subcommittee meetings for the entire duration of each meeting. However, in the absence of the DAC-IPAD’s DFO, a properly approved Alternate DFO, duly designated to the DAC-IPAD in accordance with DoD policy and procedures, shall attend the entire duration of all DAC-IPAD and subcommittee meetings.

The DFO, or Alternate DFO, calls all DAC-IPAD and subcommittee meetings; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or Alternate DFO, determines adjournment to be in the public’s interest or required by governing regulations or DoD policy and procedures.

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Defense Advisory Committee on Investigation,
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9. Estimated Number and Frequency of Meetings: The DAC-IPAD shall meet at the call of the DFO, in consultation with the DAC-IPAD's Chair and the GC DoD. The estimated number of meetings is at least one per year.
10. Duration: The need for this advisory committee is on a continuing basis through February 28, 2026; however, the DAC-IPAD is subject to renewal every two years.
11. Termination: In accordance with sections 546(e)(1) and (2) of the FY 2015 NDAA, as modified by section 535 of the FY 2020 NDAA, the DAC-IPAD will terminate on February 28, 2026, ten years after the DAC-IPAD was established, unless the DoD renews the DAC-IPAD in accordance with DoD policy and procedures.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD will be composed of no more than 20 members who must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as DAC-IPAD members.

Authority to invite or appoint individuals to serve on the DAC-IPAD rests solely with the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time. DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. DAC-IPAD members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD Appointing Authority shall appoint the DAC-IPAD's leadership from among the membership previously appointed to serve on the DAC-IPAD in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, which shall not exceed the member's approved appointment.

All members of the DAC-IPAD are expected to exercise their best judgment on behalf of the DoD, without representing any particular point of view and to discuss and deliberate in a manner that is free from conflicts of interest. Except for reimbursement of official DAC-IPAD related travel and per diem, DAC-IPAD members serve without compensation.

13. Subcommittees: The DoD, when necessary and consistent with the DAC-IPAD's mission and DoD policy and procedures, may establish subcommittees, task forces, or working groups ("subcommittees") to support the DAC-IPAD. Establishment of subcommittees shall be based upon a written determination, including terms of reference (ToR), by the DoD Appointing Authority or the GC DoD.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and DoD policy and procedures. If a subcommittee's duration exceeds that of the DAC-IPAD, and the DoD does not renew the DAC-IPAD, then the subcommittee terminates when the DAC-IPAD does.

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Defense Advisory Committee on Investigation,
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Subcommittees shall not work independently of the DAC-IPAD and shall report all of their recommendations and advice solely to the DAC-IPAD for its thorough deliberation and discussion at a properly noticed and open meeting, subject to the Sunshine Act. Subcommittees have no authority to make decisions and recommendations, orally or in writing, on behalf of the DAC-IPAD. Neither the subcommittee nor any of its members may provide updates or report directly to the DoD or to any Federal officer or employee, whether orally or in writing, on behalf of the DAC-IPAD. If a majority of DAC-IPAD members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same FACA notice and openness requirements governing the DAC-IPAD's operations.

Individual appointments to serve on DAC-IPAD subcommittees, which may be no more than 15 members, shall be approved by the DoD Appointing Authority for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on a subcommittee without prior approval from the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members. The DoD Appointing Authority shall appoint subcommittee leadership from among the membership previously appointed to serve on a subcommittee in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, not to exceed the member's approved appointment.

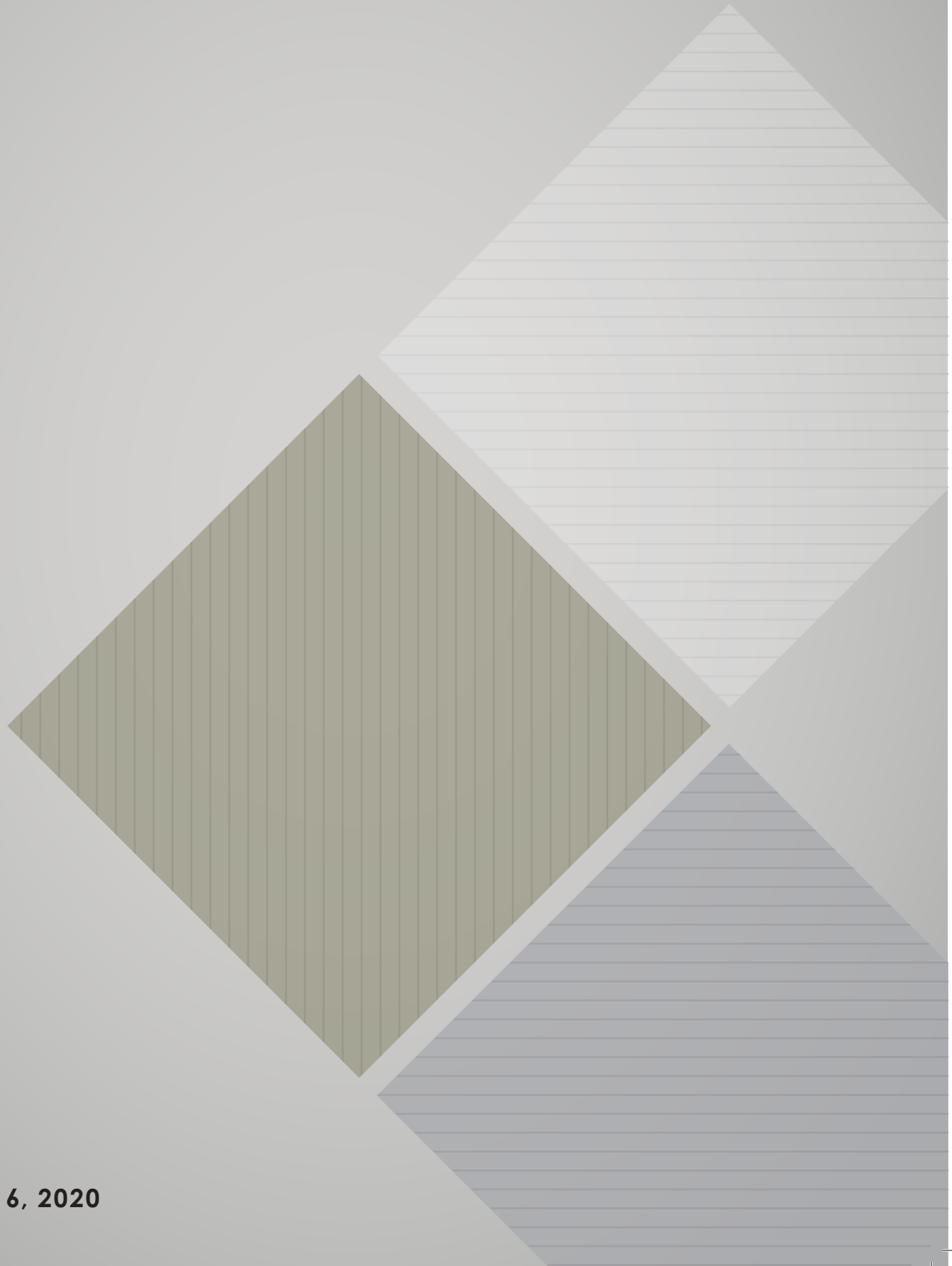
All members of a subcommittee are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner free from conflicts of interest. Except for reimbursement for official travel and per diem related to the DAC-IPAD or its subcommittees, subcommittee members shall serve without compensation.

14. Recordkeeping: The records of the DAC-IPAD and its subcommittees shall be managed in accordance with General Records Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policy and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. § 552).
15. Filing Date: February 16, 2022

Terms of Reference

Bylaws

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE



NOVEMBER 6, 2020

EXECUTIVE SUMMARY

The U. S. Secretary of the Army appointed the Fort Hood Independent Review Committee (FHIRC or Committee) and directed it to “conduct a comprehensive assessment of the Fort Hood command climate and culture [], and its impact, if any, on the safety, welfare and readiness of our Soldiers and units.” In addressing this mandate, the FHIRC determined that during the time period covered by the Review, the command climate relative to the Sexual Harassment/Assault Response and Prevention (SHARP) Program at Fort Hood was ineffective, to the extent that there was a permissive environment for sexual assault and sexual harassment.¹

As set forth in this Report, specific Findings demonstrate that the implementation of the SHARP Program was ineffective. During the review period, no Commanding General or subordinate echelon commander chose to intervene proactively and mitigate known risks of high crime, sexual assault and sexual harassment. The result was a pervasive lack of confidence in the SHARP Program and an unacceptable lack of knowledge of core SHARP components regarding reporting and certain victim services. Under a structurally weak and under-resourced III Corps SHARP Program, the Sexual Assault Review Board (SARB) process was primarily utilized to address administrative and not the actual substantive aspects of the Program. While a powerful tool by design, the SARB process became a missed opportunity to develop and implement proactive strategies to create a respectful culture and prevent and reduce incidents of sexual assault and sexual harassment. From the III Corps level and below, the SHARP Program was chronically under-resourced, due to understaffing, lack of training, lack of credentialed SHARP professionals, and lack of funding. Most of all, it lacked command emphasis where it was needed the most: the enlisted ranks.

A resonant symptom of the SHARP Program’s ineffective implementation was significant underreporting of sexual harassment and sexual assault. Without intervention from the NCOs and officers entrusted with their health and safety, victims feared the inevitable consequences of reporting: ostracism, shunning and shaming, harsh treatment, and indelible damage to their career. Many have left the Army or plan to do so at the earliest opportunity.

As part of the command climate, the issues of crime and Criminal Investigation Division (CID) operations were examined. The Committee determined that serious crime issues on and off Fort Hood were neither identified nor addressed. There was a conspicuous absence of an effective risk management approach to crime incident reduction and Soldier victimization. A military installation is essentially a large, gated community. The Commander of a military installation possesses a wide variety of options to proactively address and mitigate the spectrum of crime incidents. Despite having the capability, very few tools were employed at Fort Hood to do so. Both the Directorate of Emergency Services (DES) and the CID have a mandate and a role to play in crime reduction.² Each

¹ Per an Agreement with the Undersecretary of the Army, the review period encompassed Fiscal Years (FY) 2018, 2019, and 2020. Data and information from previous FYs were incorporated as necessary for context.

² Relevant to crime prevention and investigations, two of CID’s mandated objectives are: (i) “*Participating in the Army crime prevention program by identifying areas which are especially vulnerable to crime and by making recommendations to appropriate*

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

contributed very little analysis, feedback and general situational awareness to the command toward facilitating and enabling such actions. This was another missed opportunity.

The deficient climate also extended into the missing Soldier scenarios, where no one recognized the slippage in accountability procedures and unwillingness or lack of ability of non-commissioned officers (NCOs) to keep track of their subordinates. The absence of any formal protocols for Soldiers who fail to report resulted in an *ad hoc* approach by units and Military Police (MP) to effectively address instances of missing Soldiers during the critical first 24 hours, again with adverse consequences.

Consistent with the FHIRC Charter, this Report sets forth nine Findings and offers seventy Recommendations. The Findings of the Committee are as follows:

- Finding #1: The Implementation Of The SHARP Program At Fort Hood Has Been Ineffective, Due To A Command Climate That Failed To Instill SHARP Program Core Values Below The Brigade Level.
- Finding #2: There Is Strong Evidence That Incidents Of Sexual Assault And Sexual Harassment At Fort Hood Are Significantly Underreported.
- Finding #3: The Army SHARP Program Is Structurally Flawed.
- Finding #4: The Fort Hood CID Office Had Various Inefficiencies That Adversely Impacted Accomplishment Of Its Mission.
- Finding #5: The Mechanics Of The Army's Adjudication Processes Involving Sexual Assault And Sexual Harassment Degrade Confidence In The SHARP Program.
- Finding #6: Fort Hood Public Relations & Incident Management Have Deficiencies.
- Finding #7: There Were No Established Procedures For First Line Supervisors In 'Failure to Report' Situations That Define Appropriate Actions In The Critical First 24 Hours.
- Finding #8: The Criminal Environment Within Surrounding Cities And Counties Is Commensurate With Or Lower Than Similar Sized Areas: However, There Are Unaddressed Crime Problems On Fort Hood, Because The Installation Is In A Fully Reactive Posture.
- Finding #9: The Command Climate At Fort Hood Has Been Permissive Of Sexual Harassment / Sexual Assault.

Based on these Findings, set forth in greater detail within this Report, the FHIRC provides Recommendations regarding: (i) the structure of the SHARP Program; (ii) implementation of the SHARP Program; (iii) legal components of the SHARP Program; (iv) disclosure after adjudication of

authorities for elimination of conditions conducive to criminal activity.”; and, (ii) “Ensuring known or suspected serious crimes and crimes which may result in damaging the public confidence in the Army are thoroughly and impartially investigated by USACIDC special agents.” Army Regulation 195-2, 21 July 2020, para 1-6 (p. 3).

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

SHARP allegation; (v) Fort Hood and U.S. Army Criminal Investigation Command (USACIDC) issues; (vi) missing Soldier protocols; (vii) crime prevention and response; (viii) command climate issues, and, (ix) installation public relations and incident management. While the Recommendations are set forth in full at the end of this Report on Pages 123-132, some of the more salient points include:

- ✓ The United States Army SHARP Program at Fort Hood should have a structure similar to the United States Army Trial Defense Service (TDS) and the United States Army Combat Readiness Center (CRC) and Director of Army Safety, insofar as each are structured to support the Command, while outside of the chain of command.
- ✓ At the installation level, there should be a cadre of pooled full-time Victim Advocates, comprised of a hybrid of civilian and uniformed personnel. Consider whether some or all Civilian Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs) need Mobility Agreements to ensure compatibility with unit deployment requirements. All collateral SHARP positions should be phased out and consolidated into full-time VAs within the III Corps SHARP Program Office. All Brigade SARCS and VAs should be civilian positions.
- ✓ Strengthen and centralize all SHARP functions, governance and personnel under the installation SHARP Program Management Office.
- ✓ The SHARP Program Manager should be responsible for assessing the readiness of units in terms of SHARP awareness and cultural posture. Additionally, the installation SHARP Program Office, using the SHARP Cadre Pool, should be responsible for developing and conducting training at units throughout the installation.
- ✓ The Army should require that the installation SHARP Program Office track and monitor the aging and life-cycle of each sexual assault and sexual harassment case, and prepare a quarterly report regarding the same.
- ✓ The nature and the results of all SHARP disciplinary actions should be published at least semiannually, without identifying the subject, victim or unit, in order to deter future conduct and engender confidence in the SHARP response process.
- ✓ The Army should examine, from recruitment throughout the lifecycle of a Soldier, how the Army can better develop the “whole” person, helping each Soldier recognize the value of the warriors with whom they serve.
- ✓ Fort Hood should increase the number of appointed Special Victim Counsel.
- ✓ USACIDC should ensure that the Fort Hood and other CID offices that cover Corps and Divisional Posts maintain a sufficient number of experienced (more than 5 years) and highly experienced (more than 8 years) Special Agents to accomplish its mission. USACIDC should increase Detachment level expertise, licenses and equipment for electronic evidence forensic services, particularly for electronic data from mobile phones and laptops.
- ✓ The Command should establish a crime prevention and public safety working group to develop and implement strategies and employ all the tools available to the Command to reduce crime.

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

- ✓ Establish an Army-wide set of protocols for “failure to report” scenarios for the critical first 24 hours of a Soldier’s absence.
- ✓ DES and CID should work with local law enforcement to identify high-risk establishments, locations and living areas and rapidly declare them off limits.

The FHIRC acknowledges the military’s time-honored role in protecting the security of our Nation. The sacrifices made every day by Soldiers and their families deserve unwavering respect and gratitude. Each Member of the FHIRC accepted this appointment with the intention and hope of supporting the mission and well-being of our brave Soldiers. Soldiers assaulting and harassing other Soldiers is both corrosive to esprit de corps and contrary to good order and discipline. Worse, it is contrary to Army Values. The Findings and Recommendations contained in this Report are offered in the spirit of constructive improvements, not to provide a basis for punitive actions.

ENDORSEMENT

The Members of the Fort Hood Independent Review Committee endorse this Report and submit these Findings and Recommendations to the Secretary of the Army for disposition.



Christopher Swecker
FHIRC Chairman



Jonathan P. Harmon
FHIRC Member



Carrie F. Ricci
FHIRC Member



Queta Rodriguez
FHIRC Member



Jack L. White
FHIRC Member

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

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REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

CONTEXT & PURPOSE OF REPORT

Beyond recent events, this Independent Review (Review) must necessarily be informed by the context in which it is undertaken. With decades of military experience among its Members, the Fort Hood Independent Review Committee (FHIRC or Committee) appreciates the difference between the conduct of Soldiers as warfighters in the field or in theater, and the management of a military community during events that occur in garrison. The FHIRC appreciates the skills requisite to inculcating the esprit de corps necessary to cohesively accomplish military missions, in contrast and comparison with interactions within a community as diverse and dynamic as that which exists at Fort Hood and its surrounding cities. And, the FHIRC has been mindful of the fact that every aspect of Army engagement seeks to embrace Army Values.

With this in mind, the culture and climate of Fort Hood cannot be adequately assessed in a vacuum. The FHIRC's assessment would be remiss if it did not consider the culture and climate of the Army on a grander scheme. To be clear, this Report does not suggest – and, the Committee has not identified – a direct correlation between sexual harassment and sexual assault and the Army's endeavors toward gender inclusion. However, in reviewing the atmosphere at Fort Hood as it relates to sexual harassment and sexual assault, the Committee is not oblivious to the context of gender integration in the Army.³

Almost five years ago, then U. S. Secretary of Defense Ashton Carter declared that all positions in the U. S. military, including all combat positions, would be open to women. Although technically the remaining barrier to the integration of women into all military positions was removed with the elimination of the “1994 Direct Ground Combat Definition and Assignment Rule” in January 2013, it was not until December 3, 2015 that the U. S. Secretary of Defense issued a Memorandum regarding Implementation Guidance for the Full Integration of Women in the Armed Forces, which stated that:

Over the last three years, the Military Services have opened over 111,000 positions to women and have independently studied, developed, and verified operationally relevant standards for them. After careful review of this work, and informed by the counsel and judgment of the Secretaries of the Military Departments, Chiefs of the Military Services, and the Chairman of the Joint Chiefs of Staff, I have now determined that no exceptions are warranted to the full implementation of the rescission of the “1994 Direct Ground Combat Definition and Assignment Rule.” Anyone, who can meet operationally relevant and gender neutral standards, regardless of gender, should have the opportunity to serve in any position.⁴

³ At every critical juncture of performing this Review and drafting this Report, the FHIRC remained mindful of the seven core Army Values: Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage.

⁴ See U.S. Secretary of Defense Memorandum, *Implementation Guidance for the Full Integration of Women in the Armed Forces* (03 Dec. 2015), <https://dod.defense.gov/Portals/1/Documents/pubs/OSD014303-15.pdf>.

REPORT OF THE FORT HOOD INDEPENDENT REVIEW COMMITTEE

In accordance with this declaration, in early 2016 the Army developed an Army Gender Integration Implementation Plan. This Plan detailed the Army's "approach for integrating women into all military occupational specialties (MOSs)," including allowing "qualified female Soldiers to serve in the Infantry, Armor, and Special Forces."⁵ Of note, a pivotal component of the pursuit of full integration involved "[c]ontinually assessing integration strategies to successfully posture the force."⁶

The Army has a history of being forward thinking on social issues of the sort that require a focused and concerted effort in order to get to a better place. The Gender Integration Implementation Plan set forth by the Department of Defense (DoD) is one of these efforts. It is not a coincidence that the U. S. Secretary of Defense's December 3, 2015 Memorandum emphasizes that "[i]t is absolutely critical to our warfighting ability and the welfare of our people that we embark on integration with a commitment to the monitoring, assessment, and in-stride adjustment that enables sustainable success,"⁷ and the Army similarly committed to "[c]ontinually assessing integration strategies to successfully posture the force."⁸ Meaningful change, and the successful implementation of such meaningful change, requires careful iterative thought and assessment, a process toward which the Army has historically demonstrated that it can render itself well-positioned and committed.

The Committee's assessment has taken into account the current climate and culture of integrating women into all positions in the Army. The Army's Plan used the term "Soldier 2020" as "[t]he Army's campaign to gender integrate combat arms and improve readiness across the force."⁹ As the end of 2020 nears, the FHIRC finds that providing a culture and climate that is characterized by inclusion, commitment to diversity, freedom from sexual harassment and sexual assault, and adherence to Army Values is key to successful gender integration.

⁵ See Army Gender Integration Implementation Plan, U.S. Army (10 Mar. 2016), <https://www.army.mil/standto/archive/2016/03/10/>. For more information See also U.S. Secretary of Defense Memorandum, *Implementation Guidance for the Full Integration of Women in the Armed Forces* (03 Dec. 2015), <https://dod.defense.gov/Portals/1/Documents/pubs/OSD014303-15.pdf>.

⁶ *Ibid.*

⁷ See U.S. Secretary of Defense Memorandum, *Implementation Guidance for the Full Integration of Women in the Armed Forces* (03 Dec. 2015), <https://dod.defense.gov/Portals/1/Documents/pubs/OSD014303-15.pdf>.

⁸ See Army Gender Integration Implementation Plan, U.S. Army (10 March 2016), <https://www.army.mil/standto/archive/2016/03/10/>.

⁹ See HQDA Execution Order 097-16 to the U.S. Army Implementation Plan 2016-01 (9 March 2016) (p.39), https://dod.defense.gov/Portals/1/Documents/pubs/WISR_Implementation_Plan_Army.pdf.



Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military

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Foreword

A Letter to Service Members of the U.S. Military

We heard you. This report is a reflection of your voice - your struggles and your challenges.

To the junior enlisted: We talked with you on ships, on bases and installations; we talked with you from places within the U.S. and abroad; you reached out to us on our website, and through veterans and military service organizations. Your voices never stopped ringing in our ears as we worked through our recommendations. After all, you make up nearly half the entire force. You deserve to have your voices heard when policies, regulations, and laws are being considered that directly affect you. So, we reached out to you, and you reached out to us.

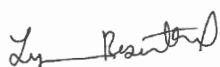
We listened when you told us that the climate of your unit was highly dependent on the quality of your leadership. We heard you when you said there were commanders who supported and mentored you but there were also those who turned away from harassment and abuse, eroding your trust. You told us about “toxic accountability” but you also told us about leaders who went above and beyond to protect and defend you. You begged us to replace boring PowerPoint trainings and engage you in meaningful dialogue instead. You admitted that sometimes you were confused about what behavior was acceptable and what crossed the line. We heard about the times when you stepped in to stop inappropriate or predatory behavior. You explained to us how you watched certain teammates go from being energetic and enthusiastic to depressed and withdrawn after a sexual assault. You told us you wanted change.

To everyone, we recognize that you came into the military for different reasons, from different backgrounds, with different goals. You wear different uniforms, have different jobs, and different career paths. But you swear the same oath and would lay down your lives for each other. You are the promise of continued freedom, and you deserve excellence. You deserve excellence in training, in leadership, mentorship, and resiliency. You also deserve dignity and respect, and the opportunity for advancement based solely on your grit, skill, and merit.

We thank you for your valued contributions to this report and for standing in the breach. The future is in your hands. We are counting on you.

Sincerely,


The Independent Review Commission (IRC) on Sexual Assault in the Military


Lynn Rosenthal


Dr. Debra Houry


LTC Bridgette Bell

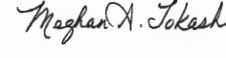

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Overview

At the direction of President Biden, on February 26, 2021, Secretary of Defense Austin established the 90-Day IRC on Sexual Assault in the Military. The Commission, chaired by Lynn Rosenthal, was charged with conducting “an independent, impartial assessment” of the military’s current treatment of sexual assault and sexual harassment. The IRC officially began its review on March 24, 2021.

To accomplish the goals outlined in its charter, the IRC recruited twelve highly-qualified experts from outside of the Department of Defense (DoD) and the Services, with experience in the fields of civilian criminal justice, victim advocacy, policy and program development for sexual violence¹ prevention and response, public health, and research. During the 90-Day period, the IRC gathered input from key stakeholders across DoD, the Military Departments and Services, and external organizations. In particular, the IRC sought the views and perspectives from the individuals who would be most impacted by its recommendations: commanders; enlisted Service members; and survivors—including active duty Service members, individuals recently separated from service, and veterans.

In June 2021, the IRC presented Secretary Austin with its report and recommendations addressing four broad areas: accountability, prevention, climate and culture, and support and care of victims.² These four lines of effort are equally important—and therefore interdependent—in stopping sexual harassment and sexual assault in the military.

The IRC developed more than 80 recommendations (28 recommendations and 54 sub-recommendations). The full set of recommendations are detailed in four separate reports, with highlights included in this overview. In addition to these recommendations, the IRC identified common themes illustrative of the current state of sexual assault and sexual harassment in the military. These themes are presented below.

Common Themes

Broken Trust

When it comes to sexual assault and harassment, the IRC concluded that there is a wide chasm between what senior leaders believe is happening under their commands, and what junior enlisted

¹ Sexual violence refers to sexual activity when consent is not obtained or not given freely. Anyone can experience sexual violence. The person can be, but is not limited to, a friend, intimate partner, coworker, neighbor, or family member. Source: Basile, K., Smith, S., Breiding, M., Black, M., & Mahendra, R. (2014). *Sexual Violence Surveillance: Uniform Definitions and recommended Data Elements, Version 2.0*. Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control. https://www.cdc.gov/violenceprevention/pdf/sv_surveillance_definitionsI-2009-a.pdf

² Those who have experienced sexual assault may refer to themselves as survivors or as victims. Some prefer “survivor” to indicate that they lived through the assault, while others prefer “victim” to indicate that someone harmed them. “Victim” is used in the military justice systems. This document uses these terms interchangeably and always with respect for those who have been subjected to these crimes.

Service members actually experience. This is true across the enterprise. As a result, trust has been broken between commanders and the Service members under their charge and care.

Leadership is Paramount

Preventing, responding to, and supporting Service members who are the victims of demeaning language, sexual harassment, and sexual assault is a command responsibility. Commanders must be held accountable for their unit climates and for their action—or inaction—when it comes to protecting their people.

The Military Justice System is Not Equipped to Properly Respond to Special Victim Crimes

Special victim crimes disproportionately impact certain victims because who they are, or what motivated the crime. These crimes are often interpersonal in nature, in which the victim and the alleged offender may have a pre-existing relationship or acquaintance. Special victims—particularly survivors of sexual assault and domestic violence—deserve all critical decisions about their case to be made by a highly trained special victim prosecutor who is independent from the chain of command.

Sexual Harassment and Sexual Assault Exist on a Continuum of Harm

Sexual assault does not stand alone, but rather exists on a continuum of harm which may begin with sexual harassment and escalate into sexual assault. This is particularly true in the military, where survivors of sexual harassment are at significantly higher risk of later experiencing sexual assault.³ To think of them as two separate problem sets is to fundamentally misunderstand the challenge the Department—and the force—face, especially with regard to unit climates.

Victims Bear a Heavy Burden

The IRC spoke with hundreds of survivors of sexual assault during the 90-Day review. One-on-one interviews and panel discussions brought to light the substantial burdens placed on victims as they navigated the military justice and health systems. Many survivors with whom the IRC spoke had dreamt their entire lives of a career in the military; in fact, they loved being in the military and did not want to leave, even after experiencing sexual assault or sexual harassment. But because their experience in the aftermath of the assault was handled so ineptly or met with hostility and retaliation, many felt they had no choice but to separate.

³ Matthews, M., Morral, A.R., Schell, T.L., Cefalu, M., Snoke, J., Briggs, R.J. (2018). *Organizational Characteristics Associated with Risk of Sexual Assault and Sexual Harassment in the U.S. Army*. RAND Corporation. https://www.rand.org/pubs/research_reports/RRA1013-1.html

Critical Deficiencies in the Workforce

The workforce dedicated to Sexual Assault Prevention and Response (SAPR) is not adequately structured and resourced to do this important work. Many failures in prevention and response can be attributed to inexperienced lawyers and investigators, collateral-duty (part-time) SAPR victim advocates, and the near total lack of prevention specialists. These failures are not the fault of these personnel, but rather of a structure that de-emphasizes specialization and experience, which are necessary to address the complexities of sexual assault cases and the needs of victims.

Outdated Gender and Social Norms Persist Across the Force

Although the military has become increasingly diverse, women make up less than 18 percent of the total force.⁴ With these dynamics, many women who serve report being treated differently than their male counterparts. In the IRC's discussions with enlisted personnel, many Service women described feeling singled out or the subject of near daily sexist comments, as one of few women in their units.

Little is Known about Perpetration

The most effective way to stop sexual harassment and sexual assault is to prevent perpetration. However, the Department lacks sufficient data to make evidence-based decisions in this domain. As a result, the impact of prevention activities in military communities, particularly activities aimed at reducing perpetration, remains relatively unknown.

Points of Strength that Show Promise for the Future

Despite these challenges, the IRC also found points of strength throughout the force. These promising observations were gleaned from installation visits, as well as discussions with junior enlisted Service members, noncommissioned officers (NCOs), survivors, commanders, and response personnel. As one junior enlisted Service member commented “not everything is broken.” For example:

- The Army is making strides to better identify both promising and toxic leaders through the Battalion Commander Assessment Program (BCAP) and the Colonels Command Assessment Program (CCAP).⁵
- The Navy leads the Services in developing and retaining experienced courtroom litigators. Since 2007, the Navy's Military Justice Litigation Career Track (MJLCT) has been vital to the

⁴ Of total force members in 2018 (i.e., Active Duty, Reserve, and Guard members from all Services), 82 percent identify as male and 71 percent identify as White. *Source:* Military One Source. (2019). 2018 Demographics: Profile of the Military Community. <https://download.militaryonesource.mil/12038/MOS/Reports/2018-demographics-report.pdf>, pp. 6-7.

⁵ Denton, C.J. (2021). BCAP: The Battalion Command Assessment Program. *Army.mil*. https://www.army.mil/article/243040/bcap_the_battalion_command_assessment_program

Navy's ability to prosecute special victim cases and maintain the successful Victims' Legal Counsel (VLC) Program.⁶

- In the Marine Corps, the Marine and Family Programs Division is promoting better understanding of the connections between sexual assault and other forms of interpersonal violence and self-harm, as well as emphasizing primary prevention lessons like how to understand what healthy relationships look like in the workplace and at home.⁷
- The Air Force has launched an Interpersonal Violence (IPV) pilot program across ten installations in the U.S., providing legal services to members of the military community who are survivors of dating, domestic or workplace violence or sexual assault.⁸
- Three state National Guards have implemented pilot programs to provide proactive case management that links Service members with histories of trauma to resources and support.

These examples of promising efforts and strong commitments across the Services are evidence that change is possible. The IRC intends this report not as an indictment of the military, but rather as an opportunity to take long overdue action. At the end of this 90-day immersive process, we conclude that this is not an impossible problem to solve. By harnessing the strengths of commander leadership, investing in prevention, and building a qualified workforce, real progress can be made.

Key Recommendations

Cross-Cutting Recommendations

- Ensure Service members who experience sexual harassment have access to support services and care.
- Professionalize, strengthen, and resource the Sexual Assault Prevention and Response workforce across the enterprise.
- Improve the military's response to domestic violence—which is inherently tied to sexual assault.
- Improve data collection, research, and reporting on sexual harassment and sexual assault to better reflect the experiences of Service members from marginalized populations—including LGBTQ+ Service members, and racial and ethnic minorities.
- Establish the DoD roles of the Senior Policy Advisor for Special Victims, and the DoD Special Victim Advocate.

⁶ Additionally, the Navy has developed specific precept language to enable the advancement of career military litigators.

⁷ Marine Corps Community Services. (n.d.). Prevention. <https://usmc-mccs.org/prevention/>

⁸ DeKunder, D. (2021, May 4). Program provides legal services for survivors of interpersonal violence, sexual assault. *Joint Base San Antonio News*. <https://www.jbsa.mil/News/News/Article/2594830/program-provides-legal-services-for-survivors-of-interpersonal-violence-sexual/>

Accountability

- Create the Office of the Special Victim Prosecutor in the Office of the Secretary of Defense (OSD) and shift legal decisions about prosecution of special victim cases out of the chain of command.
- Provide independent trained investigators for sexual harassment and mandatory initiation of involuntary separation for all substantiated complaints.
- Offer judge ordered military protective orders for victims of sexual assault and related offenses, enabling enforcement by civilian authorities.

Prevention

- Equip all leaders with prevention competencies and evaluate their performance.
- Establish a dedicated primary prevention workforce.
- Create a state-of-the-art prevention research capability in DoD.

Climate and Culture

- Codify in DoD policy and direct the development of metrics related to sexual harassment and sexual assault as part of readiness tracking and reporting.
- Use qualitative data to select, develop, and evaluate the right leaders for Command positions.
- Apply an internal focus on sexual violence across the force in DoD implementation of the 2017 National Women, Peace and Security Act.
- Fully execute on the principle that addressing sexual harassment and sexual assault in the 21st century requires engaging with the cyber domain.

Victim Care and Support

- Optimize victim care and support by establishing a full-time victim advocacy workforce outside of the command reporting structure.
- Expand victim service options for survivors by establishing and expanding existing partnerships with civilian community services and other Federal agencies.
- Center the survivor by maximizing their preferences in cases of expedited transfer, restricted reporting, and time off for recovery from sexual assault.

These recommendations, and more, are **detailed in the Appendices** to this report, which include individual reports for each line of effort.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

SEP 22 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Commencing DoD Actions and Implementation to Address Sexual Assault and Sexual Harassment in the Military

I have been clear since my first full day as Secretary of Defense that we must do more to eliminate sexual assault and sexual harassment from the ranks. I stated from the outset that this is a leadership issue, and we will lead.

Over the past seven months, the Department has made progress on a set of actions to evaluate our installations, assess compliance with existing policy, comprehensively improve our efforts at the installation level, take the initial steps to establish a violence prevention workforce, and initiate changes to the military justice process governing the handling of sexual assault and sexual harassment cases. I also established the 90-day Independent Review Commission (IRC) on Sexual Assault in the Military, which provided the Department a set of comprehensive and actionable recommendations to improve our approach in four lines of effort: accountability, prevention, climate and culture, and victim care and support.

In keeping with my intent to accept the IRC recommendations wherever possible, the Deputy Secretary has developed a tiered implementation roadmap in consultation with the uniformed and civilian leadership of the Department. I approve the roadmap, which is attached, and expect Department leaders to move swiftly and deliberately to implement it.

This includes the following actions across four Tiers:

- First, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will issue enterprise-wide guidance for Tier 1 by October 13, 2021. Tier 2 guidance will be released by November 12, 2021. Guidance for Tiers 3 and 4 will be released by December 15, 2021;
- Then, each of the Military Services and relevant Components will develop implementation plans and resource mapping for Tier 1 by November 12, 2021; Tier 2 by December 15, 2021; and Tiers 3 and 4 by January 31, 2022;
- The USD(P&R) will develop an Outcome Metrics Evaluation Report by May 1, 2022 to track effectiveness and progress of implementation of all Tiers; and
- The USD(P&R), in consultation with the uniformed and civilian leadership of the Department, will assess the roadmap formally no less than twice annually and recommend any adjustments to the Deputy Secretary, through the Deputy's Workforce Council (DWC). The DWC will meet quarterly to monitor implementation progress and timelines wherever possible.

The next steps we take are critical to maintaining our momentum. We will build back the trust of our personnel through demonstrable progress, clear and enduring implementation mechanisms, increased transparency, and continued senior leader involvement.

I expect Department leaders to talk about this work with our total DoD workforce to create shared understanding and purpose. We must be willing to have difficult conversations. Our readiness depends on it. Our people deserve it.

No one single action the Department can take will fix this problem. Ending the scourge of sexual assault and sexual harassment in the military demands strong leadership across the enterprise.

We have a true opportunity to lead. And we will.

A handwritten signature in black ink, appearing to read "Ray O'Donoghue". The signature is fluid and cursive, with a large initial "R" and "O".

Attachment:
As stated

Introduction

In January 2021, President Biden directed Secretary of Defense Lloyd Austin to launch a commission to pursue solutions to sexual assault in the military. On February 26, 2021 Secretary Austin launched the Independent Review Commission on Sexual Assault in the Military (IRC). On July 2, the IRC published their report and Secretary Austin directed Deputy Secretary Hicks to develop an implementation roadmap within 60 days, with a strong bias towards accepting all recommendations where possible. The Secretary approved this roadmap on September 22, 2021.

The enclosed Implementation Roadmap is the Department's strategic plan to implement all of the IRC recommendations, with appropriate modifications to ensure effective implementation, integrated with a number of actions directed by Secretary Austin. The objectives of this tiered roadmap are to implement these key actions as rapidly as possible while ensuring we can deliver durable and meaningful outcomes.

The Department's initial efforts will focus on Tier 1, the foundation of the Implementation Roadmap. A comprehensive timeline of actions is outlined in the Way Forward section. Implementation of Tier 1 begins immediately with the following actions:

- **By October 13, 2021:** The Under Secretary of Defense (Personnel & Readiness) (USD(P&R)) will issue enterprise-wide guidance for Tier 1.
- **By November 12, 2021:** Each of the Military Services and relevant components will develop implementation plans and resource mapping for Tier 1.
- **By December 15, 2021:** The Military Services and relevant components will begin implementing their plans for Tier 1 actions. Initial cost estimates to implement the roadmap are approximately \$4.6 billion, from FY 2022 through FY 2027.¹ Additional costs that could be incurred in FY 2028 – FY 2030 were not calculated.

Transforming DOD's workforce and addressing issues as complex as sexual harassment and sexual assault require sustained attention from the Secretary of Defense and the Department's most senior leadership. To ensure this level of attention, the Secretary has directed the Deputy's Workforce Council (DWC), chaired by the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of staff, to review progress on a quarterly basis and ensure that the Department continues to pursue the most effective and expedient pathways to implementation. He will hold leadership at all levels accountable.

Background

The implementation roadmap herein provides a summary of the Department's strategic plan to implement the recommendations, as appropriately modified, of the Independent Review Commission (IRC) on Sexual Assault in the Military. The roadmap accepts the IRC's

¹ Implementation-only estimates were developed by the Services and relevant OSD components, with sustainment estimates calculated by the Office of Cost Assessment Program Evaluation and each Military Department

Independent Review Commission Recommendation-Implementation Roadmap

recommendations, with adjustments made to ensure effective implementation only as noted by the phrase “[REVISED]” below. It directs a holistic approach to their implementation across four tiers, with the preponderance of effort and resources focused in Tier 1. Based on timelines estimated, all recommendations would be implemented by Fiscal Year (FY) 2030, with the prioritized initial tier implemented by the end of FY 2027. The timelines are a conservative estimate, and in many cases account for time to fully implement across the Reserve components. The Department is committed to completing implementation on a faster timeline where possible.

The IRC provided the Department a total of 28 recommendations, 54 sub-recommendations, 5 Cross Cutting recommendations, and 16 cross cutting sub-recommendations.

The Department’s implementation roadmap best aligns with the IRC recommendations and focuses on the necessary foundational investments needed to support sexual assault accountability, prevention programs, this command climate, and victim support approach, as envisaged by the IRC. In addition, the plan allows for a deliberative implementation strategy to include iterative evaluations throughout the process to assess effectiveness and progress of early actions, and modify as required to ensure impact.

Tiered Recommendation Approach

Based on a comprehensive assessment of the recommendations, four tiers were identified for implementation (Figure 1).

1. **Tier 1.** Implementation of these recommendations (as revised by the Department’s leadership) builds the Department’s basic foundation and infrastructure for a best-in-practice sexual assault accountability, prevention, and response programs. These recommendations are either IRC-identified priority recommendations, or represent basic infrastructure that is required to apply necessary best-in-practice strategies. These also include recommendations whose implementation is already underway. (Estimated completion: FY 2027)
2. **Tier 2.** Implementation of these recommendations is dependent on the execution of a Tier 1 action and builds directly on that Tier 1 infrastructure to apply best-in-practice strategies (e.g., training, education). (Estimated completion: FY 2028)
3. **Tier 3.** The implementation of these recommendations either is chronologically or practically dependent on the execution of a Tier 2 action, would expand programs and practices within the DoD, or would endure throughout the implementation of recommendations. (Estimated completion: FY 2028²)
4. **Tier 4.** Implementation of these recommendations either is chronologically or practically dependent on the execution of a Tier 3 action or would expand programs and practices outside of the DoD purview. (Estimated completion: FY 2030)

² All recommendations within Tier 3 will be complete by 2028 except recommendation 2.6.c, which requires an extensive assessment and pilot of a character assessment tool across the Department.

Figure 1. Tiers for Implementation



To implement the approved recommendations, the Department will take an iterative approach with initial emphasis on building the base and foundational infrastructure to ensure a concrete sexual assault and harassment prevention program. Recommendations, as revised by Department leadership, are broken down by Tiers as depicted in Figure 1. Detailed mapping of recommendations to specific tiers is included in Appendix A.³

Each progressive tier reflects recommendations with dependencies in execution or impact with previous tiers. Based on the IRC report, subsequent tiers are integral to a best-in-practice program. The proposed successive implementation plan allows for modification and adaption to ensure programs are maximally effective.

Way Forward

To implement this roadmap, the Department will immediately commence the following actions:

Overarching Guidance: OSD P&R must issue necessary guidance to allow the Services and relevant Components to ensure successful implementation to include specific requirements and chronology of actions, resource requirements, staffing requirements, credentialing of staff, and specific policy requirements where applicable. Timeline for releasing this guidance is:

- **By October 13, 2021:** The USD(P&R) will issue enterprise-wide guidance for Tier 1.
- **By November 12, 2021:** The USD(P&R) will issue enterprise-wide guidance for Tier 2.
- **By December 15, 2021:** The USD(P&R) will issue enterprise-wide guidance for Tiers 3 and 4.

Service Implementation Plans: Based on the roadmap described here and USD(P&R) issued guidance, Service-specific Implementation Plans will provide timelines and associated actions for full implementation of recommendations and a mapping of resourcing required over the FYDP and beyond. By November 12, 2021, each of the Military Services and relevant components will develop these implementation plans and resource mapping for Tier 1. Implementation Plans will be updated to include guidance for each successive Tier, culminating in full Implementation Plans which cover Tiers 1 through 4 completed by January 31, 2022.

³ Recommendations are subject to possible further revision by the Department's leadership before implementation.

Additional Actions:

- **By December 15, 2021:** The Military Services and relevant components will begin implementing their plans for Tier 1 actions.
- **Ongoing:** The USD(P&R), in consultation with the uniformed and civilian leadership of the Department, will assess the roadmap formally no less than twice annually and recommend any adjustments to the Deputy Secretary, through the DWC.
- **Outcome Metrics Evaluation Report:** Based on the Implementation Plans provided, USD(P&R) will develop an Outcome Metrics Evaluation Report by May 1, 2022 to track the effectiveness of recommendations. This report will detail outcome metrics, to include interim metrics of progress, to ensure recommendation activities are successful and show progress. Where interim metric indicate a lack of progress and/or ineffective implementation, a reevaluation can occur. This report will also include updates to surveys, research, and studies as required to ensure comprehensive evaluation is possible.

To ensure senior oversight and review progress, Senior Leaders will convene through the DWC quarterly to monitor implementation progress and timelines. These reviews will ensure actions and resources appropriately reflect the priority placed on driving meaningful progress to counter sexual assault across the Department of Defense.

Appendix A: Recommendations by Tier

NOTE: All of the recommendations below are subject to such revisions as the Department's leadership may direct.

Tier 1: Estimated Implementation by 2027

The following recommendations build the Department's basic foundation and infrastructure for a best-in-practice sexual assault prevention and response program.

IRC Priority Recommendations:

- Recommendation 1.1: [REVISED]⁴ Establishment of Offices of Special Victims Prosecutors and removing prosecution of sexual assaults and related crimes out of the military chain of command.
- Recommendation 1.2: [REVISED] Independent, trained investigators for sexual harassment and mandatory initiation of involuntary separation for all substantiated complaints.
- Recommendation 2.6 b: USD(P&R), the Services, and the NGB should continually review and update all policies that unnecessarily restrict data collection on important populations of Service members.
- Recommendation 4.1 b: Eliminate collateral duty for SARCs and SAPR VAs, with exceptions for ships, submarines, and isolated installations.
- Recommendation 4.3 a: Implement the No Wrong Door approach to sexual harassment, sexual assault, and domestic abuse across the Services and NGB.
- Recommendation 4.3 c: Allow survivors flexibility to take non-chargeable time off for seeking services or time for recovery from sexual assault.
- Recommendation 4.3 d: Increase victim agency and control of the response process by: maximizing adherence to survivor preference on reporting status, and centering survivor preferences in expedited transfers.
- Cross Cutting Recommendation 1: DoD should immediately make sexual harassment victims eligible for SAPR services and undertake a review of all policies and structures tasked with addressing elements of the military's sexual harassment response.
- Cross Cutting Recommendation 3.c: USD(P&R) should immediately publish the reissuance of DoD Instruction (DoDI) 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel."
- Cross Cutting Recommendation 5: [REVISED] The Secretary of Defense should establish a Senior Policy Advisor for Special Victims. The Senior Policy Advisor should be supported by the new position of the DoD Special Victim Advocate.

⁴ [REVISED] indicates a recommendation where the Department has made a revision or slight modification to the original IRC recommendation to ensure effective implementation within the Department.

Independent Review Commission Recommendation-Implementation Roadmap

Workforce Foundation Recommendations:

- Recommendation 2.2 b: USD(P&R) should develop a professional credential for the prevention workforce.
- Recommendation 2.2 c: The Services should determine the optimum full-time prevention workforce, and equip all echelons of active duty, reserve, and guard organizations.
- Recommendation 4.1 a: Move SARCs and SAPR VAs from the command reporting structure.
- Cross Cutting Recommendation 2: DoD must undertake a comprehensive approach to professionalizing, strengthening, and resourcing the workforce for SAPR across the board.

System Foundation Requirements

- Recommendation 1.5: Judge-alone sentencing in all noncapital general and special courts-martial and establishment of sentencing parameters.
- Recommendation 1.6: Expedite processing of proposed Executive Orders regarding military justice, including those currently awaiting issuance related to sexual assault, sexual harassment, and other special victim crimes.
- Recommendation 1.7 d: [REVISED] The method of selection of court-martial panel members should be revised.
- Recommendation 2.5 b: [REVISED] The Services and the NGB should employ virtual platforms to provide support to all Service members.
- Recommendation 2.7 a: The NGB should develop Army National Guard and Air National Guard prevention strategies aligned with DoD's Prevention Plan of Action, based on the National Guard's unique construct and missions
- Recommendation 3.8: The Services should publish the nature and results of all disciplinary actions related to sexual misconduct and disseminate this information to troops periodically.
- Recommendation 4.2 c: Expand access to CATCH to include victims of sexual harassment and enable Service members to self-service access to CATCH.
- Recommendation 4.2 e: Amplify victims' rights and services in the post-trial period.
- Cross Cutting Recommendation 4.g: DoD should require the Services and the National Guard Bureau to publish data for all sexual harassment complaints.

Directed Studies

- Recommendation 1.8: Study caseloads to attain the optimum timeline for the military justice process.
- Recommendation 2.5 a: The Services and the NGB should institute a pilot program to link Service members with resources and support.

Independent Review Commission Recommendation-Implementation Roadmap

Actions Currently Underway

- Recommendation 1.3: [REVISED] Study of judge-ordered Military Protective Orders for victims of sexual assault and related offenses.
- Recommendation 1.4: Professionalized career billets for military justice personnel handling special victim crimes.
- Recommendation 1.7 a: [REVISED] The Military Justice Review Panel has been directed to study Article 32 Preliminary Hearings.
- Recommendation 1.7 b: [REVISED] The Military Justice Review Panel has been directed to study Article 34, Advice to Convening Authority Before Referral to Trial.
- Recommendation 1.7 c: [REVISED] The Joint Service Committee on Military Justice has drafted a proposed Executive Order to establish a preponderance of the evidence standard for non-judicial punishment.
- Recommendation 1.7 e: The Secretary of Defense should direct the Services to establish funding appropriate for defense counsel control of their own resources.
- Recommendation 1.7 f: Article 128b of the UCMJ should be amended to include dating violence.
- Recommendation 2.1 a: USD(P&R) should define the competencies leaders must have to oversee prevention.
- Recommendation 2.2 a: USD(P&R) should develop a model for a dedicated and capable prevention workforce.
- Recommendation 3.3 c: Hold Service members appropriately accountable who engage in cyber harassment and other forms of technology-facilitated sexual harassment and sexual assault.
- Recommendation 4.2 a: Increase access to and visibility of civilian community-based care.
- Recommendation 4.3 b: Institute a “Commander’s Package” from the SAPR VA with recommendations for victim care and support.
- Recommendation 4.3 e: Study the methods our allies have used to make amends to survivors, including restorative engagement to acknowledge harm, and potential victim compensation.
- Recommendation 4.4 a: Establish a Defense Sexual Assault and Sexual Harassment Center of Excellence that administers a core curriculum of trauma and response trainings for all SAPR VAs and SARCs, chaplains, and other response personnel.
- Recommendation 4.4 b: Develop training to build the capacity of SARCs and SAPR VAs to provide culturally competent care to Service members from communities of color, LGBTQ+ Service members, religious minorities, and men
- Cross Cutting Recommendation 4.b: DoD should require the collection of data regarding sexual orientation and gender identity on the WGRA and WGRR.

Tier 2: Estimated Implementation by 2028

Implementation of the following recommendations either is chronologically or practically dependent on the execution of a Tier 1 action, or will build on the infrastructure to apply best-in-practice strategies (e.g., training, education, etc.).

Dependent on Tier 1 Activities:

- Recommendation 2.1 c: The Services and the NGB should equip all leaders to develop and deliver informed prevention messages in formal and informal settings.
- Recommendation 3.6: Building a climate for the reduction of sexual harassment and sexual assault as a fundamental leader development requirement.
- Recommendation 4.1 c: Explore the co-location of SAPR and SHARP with other special victim services, such as FAP, to improve coordination, collaboration, and consistency in victim support.
- Cross Cutting Recommendation 3.a: [REVISED] Designated independent judge advocates should replace commanders in deciding whether a charge should be tried by a court-martial and, if so, whether by a special or general court-martial (i.e., the referral decision) in domestic violence cases, as the IRC recommends for sexual assault, sexual harassment, and other special victim crimes.
- Cross Cutting Recommendation 4.c: DoD should ensure the WGRA and WGRR publish both past-year prevalence, prior to joining the military prevalence, and lifetime prevalence of sexual assault by race and ethnicity, sexual orientation, and gender identity.
- Cross Cutting Recommendation 4.e: DoD should ensure the WGRA and WGRR publish sexual harassment prevalence data by race and ethnicity, sexual orientation, and gender identity.
- Cross Cutting Recommendation 4.i: DoD should ensure the Workplace and Equal Opportunity surveys of military members publish past-year prevalence rates for racial/ethnic harassment by gender identity and sexual orientation.

Training, Education, and Leadership Development:

- Recommendation 2.4: Modernize prevention education and skill-building to reflect today's generation of Service members.
- Recommendation 3.2: USD(P&R) should direct the Services to educate the force about sexual harassment and sexual assault within the context of the Services' core values.
- Recommendation 3.5 b: Include a meaningful narrative section in performance evaluations for officers and NCOs.
- Recommendation 4.1 d: [REVISED] Train Independent Duty Corpsmen to be Sexual Assault Medical Forensic Examiners so patient care and evidence collection can be provided in deployed and isolated environments.
- Recommendation 4.4 c: Revise and update training modules on appropriate response to sexual assault and sexual harassment in PME for officers and NCOs.

Independent Review Commission Recommendation-Implementation Roadmap

Data Collection:

- Recommendation 3.3 a: Collect data to measure the problem of cyberharassment (and related harms).
- Recommendation 3.5 a: Use qualitative data to select and develop the right leaders.
- Recommendation 3.7 a: [REVISED] USD(P&R) should develop a standardized “pulse survey” tool that would enable unit-level commanders to collect real-time climate data on sexual harassment and sexual assault from Service members in their units between required administrations of the Defense Organizational Climate Survey (DEOCS).
- Recommendation 3.7 b: The Secretary of Defense should direct the Services to develop a formal system to share climate survey data at the unit level and initiate and evaluate corrective action plans.
- Recommendation 3.7 c: USD(P&R) should accelerate efforts to develop a validated “Climate Benchmark” to measure healthy and unhealthy climate at the unit level.
- **Cross Cutting Recommendation 3.b: DoD should establish a mechanism to track prevalence of domestic abuse/intimate partner related sexual assault by collecting information on the victim-perpetrator relationship in the Workplace and Gender Relations Surveys of Active Duty Members (WGRA), and Workplace and Gender Relations Surveys of Reserve Component Members (WGRR).**

Tier 3: Estimated Implementation by 2028⁵

Implementation of these recommendations either is chronologically or practically dependent on the execution of a Tier 2 action, or will expand programs and practices within the DoD, or will endure throughout the implementation of recommendations.

Dependent on Tier 2 Activities:

- Recommendation 2.1 b: The Services and the National Guard Bureau (NGB) should develop and hold leaders appropriately accountable for prevention.
- Recommendation 3.7 d: The Secretary of Defense should assess whether current DoD policies, relevant components, and the Service-level Equal Opportunity workforce have the capacity to help commanders resolve climate issues.

Internal Expansion Activities:

- Recommendation 2.3 a: The Services and the NGB should resource and implement prevention strategies at organizational and community levels.
- Recommendation 2.3 b: USD(P&R) should identify a non-clinical OSD-level Office of Primary Responsibility for alcohol policy and develop relevant policy guidance and oversight.
- Recommendation 2.6 c: The Secretary of Defense should immediately authorize operational testing of the Air Force Compatibility Assessment, or similar tool, with a

⁵ All recommendations within Tier 3 will be complete by 2028 except recommendation 2.6.c, which requires an extensive assessment and pilot of a character assessment tool across the Department.

Independent Review Commission Recommendation-Implementation Roadmap

cross-Service pre-accession sample, allowing for important research and intervention development.

- Recommendation 3.3 b: Educate leaders on cyberharassment and technology-facilitated sexual harassment and sexual assault.
- Recommendation 3.4 a: Elevate and standardize the gender advisor workforce.
- Cross Cutting Recommendation 4.j: DoD should evaluate ways to better collect data, via existing DoD-wide surveys, on the role of gender in the experience of racial/ethnic harassment and discrimination in the military.
- Cross Cutting Recommendation 4.k: DoD should commission qualitative research to better understand the experiences of racial/ethnic minority service women and their perceptions of climate, attitudes and experiences with sexual assault and sexual harassment, and gender and racial discrimination.
- Cross Cutting Recommendation 4.l: DoD SAPRO should dedicate a segment of its iterations of the Military Service Gender Relations (MSGR) Focus Groups to understanding the experiences of racial and ethnic minority service members and survivors.

Enduring Activities:

- Recommendation 3.1: USD(P&R) should codify in policy and direct the development and implementation of metrics related to sexual harassment and sexual assault as part of readiness tracking and reporting.

Tier 4: Estimated Implementation by 2030

Implementation of these recommendations either is chronologically or practically dependent on the execution of a Tier 3 action or will expand programs and practices outside of the DoD purview.

Dependent on Tier 3 Activities:

- Recommendation 2.6 a: DoD should establish a dedicated research center for the primary prevention of interpersonal and self-directed violence.
- Recommendation 2.6 d: USD(P&R) should commission research on gender and masculinities to develop effective social marketing strategies to facilitate primary prevention efforts.
- Recommendation 2.8: USD(P&R) should update the Department's prevention strategy, including the DoD Prevention Plan of Action, to incorporate approved IRC recommendations.
- Recommendation 3.4 b: Use qualitative data as part of indicators for Defense Objective One of the WPS Strategic Framework.
- Recommendation 3.4 d: Review and revise Professional Military Education (PME) and DoD schoolhouse curricula to mainstream WPS priorities.

Independent Review Commission Recommendation-Implementation Roadmap

- Recommendation 3.4 e: Congress should support DoD's inclusion of Personnel & Readiness in WPS implementation and codify in legislation.
- Recommendation 4.4 d: Use an action research model to identify root problems, test interventions, and create best practices with survivors' input.
- Recommendation 4.2 b: Authorize Service members to access the full spectrum of VA services for conditions related to military sexual assault and sexual harassment confidentially, and without a referral.
- Recommendation 4.2 d: [REVISED] Create survivor-led peer support programs that allow for in-person, virtual, and telephone interaction.
- Cross Cutting Recommendation 4.d: [REVISED] DoD SAPRO should work with the CDC Division of Violence Prevention to request that future reports of the military supplement to the National Intimate Partner and Sexual Violence Survey include a breakdown of past-year and lifetime prevalence by race/ethnicity.

Select Military Justice and Other Sexual Assault-Related Provisions FY 2021 NDAA

(Public Law 116-283, January 1, 2021)

Subtitle D—Prevention and Response to Sexual Assault, Harassment, and Related Misconduct

(Full text of highlighted provisions provided below)

Sec. 531. Modification of time required for expedited decisions in connection with applications for change of station or unit transfer of members who are victims of sexual assault or related offenses.

Sec. 532. Confidential reporting of sexual harassment. (HR8270, “I am Vanessa Guillén Act of 2020”, Sec. 4)

Sec. 533. Additional bases for provision of advice by the Defense Advisory Committee for the Prevention of Sexual Misconduct.

Sec. 534. Additional matters for 2021 report of the Defense Advisory Committee for the Prevention of Sexual Misconduct.

Sec. 535. Inclusion of advisory duties on the Coast Guard Academy among duties of Defense Advisory Committee for the Prevention of Sexual Misconduct.

Sec. 536. Modification of reporting and data collection on victims of sexual offenses.

Sec. 537. Modification of annual report regarding sexual assaults involving members of the Armed Forces.

Sec. 538. Coordination of support for survivors of sexual trauma.

Sec. 539. Policy for military service academies on separation of alleged victims and alleged perpetrators in incidents of sexual assault.

Sec. 539A. Safe-to-report policy applicable across the Armed Forces. (Collateral Misconduct)

Sec. 539B. Accountability of leadership of the Department of Defense for discharging the sexual harassment policies and programs of the Department.

Sec. 539C. Reports on status of investigations of alleged sex-related offenses.

Sec. 539D. Report on ability of Sexual Assault Response Coordinators and Sexual Assault Prevention and Response Victim Advocates to perform duties. (HR8270, “I am Vanessa Guillén Act of 2020”, Sec. 4)

Sec. 539E. Briefing on Special Victims’ Counsel program. (HR8270, “I am Vanessa Guillén Act of 2020”, Sec. 4)

Sec. 539F. Briefing on placement of members of the Armed Forces in academic status who are victims of sexual assault onto Non-Rated Periods.

Subtitle E—Military Justice and Other Legal Matters

Sec. 541. Right to notice of victims of offenses under the Uniform Code of Military Justice regarding certain post-trial motions, filings, and hearings.

Sec. 542. Qualifications of judges and standard of review for Courts of Criminal Appeals.

Sec. 543. Preservation of court-martial records.

Sec. 544. Availability of records for National Instant Criminal Background Check System.

Sec. 545. Removal of personally identifying and other information of certain persons from investigative reports, the Department of Defense Central Index of Investigations, and other records and databases.

Sec. 546. Briefing on mental health support for vicarious trauma for certain personnel in the military justice system.

Sec. 547. Comptroller General of the United States report on implementation by the Armed Forces of recent GAO recommendations and statutory requirements on assessment of racial, ethnic, and gender disparities in the military justice system.

Sec. 549B. Improvements to Department of Defense tracking of and response to incidents of child abuse, adult crimes against children, and serious harmful behavior between children and youth involving military dependents on military installations.

Subtitle D—Prevention and Response to Sexual Assault, Harassment, and Related Misconduct

Sec. 531. MODIFICATION OF TIME REQUIRED FOR EXPEDITED DECISIONS IN CONNECTION WITH APPLICATIONS FOR CHANGE OF STATION OR UNIT TRANSFER OF MEMBERS WHO ARE VICTIMS OF SEXUAL ASSAULT OR RELATED OFFENSES. (S. Sec. 521)

(a) IN GENERAL.—Section 673(b) of title 10, United States Code, is amended by striking “72 hours” both places it appears and inserting “five calendar days”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to decisions on applications for permanent change of station or unit transfer made under section 673 of title 10, United States Code, on or after that date.

Sec. 536. MODIFICATION OF REPORTING AND DATA COLLECTION ON VICTIMS OF SEXUAL OFFENSES. (H. Sec. 544)

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 1561 note) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “accused of” and inserting “suspected of”; and

(ii) by striking “assault” and inserting “offense”;

(B) in paragraph (2), by striking “accused of” and inserting “suspected of”; and

(C) in paragraph (3)—

(i) by striking “assaults” and inserting “offenses”; and

(ii) by striking “an accusation” and inserting “suspicion of”;

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

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

“(b) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance to ensure the uniformity of the data collected by each Armed Force for purposes of subsection (a). At a minimum, such guidance shall establish—

“(1) standardized methods for the collection of the data required to be reported under such subsection; and

“(2) standardized definitions for the terms ‘sexual offense’, ‘collateral misconduct’, and ‘adverse action’.”; and

(4) by amending subsection (c), as redesignated by paragraph (2), to read as follows:

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces.

“(2) The term ‘suspected of’, when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”.

Sec. 539A. SAFE-TO-REPORT POLICY APPLICABLE ACROSS THE ARMED FORCES. (H. Sec. 548, S. Sec. 526)

(a) **IN GENERAL.**—The Secretary of Defense shall, in consultation with the Secretaries of the military departments, prescribe in regulations a safe-to-report policy described in subsection (b) that applies with respect to all members of the Armed Forces (including members of the reserve components of the Armed Forces) and cadets and midshipmen at the military service academies.

(b) **SAFE-TO-REPORT POLICY.**—The safe-to-report policy described in this subsection is a policy that prescribes the handling of minor collateral misconduct involving a member of the Armed Forces who is the alleged victim of sexual assault.

(c) **AGGRAVATING CIRCUMSTANCES.**—The regulations under subsection (a) shall specify aggravating circumstances that increase the gravity of minor collateral misconduct or its impact on good order and discipline for purposes of the safe-to-report policy.

(d) **TRACKING OF COLLATERAL MISCONDUCT INCIDENTS.**—In conjunction with the issuance of regulations under subsection (a), Secretary shall develop and implement a process to track incidents of minor collateral misconduct that are subject to the safe-to-report policy.

(e) **DEFINITIONS.**—In this section:

(1) The term “Armed Forces” has the meaning given that term in section 101(a)(4) of title 10, United States Code, except such term does not include the Coast Guard.

(2) The term “military service academy” means the following:

(A) The United States Military Academy.

(B) The United States Naval Academy.

(C) The United States Air Force Academy.

(3) The term “minor collateral misconduct” means any minor misconduct that is potentially punishable under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that—

(A) is committed close in time to or during the sexual assault, and directly related to the incident that formed the basis of the sexual assault allegation;

(B) is discovered as a direct result of the report of sexual assault or the ensuing investigation into the sexual assault; and

(C) does not involve aggravating circumstances (as specified in the regulations prescribed under subsection (c)) that increase the gravity of the minor misconduct or its impact on good order and discipline.

Sec. 539C. REPORTS ON STATUS OF INVESTIGATIONS OF ALLEGED SEX-RELATED OFFENSES. (H. Sec. 550A)

(a) **REPORTS REQUIRED.**—Not later than 1 year after the date of the enactment of this Act, and annually thereafter through December 31, 2025, the Secretary of each military department shall submit to the congressional defense committees a report on the status of investigations into alleged sex-related offenses.

(b) **ELEMENTS.**—Each report under subsection (a) shall include, with respect to investigations into alleged sex-related offenses carried out by military criminal investigative organizations under the jurisdiction of the Secretary concerned during the preceding year, the following:

(1) The total number of investigations.

(2) For each investigation—

(A) the date the investigation was initiated; and

(B) an explanation of whether the investigation is in-progress or complete as of the date of the report and, if complete, the date on which the investigation was completed.

(3) The total number of investigations that are complete as of the date of the report.

(4) The total number of investigations that are in-progress as of the date of the report.

(5) For investigations lasting longer than 180 days, a general explanation of the primary reasons for the extended duration of such investigations.

(c) **DEFINITIONS.**—In this section:

(1) The term “alleged sex-related offense” has the meaning given that term in section 1044(e)(h) of title 10, United States Code.

(2) The term “complete” when used with respect to an investigation of an alleged sex-related offense, means the active phase of the investigation is sufficiently complete to enable the appropriate authority to reach a decision with respect to the disposition of charges for the offense.

Sec. 539E. BRIEFING ON SPECIAL VICTIMS' COUNSEL PROGRAM. (S. Sec. 524)

(a) **BRIEFING REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Judge Advocates General of the Army, the Navy, the Air Force, and the Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps shall each provide to the congressional defense committees a briefing on the status of the Special Victims' Counsel program of the Armed Force concerned.

(b) **ELEMENTS.**—Each briefing under subsection (a) shall include, with respect to the Special Victims' Counsel program of the Armed Force concerned, the following:

(1) An assessment of whether the Armed Force is in compliance with the provisions of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) relating to the Special Victims' Counsel program and, if not, what steps have been taken to achieve compliance with such provisions.

(2) An estimate of the average caseload of each Special Victims' Counsel.

(3) A description of any staffing shortfalls in the Special Victims' Counsel program or other programs of the Armed Force resulting from the additional responsibilities required of the Special Victims' Counsel program under the National Defense Authorization Act for Fiscal Year 2020.

(4) An explanation of the ability of Special Victims' Counsel to adhere to requirement that a counsel respond to a request for services within 72 hours of receiving such request.

(5) An assessment of the feasibility of providing cross-service Special Victims' Counsel representation in instances where a Special Victims' Counsel from a different Armed Force is co-located with a victim at a remote base.

Subtitle E—Military Justice and Other Legal Matters

Sec. 541. RIGHT TO NOTICE OF VICTIMS OF OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE REGARDING CERTAIN POST-TRIAL MOTIONS, FILINGS, AND HEARINGS. (H. Sec. 540K, S. Sec. 531)

Section 806b(a)(2) of title 10, United States Code (article 6b(a)(2)) of the Uniform Code of Military Justice), is amended—

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph (D):

“(D) A post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.”.

Sec. 542. QUALIFICATIONS OF JUDGES AND STANDARD OF REVIEW FOR COURTS OF CRIMINAL APPEALS. (H. Sec. 540J, S. Sec. 523)

(a) **QUALIFICATIONS OF CERTAIN JUDGES.**—Section 866(a) of title 10, United States Code (article 66(a) of the Uniform Code of Military Justice), is amended—

(1) by striking “Each Judge” and inserting:

“(1) IN GENERAL.—Each Judge”; and

(2) by adding at the end the following new paragraph:

“(2) **ADDITIONAL QUALIFICATIONS.**—In addition to any other qualifications specified in paragraph (1), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.”.

(b) **STANDARD OF REVIEW.**—Paragraph (1) of section 866(d) of title 10, United States Code (article 66(d) of the Uniform Code of Military Justice), is amended to read as follows:

“(1) **CASES APPEALED BY ACCUSED.**—

“(A) **IN GENERAL.**—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B). The Court may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.

“(B) **FACTUAL SUFFICIENCY REVIEW.**—(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

“(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

“(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

“(II) appropriate deference to findings of fact entered into the record by the military judge.

“(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.”.

(c) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES OF FACTUAL SUFFICIENCY RULINGS.—Section 867(c)(1) of title 10, United States Code (article 67(c)(1) of the Uniform Code of Military Justice), is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

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

“(C) the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modified by the Court of Criminal Appeals as incorrect in fact under section 866(d)(1)(B) of this title (article 66(d)(1)(B)).”.

(d) INCLUSION OF ADDITIONAL INFORMATION IN ANNUAL REPORTS.—Section 946a(b)(2) of title 10, United States Code (article 146a(b)(2) of the Uniform Code of Military Justice), is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) in subparagraph (C), by striking the period at the end and inserting “; and”; and

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

“(D) an analysis of each case in which a Court of Criminal Appeals made a final determination that a finding of a court-martial was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.”.

(e) EFFECTIVE DATES AND APPLICABILITY.—

(1) QUALIFICATIONS OF CERTAIN JUDGES.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to the assignment of appellate military judges on or after that date.

(2) REVIEW AMENDMENTS.—The amendments made by subsections (b) and (c) shall take effect on the date of the enactment of this Act, and shall apply with respect to any case in which every finding of guilty entered into the record under section 860c of title 10, United States Code (article 60c of the Uniform Code of Military Justice), is for an offense that occurred on or after that date.

Sec. 543. PRESERVATION OF COURT-MARTIAL RECORDS. (H. Sec. 532, S. Sec. 533)

Section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

“(d) PRESERVATION OF COURT-MARTIAL RECORDS WITHOUT REGARD TO OUTCOME.—The standards and criteria prescribed by the Secretary of Defense under subsection (a) shall provide for the preservation of general and special court-martial records, without regard to the outcome of the proceeding concerned, for not fewer than 15 years.”.

Sec. 544. AVAILABILITY OF RECORDS FOR NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. (H. Sec. 540F)

Section 101(b) of the NICS Improvement Amendments Act of 2007 (34 U.S.C. 40911(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) DEPARTMENT OF DEFENSE.—

“(A) IN GENERAL.—Not later than 3 business days after the final disposition of a judicial proceeding conducted within the Department of Defense, the Secretary of Defense shall make available to the Attorney General records which are relevant to a determination of whether a member of the Armed Forces involved in such proceeding is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, for use in background checks performed by the National Instant Criminal Background Check System.

“(B) JUDICIAL PROCEEDING DEFINED.— In this paragraph, the term ‘judicial proceeding’ means a hearing—

“(i) of which the person received actual notice; and

“(ii) at which the person had an opportunity to participate with counsel.”.

Sec. 545. REMOVAL OF PERSONALLY IDENTIFYING AND OTHER INFORMATION OF CERTAIN PERSONS FROM INVESTIGATIVE REPORTS, THE DEPARTMENT OF DEFENSE CENTRAL INDEX OF INVESTIGATIONS, AND OTHER RECORDS AND DATABASES. (S. Sec. 586)

(a) **POLICY AND PROCESS REQUIRED.**—Not later than October 1, 2021, the Secretary of Defense shall establish and maintain a policy and process through which any covered person may request that the person's name, personally identifying information, and other information pertaining to the person shall, in accordance with subsection (c), be corrected in, or expunged or otherwise removed from, the following:

(1) A law enforcement or criminal investigative report of the Department of Defense or any component of the Department.

(2) An index item or entry in the Department of Defense Central Index of Investigations (DCII).

(3) Any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

(b) **COVERED PERSONS.**—For purposes of this section, a covered person is any person whose name was placed or reported, or is maintained—

(1) in the subject or title block of a law enforcement or criminal investigative report of the Department of Defense (or any component of the Department);

(2) as an item or entry in the Department of Defense Central Index of Investigations; or

(3) in any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

(c) **ELEMENTS.**—The policy and process required by subsection (a) shall include the following elements:

(1) **BASIS FOR CORRECTION OR EXPUNGEMENT.**—That the name, personally identifying information, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record described in paragraphs (1) through (3) of subsection (a) in the following circumstances:

(A) Probable cause did not or does not exist to believe that the offense for which the person's name was placed or reported, or is maintained, in such report, item or entry, or record occurred, or insufficient evidence existed or exists to determine whether or not such offense occurred.

(B) Probable cause did not or does not exist to believe that the person actually committed the offense for which the person's name was so placed or reported, or is so maintained, or insufficient evidence existed or exists to determine whether or not the person actually committed such offense.

(C) Such other circumstances, or on such other bases, as the Secretary may specify in establishing the policy and process, which circumstances and bases may not be inconsistent with the circumstances and bases provided by subparagraphs (A) and (B).

(2) **CONSIDERATIONS.**—While not dispositive as to the existence of a circumstance or basis set forth in paragraph (1), the following shall be considered in the determination whether such circumstance or basis applies to a covered person for purposes of this section:

(A) The extent or lack of corroborating evidence against the covered person concerned with respect to the offense at issue.

(B) Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense at issue.

(C) The type, nature, and outcome of any action described in subparagraph (B) against the covered person.

(3) **PROCEDURES.**—The policy and process required by subsection (a) shall include procedures as follows:

(A) Procedures under which a covered person may appeal a determination of the applicable component of the Department of Defense denying, whether in whole or in part, a request for purposes of subsection (a).

(B) Procedures under which the applicable component of the Department will correct, expunge or remove, take other appropriate action on, or assist a covered person in so doing, any record maintained by a person, organization, or entity outside of the Department to which such component provided, submitted, or transmitted information about the covered person, which information has or will be corrected in, or expunged or removed from, Department records pursuant to this section.

(C) The timeline pursuant to which the Department, or a component of the Department, as applicable, will respond to each of the following:

(i) A request pursuant to subsection (a).

(ii) An appeal under the procedures required by subparagraph (A).

(iii) A request for assistance under the procedures required by subparagraph (B).

(D) Mechanisms through which the Department will keep a covered person apprised of the progress of the Department on a covered person's request or appeal as described in subparagraph (C).

(d) **APPLICABILITY.**—The policy and process required to be developed by the Secretary under subsection (a) shall not be subject to the notice and comment rule making requirements under section 553 of title 5, United States Code.

(e) **REPORT.**—Not later than October 1, 2021, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions taken to carry out this section, including a comprehensive description of the policy and process developed and implemented by the Secretary under subsection (a).

Select Military Justice and Other Sexual Assault-Related Provisions FY 2022 NDAA

(Public Law 117-81, 135 Stat. 1541, December 27, 2021)

Subtitle D—Military Justice Reform

(Full text of highlighted provisions provided below)

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Sec. 531. Special trial counsel.

Sec. 532. Policies with respect to special trial counsel.

Sec. 533. Definition of military magistrate, covered offense, and special trial counsel.

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Sec. 549F. Military service independent racial disparity review.

Sec. 549G. Inclusion of race and ethnicity in annual reports on sexual assaults; reporting on racial and ethnic demographics in the military justice system.

Sec. 549H. DoD Safe Helpline authorization to perform intake of official restricted and unrestricted reports for eligible adult sexual assault victims.

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Sec. 549K. Amendments to additional Deputy Inspector General of the Department of Defense.

Sec. 549L. Improved Department of Defense prevention of, and response to, bullying

Sec. 549M. Recommendations on separate punitive article in the Uniform Code of Military Justice on violent extremism.

Sec. 549N. Combating foreign malign influence.

Subtitle D—Military Justice Reform

PART 1—SPECIAL TRIAL COUNSEL

SEC. 531. SPECIAL TRIAL COUNSEL.

(a) IN GENERAL.—Subchapter V of chapter 47 of title 10, United States Code, is amended by inserting after section 824 (article 24 of the Uniform Code of Military Justice) the following new section:

“§ 824a. Art 24a. Special trial counsel,

“(a) DETAIL OF SPECIAL TRIAL COUNSEL.—Each Secretary concerned shall promulgate regulations for the detail of commissioned officers to serve as special trial counsel.

“(b) QUALIFICATIONS.—A special trial counsel shall be a commissioned officer who—

“(1)(A) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

“(B) is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by—

“(i) the Judge Advocate General of the armed force of which the officer is a member; or

“(ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and

“(2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

“(c) DUTIES AND AUTHORITIES.—

“(1) IN GENERAL.—Special trial counsel shall carry out the duties described in this chapter and any other duties prescribed by the Secretary concerned, by regulation.

“(2) DETERMINATION OF COVERED OFFENSE; RELATED CHARGES.—

“(A) AUTHORITY.—A special trial counsel shall have exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense in accordance with this chapter. Any determination to prefer or refer charges shall not act to disqualify the special trial counsel as an accuser.

“(B) KNOWN AND RELATED OFFENSES.—If a special trial counsel determines that a reported offense is a covered offense, the special trial counsel may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.

“(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to paragraph (4), with respect to charges and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

“(A) on behalf of the Government, withdraw or dismiss the charges and specifications or make a motion to withdraw or dismiss the charges and specifications;

“(B) refer the charges and specifications for trial by a special or general court-martial;

“(C) enter into a plea agreement; and

“(D) determine if an ordered rehearing is impracticable.

“(4) BINDING DETERMINATION.—The determination of a special trial counsel to refer charges and specifications to a court-martial for trial shall be binding on any applicable convening authority for the referral of such charges and specifications.

“(5) DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after the item relating to section 824 (article 24) the following new item:

“824a. Art 24a. Special trial counsel.”.

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, each Secretary concerned shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the plan of the Secretary for detailing officers to serve as special trial counsel pursuant to section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice) (as added by subsection (a) of this section).

(2) ELEMENTS.—Each report under paragraph (1) shall include the following—

(A) The plan of the Secretary concerned—

(i) for staffing billets for—

(I) special trial counsel who meet the requirements set forth in section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice) (as added by subsection (a) of this section); and

(II) defense counsel for cases involving covered offenses; and

(ii) for supporting and ensuring the continuing professional development of military justice practitioners.

(B) An estimate of the resources needed to implement such section 824a (article 24a).

(C) An explanation of other staffing required to implement such section 824a (article 24a), including staffing levels required for military judges, military magistrates, military defense attorneys, and paralegals and other support staff.

(D) A description of how the use of special trial counsel will affect the military justice system as a whole.

(E) A description of how the Secretary concerned plans to place appropriate emphasis and value on litigation experience for judge advocates in order to ensure judge advocates are experienced, prepared, and qualified to handle covered offenses, both as special trial counsel and as defense counsel. Such a description shall address promotion considerations and explain how the Secretary concerned plans to instruct promotion boards to value litigation experience.

(F) Any additional resources, authorities, or information that each Secretary concerned deems relevant or important to the implementation of the requirements of this title.

(3) DEFINITIONS.—In this subsection—

(A) The term “Secretary concerned” has the meaning given that term in section 101(a) of title 10, United States Code.

(B) The term “covered offense” has the meaning given that term in section 801(17) of title 10, United States Code (as added by section 533 of this part).

SEC. 532. POLICIES WITH RESPECT TO SPECIAL TRIAL COUNSEL.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting after section 1044e the following new section:

“§ 1044f. Policies with respect to special trial counsel

“(a) POLICIES REQUIRED.—The Secretary of Defense shall establish policies with respect to the appropriate mechanisms and procedures that the Secretaries of the military departments shall establish relating to the activities of special trial counsel, including expected milestones for such Secretaries to fully implement such mechanisms and procedures. The policies shall—

“(1) provide for the establishment of a dedicated office within each military service from which office the activities of the special trial counsel of the military service concerned shall be supervised and overseen;

“(2) provide for the appointment of one lead special trial counsel, who shall—

“(A) be a judge advocate of that service in a grade no lower than O-7, with significant experience in military justice;

“(B) be responsible for the overall supervision and oversight of the activities of the special trial counsel of that service; and

“(C) report directly to the Secretary concerned, without intervening authority;

“(3) ensure that within each office created pursuant to paragraph (1), the special trial counsel and other personnel assigned or detailed to the office—

“(A) are independent of the military chains of command of both the victims and those accused of covered offenses and any other offenses over which a special trial counsel at any time exercises authority in accordance with section 824a of this title (article 24a); and

“(B) conduct assigned activities free from unlawful or unauthorized influence or coercion;

“(4) provide that special trial counsel shall be well-trained, experienced, highly skilled, and competent in handling cases involving covered offenses; and

“(5) provide that commanders of the victim and the accused in a case involving a covered offense shall have the opportunity to provide input to the special trial counsel regarding case disposition, but that the input is not binding on the special trial counsel.

“(b) UNIFORMITY.—The Secretary of Defense shall ensure that any lack of uniformity in the implementation of policies, mechanisms, and procedures established under subsection (a) does not render unconstitutional any such policy, mechanism, or procedure.

“(c) MILITARY SERVICE DEFINED.—In this section, the term ‘military service’ means the Army, Navy, Air Force, Marine Corps, and Space Force.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 53 of title 10, United States Code, is amended by inserting after the item relating to section 1044e the following new item:

“1044f. Policies with respect to special trial counsel.”.

(c) QUARTERLY BRIEFING.—Beginning not later than 180 days after the date of the enactment of this Act, and at the beginning of each fiscal quarter thereafter until the policies established pursuant to section 1044f(a) of title 10, United States Code (as added by subsection (a)) and the mechanisms and procedures to which they apply are fully implemented and operational, the Secretary of Defense and the Secretaries of the military departments shall jointly provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a briefing detailing the actions taken and progress made by the Office of the Secretary of Defense and each of the military departments in meeting the milestones established as required by such section.

SEC. 533. DEFINITION OF MILITARY MAGISTRATE, COVERED OFFENSE, AND SPECIAL TRIAL COUNSEL.

Section 801 of title 10, United States Code (article 1 of the Uniform Code of Military Justice), is amended—

(1) by inserting after paragraph (10) the following new paragraph:

“(11) The term ‘military magistrate’ means a commissioned officer certified for duty as a military magistrate in accordance with section 826a of this title (article 26a).”; and

(2) by adding at the end the following new paragraphs:

“(17) The term ‘covered offense’ means—

“(A) an offense under section 917a (article 117a), section 918 (article 118), section 919 (article 119), section 920 (article 120), section 920b (article 120b), section 920c (article 120c), section 925 (article 125), section 928b (article 128b), section 930 (article 130), section 932 (article 132), or the standalone offense of child pornography punishable under section 934 (article 134) of this title;

“(B) a conspiracy to commit an offense specified in subparagraph (A) as punishable under section 881 of this title (article 81);

“(C) a solicitation to commit an offense specified in subparagraph (A) as punishable under section 882 of this title (article 82); or

“(D) an attempt to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 880 of this title (article 80).

“(18) The term ‘special trial counsel’ means a judge advocate detailed as a special trial counsel in accordance with section 824a of this title (article 24a) and includes a judge advocate appointed as a lead special trial counsel pursuant to section 1044f(a)(2) of this title.”.

SEC. 534. CLARIFICATION RELATING TO WHO MAY CONVENE COURTS-MARTIAL.

(a) GENERAL COURTS-MARTIAL.—Section 822(b) of title 10, United States Code (article 22(b) of the Uniform Code of Military Justice), is amended—

(1) by striking “If any” and inserting “(1) If any”; and

(2) by adding at the end the following new paragraph:

“(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a general court-martial to which charges and specifications were referred by a special trial counsel in accordance with this chapter.”.

(b) SPECIAL COURTS-MARTIAL.—Section 823(b) of title 10, United States Code (article 23(b) of the Uniform Code of Military Justice), is amended—

(1) by striking “If any” and inserting “(1) If any”; and

(2) by adding at the end the following new paragraph:

“(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special court-martial to which charges and specifications were referred by a special trial counsel in accordance with this chapter.”.

SEC. 535. DETAIL OF SPECIAL TRIAL COUNSEL.

Section 827 of title 10, United States Code (article 27 of the Uniform Code of Military Justice), is amended by adding at the end the following new subsection:

- “(e) For each general and special court-martial for which charges and specifications were referred by a special trial counsel—
- “(1) a special trial counsel shall be detailed as trial counsel; and
- “(2) a special trial counsel may detail other trial counsel as necessary who are judge advocates.”.

SEC. 536. PRELIMINARY HEARING.

(a) **DETAIL OF HEARING OFFICER; WAIVER.**—Subsection (a)(1) of section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), is amended—

(1) in subparagraph (A), by striking “hearing officer” and all that follows through the period at the end and inserting “hearing officer detailed in accordance with subparagraph (C).”;

(2) in subparagraph (B), by striking “written waiver” and all that follows through the period at the end and inserting the following: “written waiver to—

“(i) except as provided in clause (ii), the convening authority and the convening authority determines that a hearing is not required; and

“(ii) with respect to charges and specifications over which the special trial counsel is exercising authority in accordance with section 824a of this title (article 24a), the special trial counsel and the special trial counsel determines that a hearing is not required.”; and

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

“(C)(i) Except as provided in clause (ii), the convening authority shall detail a hearing officer.

“(ii) If a special trial counsel is exercising authority over the charges and specifications subject to a preliminary hearing under this section (article), the special trial counsel shall request a hearing officer and a hearing officer shall be provided by the convening authority, in accordance with regulations prescribed by the President.”.

(b) **REPORT OF PRELIMINARY HEARING OFFICER.**—Subsection (c) of such section is amended—

(1) in the heading, by inserting “OR SPECIAL TRIAL COUNSEL” after “CONVENING AUTHORITY”; and

(2) in the matter preceding paragraph (1) by striking “to the convening authority” and inserting “to the convening authority or, in the case of a preliminary hearing in which the hearing officer is provided at the request of a special trial counsel to the special trial counsel,”.

SEC. 537. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL.

Section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), is amended—

(1) in subsection (a)(1), by striking “Before referral” and inserting “Subject to subsection (c), before referral”

(2) in subsection (b), by striking “Before referral” and inserting “Subject to subsection (c), before referral”;

(3) by redesignating subsections (c) and (d) as subsections (d) and (e) respectively;

(4) by inserting after subsection (b) the following new subsection:

“(c) **COVERED OFFENSES.**—A referral to a general or special court-martial for trial of charges and specifications over which a special trial counsel exercises authority may only be made—

“(1) by a special trial counsel, subject to a special trial counsel’s written determination accompanying the referral that—

“(A) each specification under a charge alleges an offense under this chapter;

“(B) there is probable cause to believe that the accused committed the offense charged; and

“(C) a court-martial would have jurisdiction over the accused and the offense; or

“(2) in the case of charges and specifications that do not allege a covered offense and as to which a special trial counsel declines to prefer or, in the case of charges and specifications preferred by a person other than a special trial counsel, refer charges, by the convening authority in accordance with this section.”; and

(5) in subsection (e), as so redesignated, by inserting “or, with respect to charges and specifications over which a special trial counsel exercises authority in accordance with section 824a of this title (article 24a), a special trial counsel,” after “convening authority”.

SEC. 538. FORMER JEOPARDY.

Section 844(c) of title 10, United States Code (article 44(c) of the Uniform Code of Military Justice), is amended by inserting “or the special trial counsel” after “the convening authority” each place it appears.

SEC. 539. PLEA AGREEMENTS.

(a) **AUTHORITY TO ENTER INTO AGREEMENTS.**—Subsection (a) of section 853a of title 10, United States Code (article 53a of the Uniform Code of Military Justice), is amended—

(1) in paragraph (1), by striking “At any time” and inserting “Subject to paragraph (3), at any time”; and
(2) by adding at the end the following new paragraph: “(3) With respect to charges and specifications over which a special trial counsel exercises authority pursuant to section 824a of this title (article 24a), a plea agreement under this section may only be entered into between a special trial counsel and the accused. Such agreement shall be subject to the same limitations and conditions applicable to other plea agreements under this section (article).”.

(b) **BINDING EFFECT.**—Subsection (d) of such section (article) is amended by inserting after “parties” the following: “(including the convening authority and the special trial counsel in the case of a plea agreement entered into under subsection (a)(3))”.

SEC. 539A. DETERMINATIONS OF IMPRACTICABILITY OF REHEARING.

(a) **TRANSMITTAL AND REVIEW OF RECORDS.**—Section 865(e)(3)(B) of title 10, United States Code (article 65(e)(3)(B) of the Uniform Code of Military Justice), is amended—

(1) by striking “IMPRACTICAL.—If the Judge Advocate General” and inserting the following: “IMPRACTICABLE.—”

“(i) **IN GENERAL.**—Subject to clause (ii), if the Judge Advocate General”;

(2) by striking “impractical” and inserting “impracticable”; and

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

“(ii) **CASES REFERRED BY SPECIAL TRIAL COUNSEL.**— If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.”.

(b) **COURTS OF CRIMINAL APPEALS.**—Section 866(f)(1)(C) of title 10, United States Code (article 66(f)(1)(C) of the Uniform Code of Military Justice), is amended—

(1) by striking “IMPRACTICABLE.—If the Court of Criminal Appeals” and inserting the following: “IMPRACTICABLE.—”

“(i) **IN GENERAL.**—Subject to clause (ii), if the Court of Criminal Appeals”;

(2) by adding at the end the following new clause:

“(ii) **CASES REFERRED BY SPECIAL TRIAL COUNSEL.**— If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.”.

(c) **REVIEW BY THE COURT OF APPEALS FOR THE ARMED FORCES.**—Section 867(e) of title 10, United States Code (article 67(e) of the Uniform Code of Military Justice), is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, if a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.”.

(d) **REVIEW BY JUDGE ADVOCATE GENERAL.**—Section 869(c)(1)(D) of title 10, United States Code (article 69(c)(1)(D) of the Uniform Code of Military Justice), is amended—

(1) by striking “If the Judge Advocate General” and inserting “(i) Subject to clause (ii), if the Judge Advocate General”;

(2) by striking “impractical” and inserting “impracticable”; and

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

“(ii) If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.”.

SEC. 539B. APPLICABILITY TO THE UNITED STATES COAST GUARD.

The Secretary of Defense shall consult and enter into an agreement with the Secretary of Homeland Security to apply the provisions of this part and the amendments made by this part, and the policies, mechanisms, and processes established pursuant to such provisions, to the United States Coast Guard when it is operating as a service in the Department of Homeland Security.

SEC. 539C. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), the amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.

(b) **REGULATIONS.**—

(1) **REQUIREMENT.**—The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.

(2) **IMPACT OF DELAY OF ISSUANCE.**—If the President does not prescribe the regulations necessary to carry out this part before the date that is two years after the date of the enactment of this Act, the amendments made by this part shall take effect on the date on which such regulations are prescribed and shall apply with respect to offenses that occur on or after that date.

PART 2—SEXUAL HARASSMENT; SENTENCING REFORM

SEC. 539D. INCLUSION OF SEXUAL HARASSMENT AS GENERAL PUNITIVE ARTICLE.

(a) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, the President shall—

(1) prescribe regulations establishing sexual harassment, as described in this section, as an offense punishable under section 934 of title 10, United States Code (article 134 of the Uniform Code of Military Justice); and

(2) revise the Manual for Courts-Martial to include such offense.

(b) **ELEMENTS OF OFFENSE.**—The regulations and the revisions to the Manual for Courts-Martial required under subsection (a) shall provide that the required elements constituting the offense of sexual harassment are—

(1) that the accused knowingly made sexual advances, demands or requests for sexual favors, or knowingly engaged in other conduct of a sexual nature;

(2) that such conduct was unwelcome;

(3) that, under the circumstances, such conduct—

(A) would cause a reasonable person to believe, and a certain person did believe, that submission to such conduct would be made, either explicitly or implicitly, a term or condition of that person's job, pay, career, benefits, or entitlements;

(B) would cause a reasonable person to believe, and a certain person did believe, that submission to, or rejection of, such conduct would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements; or

(C) was so severe, repetitive, or pervasive that a reasonable person would perceive, and a certain person did perceive, an intimidating, hostile, or offensive working environment; and

(4) that, under the circumstances, the conduct of the accused was—

(A) to the prejudice of good order and discipline in the armed forces;

(B) of a nature to bring discredit upon the armed forces; or

(C) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

SEC. 539E. SENTENCING REFORM.

(a) ARTICLE 53; FINDINGS AND SENTENCING.—Section 853 of title 10, United States Code (article 53 of the Uniform Code of Military Justice), is amended—

(1) in subsection (b), by amending paragraph (1) to read as follows:

“(1) GENERAL AND SPECIAL COURTS-MARTIAL.—Except as provided in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused. The sentence determined by the military judge constitutes the sentence of the court-martial.”; and

(2) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death—

“(A) the members shall determine—

“(i) whether the sentence for that offense shall be death or life in prison without eligibility for parole; or

“(ii) whether the matter shall be returned to the military judge for determination of a lesser punishment; and

“(B) the military judge shall sentence the accused for that offense in accordance with the determination of the members under subparagraph (A).”; and

(B) in paragraph (2), by striking “the court-martial” and inserting “the military judge”.

(b) ARTICLE 53A; PLEA AGREEMENTS.—Section 853a of title 10, United States Code (article 53a of the Uniform Code of Military Justice), as amended by section 539 of this Act, is further amended—

(1) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject to subsection (c), the military judge of a general or special court-martial shall accept a plea agreement submitted by the parties, except that—

“(1) in the case of an offense with a sentencing parameter set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

“(2) in the case of an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.”.

(c) ARTICLE 56; SENTENCING.—Section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (C)(vii), by striking “and” at the end;

(ii) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following new subparagraph:

“(E) the applicable sentencing parameters or sentencing criteria set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022.”; and

(B) by striking paragraphs (2) through (4) and inserting the following new paragraphs:

“(2) APPLICATION OF SENTENCING PARAMETERS IN GENERAL AND SPECIAL COURTS-MARTIAL.—

“(A) REQUIREMENT TO SENTENCE WITHIN PARAMETERS.— Except as provided in subparagraph (B), in a general or special court-martial in which the accused is convicted of an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge shall sentence the accused for that offense within the applicable parameter.

“(B) EXCEPTION.—The military judge may impose a sentence outside a sentencing parameter upon finding specific facts that warrant such a sentence. If the military judge imposes a sentence outside a sentencing parameter under this subparagraph, the military judge shall include in the record a written statement of the factual basis for the sentence.

“(3) USE OF SENTENCING CRITERIA IN GENERAL AND SPECIAL COURTS-MARTIAL.—In a general or special court-martial in which the accused is convicted of an offense for which the President has established sentencing criteria pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

“(4) OFFENSE-BASED SENTENCING IN GENERAL AND SPECIAL COURTS-MARTIAL.—In announcing the sentence under section 853 of this title (article 53) in a general or special court-martial, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

“(5) INAPPLICABILITY TO DEATH PENALTY.—Sentencing parameters and sentencing criteria shall not apply to a determination of whether an offense should be punished by death.

“(6) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—

“(A) IN GENERAL.—If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

“(B) TERM OF CONFINEMENT.—An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused’s life unless—

“(i) the sentence is set aside or otherwise modified as a result of—

“(I) action taken by the convening authority or the Secretary concerned; or

“(II) any other action taken during post-trial procedure or review under any other provision of subchapter IX of this chapter;

“(ii) the sentence is set aside or otherwise modified as a result of action taken by a court of competent jurisdiction; or

“(iii) the accused receives a pardon or another form of Executive clemency.”; and (4) in subsection (d)(1)—

(A) in subparagraph (A), by striking “or” at the end;

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following new subparagraph:

“(B) in the case of a sentence for an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the sentence is a result of an incorrect application of the parameter; or”;

(D) in subparagraph (C), as redesignated by subparagraph (B) of this paragraph, by striking “, as determined in accordance with standards and procedures prescribed by the President”.

(d) ARTICLE 66; COURTS OF CRIMINAL APPEALS.—Section 866 of title 10, United States Code (article 66 of the Uniform Code of Military Justice), as amended by section 539A of this Act, is further amended—

(1) in subsection (d)(1)(A), by striking the third sentence; and

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

“(e) CONSIDERATION OF SENTENCE.—

“(1) IN GENERAL.—In considering a sentence on appeal, other than as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

“(A) whether the sentence violates the law;

“(B) whether the sentence is inappropriately severe—

“(i) if the sentence is for an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022; or

“(ii) in the case of an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, if the sentence is above the upper range of such sentencing parameter;

“(C) in the case of a sentence for an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, whether the sentence is a result of an incorrect application of the parameter;

“(D) whether the sentence is plainly unreasonable; and

“(E) in review of a sentence to death or to life in prison without eligibility for parole determined by the members in a capital case under section 853(c) of this title (article 53(c)), whether the sentence is otherwise appropriate, under rules prescribed by the President.

“(2) RECORD ON APPEAL.—In an appeal under this subsection or section 856(d) of this title (article 56(d)), other than review under subsection (b)(2) of this section, the record on appeal shall consist of—

“(A) any portion of the record in the case that is designated as pertinent by any party;

“(B) the information submitted during the sentencing proceeding; and

“(C) any information required by rule or order of the Court of Criminal Appeals.”.

(e) ESTABLISHMENT OF SENTENCING PARAMETERS AND SENTENCING CRITERIA.—

(1) IN GENERAL.—Not later than two years after the date of the enactment of this Act, the President shall prescribe regulations establishing sentencing parameters and sentencing criteria related to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), in accordance with this subsection. Such parameters and criteria—

(A) shall cover sentences of confinement; and

(B) may cover lesser punishments, as the President determines appropriate.

(2) SENTENCING PARAMETERS.—Sentencing parameters established under paragraph (1) shall—

(A) identify a delineated sentencing range for an offense that is appropriate for a typical violation of the offense, taking into consideration—

(i) the severity of the offense;

(ii) the guideline or offense category that would apply to the offense if the offense were tried in a United States district court;

(iii) any military-specific sentencing factors;

(iv) the need for the sentencing parameter to be sufficiently broad to allow for individualized consideration of the offense and the accused; and

(v) any other relevant sentencing guideline.

(B) include no fewer than 5 and no more than 12 offense categories;

(C) assign such offense under this chapter to an offense category unless the offense is identified as unsuitable for sentencing parameters under paragraph (4)(F)(ii); and

(D) delineate the confinement range for each offense category by setting an upper confinement limit and a lower confinement limit.

(3) SENTENCING CRITERIA.—Sentencing criteria established under paragraph (1) shall identify offense-specific factors the military judge should consider and any collateral effects of available punishments that may aid the military judge in determining an appropriate sentence when there is no applicable sentencing parameter for a specific offense.

(4) MILITARY SENTENCING PARAMETERS AND CRITERIA BOARD.—

(A) IN GENERAL.—There is established within the Department of Defense a board, to be known as the “Military Sentencing Parameters and Criteria Board” (referred to in this subsection as the “Board”).

(B) VOTING MEMBERS.—The Board shall have 5 voting members, as follows:

(i) The 4 chief trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), except that, if the chief trial judge of the Coast Guard is not available, the Judge Advocate General of the Coast Guard may designate as a voting member a judge advocate of the Coast Guard with substantial military justice experience.

(ii) A trial judge of the Navy, designated under regulations prescribed by the President, if the chief trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), do not include a trial judge of the Navy.

(iii) A trial judge of the Marine Corps, designated under regulations prescribed by the President, if the chief trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), do not include a trial judge of the Marine Corps.

(C) NONVOTING MEMBERS.—The Chief Judge of the Court of Appeals for the Armed Forces, the Chairman of the Joint Chiefs of Staff, and the General Counsel of the Department of Defense shall each designate one nonvoting member of the Board. The Secretary of Defense may appoint one additional nonvoting member of the Board at the Secretary’s discretion.

(D) CHAIR AND VICE-CHAIR.—The Secretary of Defense shall designate one voting member as chair of the Board and one voting member as vice-chair.

(E) VOTING REQUIREMENT.—An affirmative vote of at least three members is required for any action of the Board under this subsection.

(F) DUTIES OF BOARD.—The Board shall have the following duties:

(i) As directed by the Secretary of Defense, the Board shall submit to the President for approval—

(I) sentencing parameters for all offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) (other than offenses that the Board identifies as unsuitable for sentencing parameters in accordance with clause (ii)); and

(II) sentencing criteria to be used by military judges in determining appropriate sentences for offenses that are identified as unsuitable for sentencing parameters in accordance with clause (ii).

(ii) Identify each offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that is unsuitable for sentencing parameters. The Board shall identify an offense as unsuitable for sentencing parameters if—

(I) the nature of the offense is indeterminate and unsuitable for categorization; and

(II) there is no similar criminal offense under the laws of the United States or the laws of the District of Columbia.

(iii) In developing sentencing parameters and criteria, the Board shall consider the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 1 shall consider the appropriateness of establishing sentencing parameters for punitive discharges, fines, reductions, forfeitures, and other lesser punishments authorized under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice)).

(iv) In addition to establishing parameters for sentences of confinement under clause (i)(I), the Board shall consider the appropriateness of establishing sentencing parameters for punitive discharges, fines, reductions, forfeitures, and other lesser punishments authorized under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(v) The Board shall regularly—

(I) review, and propose revision to, in consideration of comments and data coming to the Board's attention, the sentencing parameters and sentencing criteria prescribed under paragraph (1); and

(II) submit to the President, through the Secretary of Defense, proposed amendments to the sentencing parameters and sentencing criteria, together with statements explaining the basis for the proposed amendments.

(vi) The Board shall develop means of measuring the degree to which applicable sentencing, penal, and correctional practices are effective with respect to the sentencing factors and policies set forth in this section.

(vii) In fulfilling its duties and in exercising its powers, the Board shall consult authorities on, and individual and institutional representatives of, various aspects of the military criminal justice system. The Board may establish separate advisory groups consisting of individuals with current or recent experience in command and in senior enlisted positions, individuals with experience in the trial of courts-martial, and such other groups as the Board deems appropriate.

(viii) The Board shall submit to the President, through the Secretary of Defense, proposed amendments to the rules for courts-martial with respect to sentencing proceedings and maximum punishments, together with statements explaining the basis for the proposed amendments.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date that is two years after the date of the enactment of this Act and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.

(g) **REPEAL OF SECRETARIAL GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED UNDER THE UNIFORM CODE OF MILITARY JUSTICE.**—Section 537 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1363; 10 U.S.C. 856 note) is repealed.

Subtitle E—Other Military Justice and Legal Matters

SEC. 541. RIGHTS OF THE VICTIM OF AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

Section 806b(a) of title 10, United States Code (article 6b(a) of the Uniform Code of Military Justice), is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

“(8) The right to be informed in a timely manner of any plea agreement, separation-in-lieu-of-trial agreement, or nonprosecution agreement relating to the offense, unless providing such information would jeopardize a law enforcement proceeding or would violate the privacy concerns of an individual other than the accused.”.

SEC. 542. CONDUCT UNBECOMING AN OFFICER.

(a) IN GENERAL.—Section 933 of title 10, United States Code (article 133 of the Uniform Code of Military Justice) is amended—

(1) in the section heading, by striking “and a gentleman”; and

(2) by striking “and a gentleman”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter X of chapter 47 of such title is amended by striking the item relating to section 933 (article 133) and inserting the following new item:

“933. 133. Conduct unbecoming an officer.”.

SEC. 545. MODIFICATION OF NOTICE TO VICTIMS OF PENDENCY OF FURTHER ADMINISTRATIVE ACTION FOLLOWING A DETERMINATION NOT TO REFER TO TRIAL BY COURT-MARTIAL.

Section 549 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 806b note) is amended—

(1) in the section heading, by striking “ALLEGED SEXUAL ASSAULT” and inserting “ALLEGED SEX-RELATED OFFENSE”;

(2) by striking “Under regulations” and inserting “Notwithstanding section 552a of title 5, United States Code, and under regulations”;

(3) by striking “alleged sexual assault” and inserting “an alleged sex-related offense (as defined in section 1044e(h) of title 10, United States Code)”;

(4) by adding at the end the following new sentence: “Upon such final determination, the commander shall notify the victim of the type of action taken on such case, the outcome of the action (including any punishments assigned or characterization of service, as applicable), and such other information as the commander determines to be relevant.”

SEC. 546. CIVILIAN POSITIONS TO SUPPORT SPECIAL VICTIMS’ COUNSEL.

(a) CIVILIAN SUPPORT POSITIONS.—Each Secretary of a military department may establish one or more civilian positions within each office of the Special Victims’ Counsel under the jurisdiction of such Secretary.

(b) DUTIES.—The duties of each position under subsection (a) shall be—

(1) to provide support to Special Victims’ Counsel, including legal, paralegal, and administrative support; and

(2) to ensure the continuity of legal services and the preservation of institutional knowledge in the provision of victim legal services notwithstanding transitions in the military personnel assigned to offices of the Special Victims’ Counsel.

(c) SPECIAL VICTIMS’ COUNSEL DEFINED.—In this section, the term “Special Victims’ Counsel” means Special Victims’ Counsel described in section 1044e of title 10, United States Code, and in the case of the Navy and Marine Corps, includes counsel designated as “Victims’ Legal Counsel”.

SEC. 547. PLANS FOR UNIFORM DOCUMENT MANAGEMENT SYSTEM, TRACKING PRETRIAL INFORMATION, AND ASSESSING CHANGES IN LAW.

(a) PLAN FOR DOCUMENT MANAGEMENT SYSTEM.—

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), the Secretaries of the military departments, and the Judge Advocates specified in subsection (e), shall publish a plan pursuant to which the Secretary of Defense shall establish a single document management system for use by each Armed Force to collect and present information on matters within the military justice system, including information collected and maintained for purposes of section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice).

(2) **ELEMENTS.**—The plan under subsection (a) shall meet the following criteria:

(A) **CONSISTENCY OF DATA FIELDS.**—The plan shall ensure that each Armed Force uses consistent data collection fields, definitions, and other criteria for the document management system described in subsection (a).

(B) **BEST PRACTICES.**—The plan shall include a strategy for incorporating into the document management system the features of the case management and electronic case filing system of the Federal courts to the greatest extent possible.

(C) **PROSPECTIVE APPLICATION.**—The plan shall require the document management system to be used for the collection and presentation of information about matters occurring after the date of the implementation of the system. The plan shall not require the collection and presentation of historical data about matters occurring before the implementation date of the system.

(D) **RESOURCES.**—The plan shall include an estimate of the resources (including costs, staffing, and other resources) required to implement the document management system.

(E) **AUTHORITIES.**—The plan shall include an analysis of any legislative actions, including any changes to law, that may be required to implement the document management system for each Armed Force.

(b) PLAN FOR TRACKING PRETRIAL INFORMATION.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), the Secretaries of the military departments, and the Judge Advocates specified in subsection (e), shall publish a plan addressing how the Armed Forces will collect, track, and maintain pretrial records, data, and other information regarding the reporting, investigation, and processing of all offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), arising in any Armed Force in a manner such that each Armed Force uses consistent data collection fields, definitions, and criteria.

(c) PLAN FOR ASSESSING EFFECTS OF CHANGES IN LAW.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), the Secretaries of the military departments, and the Judge Advocates specified in subsection (e), shall publish a plan addressing the manner in which the Department of Defense will analyze the effects of the changes in law and policy required under subtitle D and the amendments made by such subtitle with respect to the disposition of offenses over which a special trial counsel at any time exercises authority in accordance with section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice) (as added by section 531 of this Act).

(d) INTERIM BRIEFINGS.—

(1) **IN GENERAL.**—Not less frequently than once every 90 days during the covered period, the Secretary of Defense, in consultation with the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), the Secretaries of the military departments, and the Judge Advocates specified in subsection (e), shall provide to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a briefing on the status of the development of the plans required under subsections (a) through (c).

(2) **COVERED PERIOD.**—In this subsection, the term “covered period” means the period beginning on the date of the enactment of this Act and ending on the date that is one year after the date of the enactment of this Act.

(e) JUDGE ADVOCATES SPECIFIED.—The Judge Advocates specified in this subsection are the following:

- (1) The Judge Advocate General of the Army.
- (2) The Judge Advocate General of the Navy.
- (3) The Judge Advocate General of the Air Force.
- (4) The Staff Judge Advocate to the Commandant of the Marine Corps.
- (5) The Judge Advocate General of the Coast Guard.

SEC. 549C. REFORM AND IMPROVEMENT OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.

(a) **EVALUATION AND PLAN FOR REFORM.**—Not later than one year after the date of the enactment of this Act, each Secretary concerned shall—

(1) complete an evaluation of the effectiveness of the military criminal investigative organization under the jurisdiction of such Secretary; and

(2) submit to the appropriate congressional committees a report that includes—

(A) the results of the evaluation conducted under paragraph (1); and

(B) based on such results, if the Secretary determines that reform to the military criminal investigative organization under the jurisdiction of such Secretary is advisable, a proposal for reforming such organization to ensure that the organization effectively meets the demand for complex investigations and other emerging mission requirements.

(b) **IMPLEMENTATION PLAN.**—

(1) **IN GENERAL.**—Not later than two years after the date of the enactment of this Act, each Secretary concerned shall submit to the appropriate congressional committees a plan to implement, to the extent determined appropriate by such Secretary, the reforms to the military criminal investigative organization proposed by such Secretary under subsection (a) to ensure that such organization is capable of professionally investigating criminal misconduct under its jurisdiction.

(2) **ELEMENTS.**—Each plan under paragraph (1) shall include, with respect to the military criminal investigative organization under the jurisdiction of the Secretary concerned, the following:

(A) The requirements that such military criminal investigative organization must meet to effectively carry out criminal investigative and other law enforcement missions in 2022 and subsequent years.

(B) The resources that will be needed to ensure that each such military criminal investigative organization can achieve its mission.

(C) An analysis of factors affecting the performance of such military criminal investigate organization including—

(i) whether appropriate technological investigative tools are available and accessible to such organization; and

(ii) whether the functions of such organization would be better supported by civilian rather than military leadership.

(D) For each such military criminal investigative organization—

(i) the number of military personnel assigned to the organization;

(ii) the number of civilian personnel assigned to the organization; and

(iii) the functions of such military and civilian personnel.

(E) A description of any plans of the Secretary concerned to develop a more professional workforce of military and civilian investigators.

(F) A proposed timeline for the reform of such military investigative organization.

(G) An explanation of the potential benefits of such reforms, including a description of—

(i) specific improvements that are expected to result from the reforms; and

(ii) whether the reforms will improve information sharing across military criminal investigative organizations.

(H) With respect to the military criminal investigative organization of the Army, an explanation of how the plan will—

(i) address the findings of the report of the Fort Hood Independent Review Committee, dated November 6, 2020; and

(ii) coordinate with any other internal reform efforts of the Army.

(c) **LIMITATION ON THE CHANGES TO TRAINING LOCATIONS.**— In carrying out this section, the Secretary concerned may not change the locations at which military criminal investigative training is provided to members of the military criminal investigative organization under the jurisdiction of such Secretary until—

(1) the implementation plan under subsection (b) is submitted to the appropriate congressional committees; and

(2) a period of 60 days has elapsed following the date on which the Secretary notifies the appropriate congressional committees of the Secretary's intent to move such training to a different location.

(d) **DEFINITIONS.**—In this section:

(1) The term “appropriate congressional committees” means—

(A) the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term “military criminal investigative organization” means each organization or element of the Department of Defense or the Armed Forces that is responsible for conducting criminal investigations, including—

(A) the Army Criminal Investigation Command;

(B) the Naval Criminal Investigative Service;

(C) the Air Force Office of Special Investigations;

(D) the Coast Guard Investigative Service; and

(E) the Defense Criminal Investigative Service.

(3) The term “Secretary concerned” means—

(A) the Secretary of the Army, with respect to the Army Criminal Investigation Command;

(B) the Secretary of the Navy, with respect to the Naval Criminal Investigative Service;

(C) the Secretary of the Air Force, with respect to the Air Force Office of Special Investigations;

(D) the Secretary of Homeland Security, with respect to the Coast Guard Investigative Service; and

(E) the Secretary of Defense, with respect to the Defense Criminal Investigative Service.

SEC. 549D. MILITARY DEFENSE COUNSEL.

Each Secretary of a military department shall—

- (1) ensure that military defense counsel have timely and reliable access to and funding for defense investigators, expert witnesses, trial support, pre-trial and post-trial support, paralegal support, counsel travel, and other necessary resources;
- (2) ensure that military defense counsel detailed to represent a member of the Armed Forces accused of a covered offense (as defined in section 801(17) of title 10, United States Code (article 1(17) of the Uniform Code of Military Justice), as added by section 533 of this Act) are well-trained and experienced, highly skilled, and competent in the defense of cases involving covered offenses; and
- (3) take or direct such other actions regarding military defense counsel as may be warranted in the interest of the fair administration of justice.

SEC. 549F. MILITARY SERVICE INDEPENDENT RACIAL DISPARITY REVIEW.

(a) **REVIEW REQUIRED.**—Each Secretary of a military department shall conduct an assessment of racial disparity in military justice and discipline processes and military personnel policies, as they pertain to minority populations.

(b) **REPORT REQUIRED.**—Not later than one year after the date of the enactment of this Act, each Secretary of a military department shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Comptroller General of the United States a report detailing the results of the assessment required by subsection (a), together with recommendations for statutory or regulatory changes as the Secretary concerned determines appropriate.

(c) **COMPTROLLER GENERAL REPORT.**—Not later than 180 days after receiving the reports submitted under subsection (b), the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report comparing the military service assessments on racial disparity conducted under subsection (a) to existing reports assessing racial disparity in civilian criminal justice systems in the United States.

(d) **DEFINITIONS.**—In this section:

(1) **MILITARY JUSTICE; DISCIPLINE PROCESSES.**—The terms “military justice” and “discipline processes” refer to all facets of the military justice system, including investigation, the use of administrative separations and other administrative sanctions, non-judicial punishment, panel selection, pre-trial confinement, the use of solitary confinement, dispositions of courts-martial, sentencing, and post-trial processes.

(2) **MILITARY PERSONNEL POLICIES.**—The term “military personnel policies” includes accession rates and policies, retention rates and policies, promotion rates, assignments, professional military education selection and policies, and career opportunity for minority members of the Armed Forces.

(3) **MINORITY POPULATIONS.**—The term “minority populations” includes Black, Hispanic, Asian/Pacific Islander, American Indian, and Alaska Native populations.

SEC. 549G. INCLUSION OF RACE AND ETHNICITY IN ANNUAL REPORTS ON SEXUAL ASSAULTS; REPORTING ON RACIAL AND ETHNIC DEMOGRAPHICS IN THE MILITARY JUSTICE SYSTEM.

(a) ANNUAL REPORTS ON RACIAL AND ETHNIC DEMOGRAPHICS IN THE MILITARY JUSTICE SYSTEM.—

(1) IN GENERAL.—Chapter 23 of title 10, United States Code, is amended by inserting after section 485 the following new section:

“§ 486. Annual reports on racial and ethnic demographics in the military justice system

“(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of each military department shall submit to the Secretary of Defense a report on racial, ethnic, and sex demographics in the military justice system during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps. In the case of the Secretary of the Air Force, separate reports shall be prepared for the Air Force and for the Space Force.

“(b) CONTENTS.—The report of a Secretary of a military department for an armed force under subsection (a) shall contain, to the extent possible, statistics on offenses under chapter 47 of this title (the Uniform Code of Military Justice), during the year covered by the report, including—

“(1) the number of offenses in the armed force that were reported to military officials, disaggregated by—

“(A) statistical category as related to the victim; and

“(B) statistical category as related to the principal;

“(2) the number of offenses in the armed forces that were investigated, disaggregated by statistical category as related to the principal;

“(3) the number of offenses in which administrative action was imposed, disaggregated by statistical category as related to the principal and each type of administrative action imposed;

“(4) the number of offenses in which non judicial punishment was imposed under section 815 of this title (article 15 of the Uniform Code of Military Justice), disaggregated by statistical category as related to the principal;

“(5) the number of offenses in which charges were preferred, disaggregated by statistical category as related to the principal;

“(6) the number of offenses in which charges were referred to court-martial, disaggregated by statistical category as related to the principal and type of court-martial;

“(7) the number of offenses which resulted in conviction at court-martial, disaggregated by statistical category as related to the principal and type of court-martial; and

“(8) the number of offenses which resulted in acquittal at court-martial, disaggregated by statistical category as related to the principal and type of court-martial.

“(c) SUBMISSION TO CONGRESS.—Not later than April 30 of each year in which the Secretary of Defense receives reports under subsection (a), the Secretary of Defense shall forward the reports to the Committees on Armed Services of the Senate and the House of Representatives.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘statistical category’ means each of the following categories:

“(A) race;

“(B) sex;

“(C) ethnicity;

“(D) rank; and

“(E) offense enumerated under chapter 47 of this title (the Uniform Code of Military Justice).

“(2) The term ‘principal’ has the meaning given that term in section 877 of this title (article 77 of the Uniform Code of Military Justice).”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 23 of such title is amended by inserting after the item relating to section 485 the following new item:

“486. Annual reports on racial and ethnic demographics in the military justice system.”.

(b) POLICY REQUIRED.—

(1) REQUIREMENT.—Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall prescribe a policy requiring information on the race and ethnicity of accused individuals to be included to the maximum extent practicable in the annual report required under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note).

(2) EXCLUSION.—The policy prescribed under paragraph (1) may provide for the exclusion of such information based on privacy concerns, impacts on accountability efforts, or other matters of importance as determined and identified in such policy by the Secretary.

(3) PUBLICLY AVAILABLE.—The Secretary of Defense shall make publicly available the information described in paragraph (1), subject to the exclusion of such information pursuant to paragraph (2).

(4) SUNSET.—The requirements of this subsection shall terminate on May 1, 2028.

U.S. Department of Defense

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

March 2022

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EXECUTIVE SUMMARY

In section 546 of the National Defense Authorization Act for Fiscal Year 2015, enacted in December 2014, Congress directed the Secretary of Defense to establish the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD or Committee).¹ Its authorizing legislation, as amended in 2019, charges the Committee to execute three tasks over a 10-year term:

1. 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;
2. To review, on an ongoing basis, cases involving allegations of sexual misconduct for purposes of providing advice to the Secretary of Defense; and
3. To submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives describing the results of its activities during the preceding year no later than March 30 of each year.²

This is a report submitted by the Department of Defense concerning the work of the DAC-IPAD, with a focus on the Committee's activities between April 2020 until its suspension in January 2021, when the Secretary of Defense directed a zero-based review of all Department of Defense advisory committees. Between April 2020 and January 2021, the Committee held five public meetings, during which it received presentations from its subcommittees and professional staff on topics including the military pretrial process, victim services, restorative justice, victim impact statements at sentencing, and racial and ethnic disparities in the military justice system. The Committee also deliberated and voted on three stand-alone reports, the topics of which were the advisability of a guardian ad litem appointment process for child victims of an alleged sex-related offense in the military, investigative case file reviews for military adult penetrative sexual offense cases closed in fiscal year 2017, and racial and ethnic data relating to disparities in the investigation, prosecution, and conviction of sexual offenses in the military. In addition to the public meetings, the Committee and its subcommittees held 16 preparatory sessions.

Section I of this report provides background on the zero-based review and the Committee's composition and organization prior to it. Section II summarizes the three reports released between April 2020 and January 2021 and highlights their findings and recommendations. Finally, Section III provides an update on the Committee's current status. The reconstituted DAC-IPAD expects to hold its initial meeting on April 21, 2022, to resume its important work developing recommendations to improve the military's response to sexual misconduct within its ranks.

¹ National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [FY15 NDAA], § 546, 128 Stat. 3292 (2014).

² *Id.* The National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 [FY20 NDAA], § 535, 133 Stat. 1198 (2019), amended FY15 NDAA § 546 to extend the term of the Committee from 5 to 10 years.

I: Introduction

The Secretary of Defense established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD or Committee) in February 2016 pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY15 NDAA), as amended.³ The statutory mission of the DAC-IPAD is 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.⁴ To provide that advice, the Committee is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.⁵

The DAC-IPAD is required by its authorizing legislation to submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, no later than March 30 of each year, describing the results of its activities.⁶ This report, prepared by the Department of Defense (DoD), summarizes the Committee's activities from April 2020 until its suspension in January 2021 and provides an update on the Committee's current status.

A. Zero-Based Review

On January 30, 2021, the Secretary of Defense directed a zero-based review of all DoD advisory committees, including the DAC-IPAD, suspending their operations.⁷ This suspension prevented completion of the DAC-IPAD's statutorily required annual report by March 30, 2021. On March 26, 2021, the Acting DoD General Counsel (DoD GC) submitted an interim report to the chairs of the Committees on Armed Services of the Senate and the House of Representatives explaining the suspension of the DAC-IPAD's operations and the renewal of its members, whose four-year term appointments had expired on January 18, 2021.⁸ Additionally, on August 5, 2021, the DoD GC submitted a follow-on interim report to the chairs of the Committees on Armed Services of the Senate and the House of Representatives providing an update on the DAC-IPAD's status.⁹

³ FY15 NDAA, *supra* note 1, § 546. In accordance with the authorizing statute and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense filed the charter for the DAC-IPAD with the General Services Administration on February 18, 2016.

⁴ *Id.* at § 546(c)(1).

⁵ *Id.* at § 546(c)(2).

⁶ *Id.* at § 546(d).

⁷ Memorandum from Secretary of Defense to Senior Pentagon Leadership Regarding Department of Defense Advisory Committees – Zero-Based Review (Jan. 30, 2021). The Secretary directed this review to align DoD advisory committee efforts with the Department's most pressing strategic priorities. *See* Appendix C at C-1–C-2.

⁸ Letters from Acting General Counsel of the Department of Defense to the Honorable Adam Smith, Chairman of the Committee on Armed Services of the House of Representatives (Mar. 26, 2021) and to the Honorable Jack Reed, Chairman of the Committee on Armed Services of the Senate (Mar. 26, 2021). *See* Appendix C at C-3–C-4.

⁹ Letters from General Counsel of the Department of Defense to the Honorable Adam Smith, Chairman of the Committee on Armed Services of the House of Representatives (Aug. 5, 2021) and to the Honorable Jack Reed, Chairman of the Committee on Armed Services of the Senate (Aug. 5, 2021). *See* Appendix C at C-5–C-6.

B. Composition and Organization of the Committee Prior to Zero-Based Review

The Committee's authorizing legislation requires the Secretary of Defense to select Committee members with experience in investigating, prosecuting, and defending against allegations of sexual offenses.¹⁰ In January 2017, the Secretary of Defense appointed 16 members to the DAC-IPAD, representing a wide range of perspectives and experience related to sexual offenses both within and outside the military.¹¹

Prior to the zero-based review, the DAC-IPAD established three subcommittees to support its mission: the Case Review Subcommittee, the Data Subcommittee, and the Policy Subcommittee. The Case Review Subcommittee's (CRSC) mission was to make recommendations to the Committee based on its review of cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Data Subcommittee's (DSC) mission was to make recommendations to the Committee based on its collection and analysis of case adjudication data from completed cases involving allegations of penetrative (rape, forcible sodomy, and sexual assault) and contact (aggravated sexual contact, abusive sexual contact) sex offenses for which charges were preferred. Finally, the Policy Subcommittee's (PSC) mission was to make recommendations to the Committee based on its review of DoD policies, Military Department policies, and Uniform Code of Military Justice (UCMJ) provisions applicable to allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct.

The current status of the DAC-IPAD is discussed in Section III below.

¹⁰ FY15 NDAA, *supra* note 1, § 546(b).

¹¹ Committee member Dean Keith M. Harrison, Associate Dean and Professor of Law, Savannah Law School, passed away unexpectedly in 2018.

II: Committee Activities: April 2020 – January 2021

Between April 2020 and January 2021 (when the Committee’s activities were suspended by the zero-based review), the Committee held five public meetings.¹² During that time, the Committee deliberated on and released three stand-alone reports: one on the advisability of a guardian ad litem appointment process for child victims of an alleged sex-related offense in the military; one on investigative case file reviews for military adult penetrative sexual offense cases closed in fiscal year 2017; and one on racial and ethnic data relating to disparities in the investigation, prosecution, and conviction of sexual offenses in the military.

A. Guardian ad Litem Report (June 2020)

In June 2020, the DAC-IPAD submitted its *Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims of an Alleged Sex-Related Offense in the Military*.¹³ The DAC-IPAD published this report pursuant to a request of the Armed Services Committee of the U.S. House of Representatives (HASC). The HASC directed the DAC-IPAD to evaluate the advisability and feasibility of establishing a process under which a guardian ad litem may be appointed in a court-martial to represent the interests of a child victim of an alleged sex-related offense.¹⁴

To fulfill this mandate, the Committee conducted comprehensive research on civilian and military practices regarding the appointment of guardians ad litem for child victims, including extensive interviews of experts in the area of child victims’ rights and a review of civilian and military statutes, rules of professional conduct, and court practices. The report sets forth the Committee’s 42 findings and eight recommendations resulting from this research.¹⁵

The Committee concluded that while there are some gaps in services available to child victims of sexual offenses, it is neither advisable nor necessary to implement a designated guardian ad litem program in the Military Services, provided that the Committee’s recommendations or similar proposals to rectify these gaps are approved and implemented. The Committee determined that a trained child victim advocate working in collaboration with the special victims’ counsel (SVC) / victims’ legal counsel (VLC) is the best option for ensuring that a child’s interests are protected in the courtroom.¹⁶

¹² See Appendix E for a complete listing of DAC-IPAD meetings, preparatory sessions, and presenters since April 2020.

¹³ DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES REPORT ON THE ADVISABILITY AND FEASIBILITY OF ESTABLISHING A GUARDIAN AD LITEM APPOINTMENT PROCESS FOR CHILD VICTIMS OF AN ALLEGED SEX-RELATED OFFENSE IN THE MILITARY [DAC-IPAD GAL REPORT] (June 2020), *available* at https://dacipad.whs.mil/images/Public/08-Reports/06_DACIPAD_GAL_Report_20200617_Final_Web.pdf.

¹⁴ H.R. REP. NO. 116-120, at 124–25 (2019); *see also* Appendix A at A-5. While this provision from the House Report was not part of the final National Defense Authorization Act for Fiscal Year 2020, the DAC-IPAD followed the DoD policy of responding to all requests made by Congress for reports.

¹⁵ DAC-IPAD GAL REPORT, *supra* note 31, at 6–13.

¹⁶ *Id.* at 4.

B. Report on Investigative Case File Reviews (October 2020)

In October 2020, the DAC-IPAD submitted its *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017* culminating a three-year project involving in-depth quantitative and qualitative reviews of 1,904 criminal investigative cases and related court-martial cases involving adult penetrative sexual offenses.¹⁷

In the comprehensive review, the DAC-IPAD Case Review Subcommittee and professional staff: (1) recorded numerous objective data points for each case; (2) subjectively assessed whether the victim's statement(s), if any, contained sufficient evidence to establish probable cause to believe that the subject of the investigation committed a penetrative sexual offense; (3) subjectively assessed whether the initial disposition authority's decision to prefer a penetrative sexual offense charge or to take no action in the case was reasonable; and (4) for those cases resulting in preferred penetrative sexual offense charges, subjectively assessed the evidence provided for review, focusing specifically on whether it was sufficient to establish probable cause to believe that the accused had committed a penetrative sexual offense and whether the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction.¹⁸

The October 2020 case review report sets out 47 findings, one recommendation, and nine directives for further study, including the following two key findings:

- There is not a systematic problem with an initial disposition authority's decision either to prefer a penetrative sexual offense charge or to take no action. In 94.0% and 98.5% of cases examined, respectively, the reviewers found those decisions to be reasonable.
- There is a systematic 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. In 31.1% of cases reviewed that were tried to verdict on a penetrative sexual offense charge, the evidence in the materials reviewed did not meet that threshold.¹⁹

In the Committee's view, the decision to refer charges to trial by general court-martial in the absence of sufficient admissible evidence to obtain and sustain a conviction has significant negative implications for the accused, the victim, and the military justice process. Accordingly, the Committee recommended that Congress amend Article 34, UCMJ, to require that the staff judge advocate 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.²⁰

¹⁷ DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES REPORT ON INVESTIGATIVE CASE FILE REVIEWS FOR MILITARY ADULT PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FISCAL YEAR 2017 (Oct. 2020), *available at* https://dacipad.whs.mil/images/Public/08-Reports/08_DACIPAD_CaseReview_Report_20201019_Final_Web.pdf.

¹⁸ *Id.* at 26–27.

¹⁹ *Id.* at 2–4.

²⁰ *Id.* at 16.

C. Report on Racial and Ethnic Data Disparity (December 2020)

In December 2020, as required by section 540I of the National Defense Authorization Act for Fiscal Year 2020, the Committee released its *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military*.²¹ This important report was undertaken at a time of heightened focus on racial discrimination in the United States, including within the military justice system. Pursuant to the congressional tasking, the Committee requested, and each Military Service reported, the race and ethnicity of: (1) Service members accused of a penetrative or contact sexual offense; (2) Service members against whom such charges were preferred; and (3) Service members convicted of a penetrative or contact sexual offense for all cases completed in fiscal year 2019.²²

The Committee found that the Military Services' FY19 data responses raised more questions than they answered, owing to persistent inadequacies in race and ethnicity data collection in DoD and the Military Services. The Committee's assessment of the FY19 data for this report was further hampered by inconsistencies across the Military Services in how they reported demographic data for Service members.²³ Because the Military Services did not report race and ethnicity in standardized categories, the Committee was limited in its ability to undertake the type of comprehensive assessment of racial disparities that is essential to identifying possible areas of racial and ethnic discrimination in sexual offense cases. In addition, no Military Service consistently recorded the race and ethnicity of victims of a sexual offense. Civilian criminologists consider the victim's demographic information to be a critical component of any assessment of racial disparities in a criminal justice system.²⁴

The report's five findings and eight recommendations for improvement focused on comprehensive data collection, consistent terminology, and holistic assessments of racial disparities.²⁵ The report concluded that implementation of the Committee's recommendations, along with the Article 140a, UCMJ, standards and criteria, will enhance the administration of justice in the military.

²¹ DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES REPORT ON RACIAL AND ETHNIC DATA RELATING TO DISPARITIES IN THE INVESTIGATION, PROSECUTION, AND CONVICTION OF SEXUAL OFFENSES IN THE MILITARY (Dec. 2020), *available at* https://dacipad.whs.mil/images/Public/08-Reports/09_DACIPAD_RaceEthnicity_Report_20201215_Web_Final.pdf.

²² *Id.* at 18.

²³ *Id.* at 1.

²⁴ *Id.* at 8.

²⁵ *Id.* at 5–6.

III: Current Status of the DAC-IPAD

The DAC-IPAD members cannot undertake any DAC-IPAD work, whether at the committee or subcommittee level, until their appointment to either the DAC-IPAD or a subcommittee is approved, all paperwork is completed and processed, and they take the oath of office.

On January 30, 2022, the Secretary of Defense approved a slate of candidates to the DAC-IPAD. As of the date of this report, the members are still undergoing the federal vetting process and have not yet been sworn in to begin their service on the Committee. DoD expects to complete this process shortly and for the reconstituted Committee to hold its initial meeting on April 21, 2022. This meeting will include an introduction of the members and a discussion of the Committee's priorities and the projects it plans to undertake over the next year.

APPENDICES

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SECTION 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES. (PUBLIC LAW 113–291; 128 STAT. 3374; 10 U.S.C. 1561 NOTE)

(a) ESTABLISHMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).

(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary 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.

(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SECTION 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

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

- (1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and
- (2) by inserting after subsection (c) the following new subsection (d):

“(d) AUTHORITIES.—

“(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

“(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.”.

SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.

- (a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:
 - (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
 - (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
 - (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).
- (b) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020

SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

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 (Dec. 9, 2019):

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

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

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

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

- (a) IN GENERAL.—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.
- (b) SECRETARY OF DEFENSE AND RELATED ACTIVITIES.—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:
 - (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—
 - (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;
 - (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.
 - (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—
 - (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and
 - (B) describes how such a review should be conducted.

(3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—

(A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;

(B) take steps to address the causes of such disparities, as appropriate.

(c) DAC-IPAD ACTIVITIES.—

(1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:

(A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.

(B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(2) INFORMATION FROM FEDERAL AGENCIES.—

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

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

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

(4) DEFINITIONS.—In this subsection:

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

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

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

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021

SEC. 536. MODIFICATION OF REPORTING AND DATA COLLECTION ON VICTIMS OF SEXUAL OFFENSES.

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 1561 note) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

- (i) by striking “accused of” and inserting “suspected of”; and
- (ii) by striking “assault” and inserting “offense”;

(B) in paragraph (2), by striking “accused of” and inserting “suspected of”; and

(C) in paragraph (3)—

- (i) by striking “assaults” and inserting “offenses”; and
- (ii) by striking “an accusation” and inserting “suspicion of”;

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

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

“(b) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance to ensure the uniformity of the data collected by each Armed Force for purposes of subsection (a). At a minimum, such guidance shall establish—

“(1) standardized methods for the collection of the data required to be reported under such subsection; and

“(2) standardized definitions for the terms ‘sexual offense’, ‘collateral misconduct’, and ‘adverse action’.”; and

(4) by amending subsection (c), as redesignated by paragraph (2), to read as follows:

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces.

“(2) The term ‘suspected of’, when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”.

H. Rept. 116-120 on H.R. 2500 (June 19, 2019)

Title V—Military Personnel Policy Items of Special Interest

Appointment of Guardian ad Litem for Minor Victims

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

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

Appendix B. DAC-IPAD Charter and Membership Balance Plan

Charter

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

1. Committee's Official Designation: The committee shall be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Federal advisory committee.
3. Objectives and Scope of Activities: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations 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 ongoing review of cases.
4. Description of Duties: Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and the House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA. The DAC-IPAD will also focus on matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD, as the DAC-IPAD's sponsor.

Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- (1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual.
- (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- (3) The percentage of investigations of sexual offenses that involved suspicion of or adverse action against a covered individual as described in paragraphs (1) and (2).

The term "covered individual" means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term 'suspected of,' when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

Appendix B. DAC-IPAD Charter and Membership Balance Plan

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

Pursuant to the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92) Joint Explanatory Statement, the conferees request the DAC-IPAD:

- (1) 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 when 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.
- (2) On a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under Rule for Courts-Martial (RCM) 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

The Joint Explanatory Statement summarized the conferees’ concern as follows: [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 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.

5. Agency or Official to Whom the Committee Reports: The DAC-IPAD reports to the Secretary of Defense and the Deputy Secretary of Defense, through the GC DoD, who may act upon the DAC-IPAD’s advice and recommendations in accordance with DoD policy and procedures.
6. Support: The DoD, through the Office of the GC DoD, provides support for the Committee’s functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act (“the Sunshine Act”) (5 U.S.C. § 552b), governing Federal statutes and regulations, and DoD policy and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs for the DAC-IPAD, to include travel, meetings, and contract support, are approximately \$2,600,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The DAC-IPAD’s Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD civilian officer or employee, or active duty member of the Armed Forces, designated in accordance with established DoD policy and procedures.

The DAC-IPAD’s DFO is required to attend all DAC-IPAD and subcommittee meetings for the entire duration of each meeting. However, in the absence of the DAC-IPAD’s DFO, a properly approved Alternate DFO, duly designated to the DAC-IPAD in accordance with DoD policy and procedures, shall attend the entire duration of all DAC-IPAD and subcommittee meetings.

The DFO, or Alternate DFO, calls all DAC-IPAD and subcommittee meetings; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or Alternate DFO, determines adjournment to be in the public’s interest or required by governing regulations or DoD policy and procedures.

Appendix B. DAC-IPAD Charter and Membership Balance Plan

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

9. Estimated Number and Frequency of Meetings: The DAC-IPAD shall meet at the call of the DFO, in consultation with the DAC-IPAD's Chair and the GC DoD. The estimated number of meetings is at least one per year.
10. Duration: The need for this advisory committee is on a continuing basis through February 28, 2026; however, the DAC-IPAD is subject to renewal every two years.
11. Termination: In accordance with sections 546(e)(1) and (2) of the FY 2015 NDAA, as modified by section 535 of the FY 2020 NDAA, the DAC-IPAD will terminate on February 28, 2026, ten years after the DAC-IPAD was established, unless the DoD renews the DAC-IPAD in accordance with DoD policy and procedures.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD will be composed of no more than 20 members who must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as DAC-IPAD members.

Authority to invite or appoint individuals to serve on the DAC-IPAD rests solely with the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time. DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. DAC-IPAD members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD Appointing Authority shall appoint the DAC-IPAD's leadership from among the membership previously appointed to serve on the DAC-IPAD in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, which shall not exceed the member's approved appointment.

All members of the DAC-IPAD are expected to exercise their best judgment on behalf of the DoD, without representing any particular point of view and to discuss and deliberate in a manner that is free from conflicts of interest. Except for reimbursement of official DAC-IPAD related travel and per diem, DAC-IPAD members serve without compensation.

13. Subcommittees: The DoD, when necessary and consistent with the DAC-IPAD's mission and DoD policy and procedures, may establish subcommittees, task forces, or working groups ("subcommittees") to support the DAC-IPAD. Establishment of subcommittees shall be based upon a written determination, including terms of reference (ToR), by the DoD Appointing Authority or the GC DoD.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and DoD policy and procedures. If a subcommittee's duration exceeds that of the DAC-IPAD, and the DoD does not renew the DAC-IPAD, then the subcommittee terminates when the DAC-IPAD does.

Appendix B. DAC-IPAD Charter and Membership Balance Plan

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

Subcommittees shall not work independently of the DAC-IPAD and shall report all of their recommendations and advice solely to the DAC-IPAD for its thorough deliberation and discussion at a properly noticed and open meeting, subject to the Sunshine Act. Subcommittees have no authority to make decisions and recommendations, orally or in writing, on behalf of the DAC-IPAD. Neither the subcommittee nor any of its members may provide updates or report directly to the DoD or to any Federal officer or employee, whether orally or in writing, on behalf of the DAC-IPAD. If a majority of DAC-IPAD members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same FACA notice and openness requirements governing the DAC-IPAD's operations.

Individual appointments to serve on DAC-IPAD subcommittees, which may be no more than 15 members, shall be approved by the DoD Appointing Authority for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on a subcommittee without prior approval from the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members. The DoD Appointing Authority shall appoint subcommittee leadership from among the membership previously appointed to serve on a subcommittee in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, not to exceed the member's approved appointment.

All members of a subcommittee are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner free from conflicts of interest. Except for reimbursement for official travel and per diem related to the DAC-IPAD or its subcommittees, subcommittee members shall serve without compensation.

14. Recordkeeping: The records of the DAC-IPAD and its subcommittees shall be managed in accordance with General Records Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policy and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. § 552).
15. Filing Date: February 16, 2022

Appendix B. DAC-IPAD Charter and Membership Balance Plan

Membership Balance Plan Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“the FY 2015 NDAA”) (Public Law 113-291), as modified by Section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix.) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), as a non-discretionary advisory committee.
2. Mission/Function: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations 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 ongoing review of cases.

Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, shall submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA.

Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- 1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
- 2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- 3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

The term “covered individual” means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term ‘suspected of,’ when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

3. Membership Criteria and Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD shall be composed of no more than 20 members. DAC-IPAD members must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual

Appendix B. DAC-IPAD Charter and Membership Balance Plan

Membership Balance Plan Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve on the DAC-IPAD or any of its subcommittees.

The DoD, in evaluating potential candidates for the DAC-IPAD, considers the candidate's educational, experiential, and professional credentials with respect to the subject matters anticipated to be tasked to the DAC-IPAD. The DoD has found that viewing the complex issues facing the DoD through a multidisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which subsequent policy decisions are based.

Membership shall be fairly balanced to provide variety of background, experience, and thought in support of the DAC-IPAD's mission. The DAC-IPAD's membership balance is not static and the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") may change the membership based upon work assigned to the DAC-IPAD by the DoD Appointing Authority or the GC DoD, as the DAC-IPAD's Sponsor.

DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD, unless otherwise provided for by statute or Presidential directive, does not use representative members on DoD Federal advisory committees. Each member, based upon their own individual experiences, exercises their own best judgment concerning matters before the DAC-IPAD, does not represent any particular point of view, and discusses and deliberates in a manner free from conflicts of interest.

4. Other Balance Factors: N/A
5. Candidate Identification Process: In accordance with DoD policy, the DoD GC shall nominate to the DoD Appointing Authority a slate of highly qualified individuals who represent a diverse and inclusive range of viewpoints, backgrounds, and experiences to serve as Committee members. To identify potential candidates, the DoD GC will request recommendations from senior career and political officials within the DoD. The DoD, in selecting potential candidates for the DAC-IPAD, reviews the expertise and professional credentials of individuals with extensive professional experience in the areas described in section 3 above.

Once potential candidates are identified, the DAC-IPAD Designated Federal Officer (DFO), in consultation with other senior DoD officers and employees, reviews the credentials of each individual and narrows the list of candidates for consideration by the GC DoD. In reviewing the list of potential candidates for nomination to the DoD Appointing Authority, the GC DoD strives to provide a membership that delivers diversity of background, experience, and thought in support the DAC-IPAD mission.

Before formal nomination to the DoD Appointing Authority, the list of candidates is reviewed by the DoD Office of General Counsel and the DoD Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the DAC-IPAD's statute, charter, and membership balance plan. Following this review, the DoD ACMO prepares the appropriate DoD Appointment Approval Instrument for the Director of Administration and Management, who submits it to the DoD Appointing Authority for approval.

Appendix B. DAC-IPAD Charter and Membership Balance Plan

Membership Balance Plan Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Following approval by the by the DoD Appointing Authority, the candidates must complete appointment paperwork and training, to include any financial disclosure or other ethics requirements stipulated by the

Office of Government Ethics for advisory committee members. All DAC-IPAD members are appointed for a term of service of one-to-four years with annual renewals. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, including its subcommittees. Membership vacancies for the DAC-IPAD will be filled in the same manner as described above.

6. Subcommittee Balance: The DoD, as necessary and consistent with the DAC-IPAD's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the DAC-IPAD ("subcommittees").

Individuals considered for appointment to any DAC-IPAD subcommittee may come from members of the DAC-IPAD itself or from new nominees, as recommended by the GC DoD and based upon the subject matters under consideration. Pursuant to DoD policy and procedures, the GC DoD shall follow the same procedures described above in section 5 to nominate new members for appointment.

Subcommittee members shall be appointed for a term of service of one-to-four years, with annual renewals. However, no member will serve more than two consecutive terms of service on a subcommittee unless previously approved by the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the DAC-IPAD, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: February 16, 2022

Appendix C. Memorandum Relating to DAC-IPAD Zero-Based Review and Interim Reports



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

11/30/21

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP COMMANDERS OF THE COMBATANT COMMANDS DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: DoD Advisory Committees — Zero-Based Review

Advisory committees have and will continue to provide an important role in shaping public policy within DoD. That said, our stewardship responsibilities require that we continually assess to ensure each advisory committee provides appropriate value today and in the future, as times and requirements change.

I am aware of and appreciate earlier review efforts to reshape how we use advisory committees and consider the tangible benefits they bring to the Department. Nevertheless, I am directing a zero-based review of all DoD advisory committees, to include any advisory committee that is not subject to the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix). This review will, by definition and intent, focus our advisory committee efforts to align with our most pressing strategic priorities and the National Defense Strategy.

The Interim Director of Administration and Management (DA&M), in consultation with the Acting General Counsel of the DoD (GC DoD) will lead this review, and I am asking for your personal attention in this effort. As an interim step, I am directing the immediate suspension of all advisory committee operations until the review is completed unless otherwise directed by myself or the Deputy Secretary of Defense. In addition, the DA&M, who exercises the Secretary of Defense statutory and regulatory authorities pertaining to the FACA, will not, for the duration of the review, establish or renew a DoD advisory committee unless authorized by myself or the Deputy Secretary of Defense.

I also direct, no later than February 16, 2021, the conclusion of service for all DoD advisory committee and subcommittee members currently serving on DoD advisory committees where the DoD approving authority is the Secretary of Defense or where statute authorizes another DoD civilian officer or employee, or Active Duty member of the Armed Services to act as the DoD approving authority. Each Component head ("DoD Sponsor") that sponsors a DoD advisory committee subject to this review, will ensure that appropriate letters are sent no later than February 26, 2021 to each advisory committee or subcommittee member thanking them for their service. The Interim DA&M will provide each component head the required letter that must be signed by the DoD Sponsor.

A list of the affected DoD advisory committees, to include those not subject to the FACA, is attached. Please note the only advisory committees and/or committee members not subject to the zero-based review or conclusion of service are described in the attachment. In addition, each Component head, no later than February 28, 2021, will certify to the Interim DA&M that no other advisory committee has been established and utilized within the Component where at least one advisory committee member is not a full-time or permanent part-

Appendix C. Memorandum Relating to DAC-IPAD Zero-Based Review and Interim Reports

time Federal civilian officer or employee, or Active Duty member of the uniformed services. If the Component established or utilized such an advisory committee, then it will be suspended until the Interim DA&M, in consultation with the Acting GC DoD, determines the advisory committee's status. The Interim DA&M will notify me no later than March 15, 2021 of any such identified advisory committee and its status.

With regard to the zero-based review, each DoD Sponsor will conduct an in-depth business case of every sponsored advisory committee, supported by fact-based evidence for continued utilization of the advisory committee. Each business case should consider, but is not limited to: review of the committee's mission and function as it relates to DoD strategic priorities and National Defense Strategy; potential functional realignments to create a single cross-functional advisory committee; and potential legislative changes to non-discretionary advisory committees to properly align them with our strategic priorities. Each DoD Sponsor will provide his or her business case(s) to the Interim DA&M based on the tier-review schedule described in the attachment.

The Interim DA&M, in consultation with the Acting GC DoD and following the tier-review schedule, will review each DoD Sponsor's business case and make final recommendations to me on each DoD advisory committee, to include retention, realignment, termination, changes to mission or functions, membership balance, membership size, and possible legislative changes to non-discretionary advisory committees. Following appropriate discussions, I will take action on the Interim DA&M recommendations.

This process shall ensure that advisory committee and subcommittee member appointments comply with all applicable federal statutes and regulations, to include DoD policies and procedures. DoD Sponsors, in consultation with the Special Assistant to the Secretary of Defense for White House Liaison, will develop potential member candidates that conform to the advisory committee's membership balance plan or, in the case of those not subject to the FACA, statutory requirements. All member and subcommittee member appointments will be approved by me or the Deputy Secretary of Defense using the DoD Appointment Approval Instrument prepared by the DoD Advisory Committee Management Officer, in consultation with the Office of the GC DoD. In addition, all committee and subcommittee work will be based on written terms of reference unless otherwise provided for by statute or Presidential directive. No committee or subcommittee member will perform any work until properly appointed, unless they have an active appointment.



Attachment:
As stated

Appendix C. Memorandum Relating to DAC-IPAD Zero-Based Review and Interim Reports



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

The Honorable Adam Smith
Chairman
Committee on Armed Services
U. S. House of Representatives
Washington, DC 20515

26 MAR


Dear Chairman Smith:

I am writing to provide you with an interim report in response to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended, which requires an annual report by the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). The DAC-IPAD is required to submit a report describing the results of the Committee's activities over the previous 12 months no later than March 30 of each year.

On January 18, 2021, the four-year term appointments of all 15 members of the DAC-IPAD expired. On January 30, 2021, the Secretary of Defense directed a Department-wide zero-based review of all Department of Defense advisory committees. The Secretary directed that the DAC-IPAD's zero-based review proceed on an accelerated timeline. Once this review is complete and the DAC-IPAD is reconstituted with duly appointed members, the committee can resume its important work, including the submission of its Fifth Annual Report. If the report is not submitted by July 31, 2021, the Department will provide another interim response.

I am sending a similar letter to the Chairman of the Senate Armed Services Committee.

Sincerely,


for Beth George
Acting General Counsel

cc:
The Honorable Mike D. Rogers
Ranking Member

Appendix C. Memorandum Relating to DAC-IPAD Zero-Based Review and Interim Reports



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

26 MAR

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Chairman Reed:

I am writing to provide you with an interim report in response to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended, which requires an annual report by the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). The DAC-IPAD is required to submit a report describing the results of the Committee's activities over the previous 12 months no later than March 30 of each year.

On January 18, 2021, the four-year term appointments of all 15 members of the DAC-IPAD expired. On January 30, 2021, the Secretary of Defense directed a Department-wide zero-based review of all Department of Defense advisory committees. The Secretary directed that the DAC-IPAD's zero-based review proceed on an accelerated timeline. Once this review is complete and the DAC-IPAD is reconstituted with duly appointed members, the committee can resume its important work, including the submission of its Fifth Annual Report. If the report is not submitted by July 31, 2021, the Department will provide another interim response.

I am sending a similar letter to the Chairman of the House Armed Services Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth George".

Beth George
Acting General Counsel

cc:
The Honorable James Inhofe
Ranking Member



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

AUG 05 2021

The Honorable Adam Smith
Chairman
Committee on Armed Services
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to provide you with an interim report in response to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended, which requires an annual report by the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). The DAC-IPAD is required to submit a report describing the results of its activities over the previous 12 months no later than March 30 of each year. The Department of Defense previously submitted an interim response on March 26, 2021.

On January 18, 2021, the four-year term appointments of all 15 members of the DAC-IPAD expired. On January 30, 2021, the Secretary of Defense directed a Department-wide zero-based review of all Department of Defense advisory committees. The Secretary directed that the DAC-IPAD's zero-based review proceed on an accelerated timeline. The Secretary has approved the DAC-IPAD's reconstitution and the member-selection process is underway. Until those members are appointed and formally enter government service, the DAC-IPAD will be unable to fulfill the statutory reporting requirement.

I am sending a similar letter to the Chairman of the Senate Armed Services Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline D. Krass".

Caroline D. Krass
General Counsel

cc:
The Honorable Mike D. Rogers
Ranking Member



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

AUG 05 2021

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to provide you with an interim report in response to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended, which requires an annual report by the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). The DAC-IPAD is required to submit a report describing the results of its activities over the previous 12 months no later than March 30 of each year. The Department of Defense previously submitted an interim response on March 26, 2021.

On January 18, 2021, the four-year term appointments of all 15 members of the DAC-IPAD expired. On January 30, 2021, the Secretary of Defense directed a Department-wide zero-based review of all Department of Defense advisory committees. The Secretary directed that the DAC-IPAD's zero-based review proceed on an accelerated timeline. The Secretary has approved the DAC-IPAD's reconstitution and the member-selection process is underway. Until those members are appointed and formally enter government service, the DAC-IPAD will be unable to fulfill the statutory reporting requirement.

I am sending a similar letter to the Chairman of the House Armed Services Committee.

Sincerely,

Caroline D. Krass
General Counsel

cc:
The Honorable James M. Inhofe
Ranking Member

Appendix D. DAC-IPAD Recommendations to Date

DAC-IPAD Recommendation 1 – (March 2018) The Secretary of Defense, the Secretary of Homeland Security, and the Services take action to dispel the misperception of widespread abuse of the expedited transfer policy, including addressing the issue in the training of all military personnel.

DAC-IPAD Recommendation 2 – (March 2018) The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it.

DAC-IPAD Recommendation 3 – (March 2018) The DoD-level and Coast Guard equivalent Family Advocacy Program (FAP) policy include provisions for expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD Sexual Assault Prevention and Response (SAPR) policy and consistent with 10 U.S.C. § 673.

DAC-IPAD Recommendation 4 – (March 2018) The DoD-level military personnel assignments policy (DoD Instruction 1315.18) and Coast Guard equivalent include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.

DAC-IPAD Recommendation 5 – (March 2019) In developing a uniform command action form in accordance with section 535 of the FY19 National Defense Authorization Act (NDAA), the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.

DAC-IPAD Recommendation 6 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.

DAC-IPAD Recommendation 7 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.

DAC-IPAD Recommendation 8 – (March 2019) The uniform standards and criteria developed to implement Article 140a, Uniform Code of Military Justice (UCMJ), should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial.

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- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD.
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD.
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible.
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

DAC-IPAD Recommendation 9 – (March 2019) The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

DAC-IPAD Recommendation 10 – (March 2019) The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

DAC-IPAD Recommendation 11 – (March 2019) Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization (MCIO) concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and sex;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

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DAC-IPAD Recommendation 12 – (March 2019) The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that:

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

DAC-IPAD Recommendation 13 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:

- a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim's commander.
- b. The victim's commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject's identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care.
- c. A sexual assault response coordinator, victim advocate, or special victims' counsel (SVC) / victims' legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report.

DAC-IPAD Recommendation 14 – (March 2019) The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group's goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim's wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:

- a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation.
- b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances.
- c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO's decision to honor the victim's request.

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- d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy.
- e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.

DAC-IPAD Recommendation 15 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:

- a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests.
- b. The single, overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault).
- c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: "any evidence that the victim's report is not credible."

DAC-IPAD Recommendation 16 – (March 2019) Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.

DAC-IPAD Recommendation 17 – (March 2019) The Services track and report the following data in order to best evaluate the expedited transfer program:

- a. Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final.
- b. Data on the number of accused transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final.
- c. Data on victim participation in investigation/prosecution before and after an expedited transfer.
- d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program.
- e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers.
- f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.

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- g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- h. Data on victim satisfaction with the expedited transfer program.
- i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault.

DAC-IPAD Recommendation 18 – (March 2019) The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.

DAC-IPAD Recommendation 19 – (March 2020) The Department of Defense should publish a memorandum outlining sufficiently specific data collection requirements to ensure that the Military Services use uniform methods, definitions, and timelines when reporting data on collateral misconduct (or, where appropriate, the Department should submit a legislative proposal to Congress to amend section 547 [of the FY19 NDAA] by clarifying certain methods, definitions, and timelines). The methodology and definitions should incorporate the following principles:

a. Definition of “sexual offense”:

- The definition of “sexual offense” for purposes of reporting collateral misconduct should include
 - Both penetrative and non-penetrative violations of Article 120, UCMJ (either the current or a prior version, whichever is applicable at the time of the offense);
 - Violations of Article 125, UCMJ, for allegations of sodomy occurring prior to the 2019 version of the UCMJ; and
 - Attempts, conspiracies, and solicitations of all of the above.
- The definition of sexual offense should not include violations of Article 120b, UCMJ (Rape and sexual assault of a child); Article 120c, UCMJ (Other sexual misconduct); Article 130, UCMJ (Stalking); or previous versions of those statutory provisions.

b. Definition of “collateral misconduct”:

- Current DoD policy defines “collateral misconduct” as “[v]ictim misconduct that might be in time, place, or circumstance associated with the victim’s sexual offense incident.”¹
- However, a more specific definition of collateral misconduct is necessary for purposes of the section 547 reporting requirement. That recommended definition should read as follows: “Any misconduct by the victim that is potentially punishable under the UCMJ, committed close in time to or during the sexual offense, and directly related to the incident that formed the basis of the sexual offense allegation. The collateral misconduct must have been discovered as a direct result of the report of the sexual offense and/or the ensuing investigation into the sexual offense.”

¹ Dep’t of Def. Instr. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Glossary (March 28, 2013, Incorporating Change 3, May 24, 2017), 117.

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- Collateral misconduct includes (but is not limited to) the following situations:
 - The victim was in an unprofessional or adulterous relationship with the accused at the time of the assault.²
 - The victim was drinking underage or using illicit substances at the time of the assault.
 - The victim was out past curfew, was at an off-limits establishment, or was violating barracks/dormitory/berthing policy at the time of the assault.
- To ensure consistency across the Military Services, collateral misconduct, for purposes of this report, should *not* include the following situations (the list is not exhaustive):
 - The victim is under investigation or receiving disciplinary action for misconduct and subsequently makes a report of a sexual offense.
 - The victim used illicit substances at some time after the assault, even if the use may be attributed to coping with trauma.
 - The victim engaged in misconduct after reporting the sexual offense.
 - The victim had previously engaged in an unprofessional or adulterous relationship with the subject, but had terminated the relationship prior to the assault.
 - The victim engaged in misconduct that is not close in time to the sexual offense, even if it was reasonably foreseeable that such misconduct would be discovered during the course of the investigation (such as the victim engaging in an adulterous relationship with an individual other than the subject).
 - The victim is suspected of making a false allegation of a sexual offense.
 - The victim engaged in misconduct during the reporting or investigation of the sexual offense (such as making false official statements during the course of the investigation).

c. Methodology for identifying sexual offense cases and victims:

- To identify sexual offense cases and victims, all closed cases from the relevant time frame that list at least one of the above included sexual offenses as a crime that was investigated should be collected from the MCIOs.
- A case is labeled “closed” after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision, any action taken by the commander has been completed, and documentation of the outcome has been provided to the MCIO.³
- Each Military Service should identify all of its Service member victims from all closed cases from the relevant time frame, even if the case was investigated by another Military Service’s MCIO.

d. Time frame for collection of data:

- The Military Services should report collateral misconduct data for the two most recent fiscal years preceding the report due date for which data are available. The data should be provided separately for each fiscal year and should include only closed cases as defined above. For example, the Department’s report due September 30, 2021, should include data for closed cases from fiscal years 2019 and 2020.

² For purposes of this report, an “unprofessional relationship” is a relationship between the victim and accused that violated law, regulation, or policy in place at the time of the assault.

³ This definition of “closed case” mirrors the definition used by the DAC-IPAD’s Case Review Working Group.

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e. Definition of “covered individual”:

- Section 547 of the FY19 NDAA defines “covered individual” as “an individual who is identified as a victim of a sexual offense in the case files of a military criminal investigative organization.” This definition should be clarified as follows: “an individual identified in the case files of an MCIO as a victim of a sexual offense while in title 10 status.”
- For the purposes of this study, victims are those identified in cases closed during the applicable time frame.

f. Replacement of the term “accused”:

- Section 547 of the FY19 NDAA uses the phrase “accused of collateral misconduct.” To more accurately capture the frequency with which collateral misconduct is occurring, the term “accused of” should be replaced with the term “suspected of,” defined as follows: instances in which the MCIO’s investigation reveals facts and circumstances that would lead a reasonable person to believe that the victim committed an offense under the UCMJ.⁴
- Examples of a victim suspected of collateral misconduct include (but are not limited to) the following situations:
 - The victim disclosed engaging in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - Another witness in the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - The subject of the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - In the course of the sexual offense investigation, an analysis of the victim’s phone, urine, or blood reveals evidence that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- This definition of “suspected of” does not require preferral of charges, a formal investigation, or disciplinary action against the victim for the collateral misconduct. However, if any of those actions has occurred regarding collateral misconduct, or if there is evidence of collateral misconduct from other sources available, such victims should also be categorized as suspected of collateral misconduct even if the MCIO case file does not contain the evidence of such misconduct.
 - For example, if in pretrial interviews the victim disclosed collateral misconduct, such a victim would be counted as suspected of collateral misconduct.

g. Definition of “adverse action”:

- The term “adverse action” applies to an officially documented command action that has been initiated against the victim in response to the collateral misconduct.
- Adverse actions required to be documented in collateral misconduct reports are limited to the following:
 - Letter of reprimand (or Military Service equivalent) or written record of individual counseling in official personnel file;
 - Imposition of nonjudicial punishment;
 - Preferral of charges; or
 - Initiation of an involuntary administrative separation proceeding.

⁴ Cf. *United States v. Cohen*, 63 M.J. 45, 50 (C.A.A.F. 2006) (stating that determining whether a person is a “suspect” entitled to warnings under Article 31(b) prior to interrogation “is an objective question that is answered by considering all the facts and circumstances at the time of the interview to determine whether the military questioner believed or reasonably should have believed that the servicemember committed an offense”) (internal citations omitted).

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- The Committee recommends limiting the definition of adverse action to the above list for purposes of this reporting requirement to ensure consistency and accuracy across the Military Services in reporting and to avoid excessive infringement on victim privacy. The Committee recognizes the existence of other adverse administrative proceedings or actions that could lead to loss of special or incentive pay, administrative reduction of grade, loss of security clearance, bar to reenlistment, adverse performance evaluation (or Military Service equivalent), or reclassification.

h. Methodology for counting “number of instances”:

- Cases in which a victim is suspected of more than one type of collateral misconduct should be counted only once; where collateral misconduct is reported by type, it should be counted under the most serious type of potential misconduct (determined by UCMJ maximum punishment) or, if the victim received adverse action, under the most serious collateral misconduct identified in the adverse action.
- For cases in which a victim received more than one type of adverse action identified above, such as nonjudicial punishment and administrative separation, reporting should include both types of adverse action.

DAC-IPAD Recommendation 20 – (March 2020) Victims suspected of making false allegations of a sexual offense should not be counted as suspected of collateral misconduct.

DAC-IPAD Recommendation 21 – (March 2020) For purposes of the third statistical data element required by section 547, the Department of Defense should report not only the percentage of all Service member victims who are suspected of collateral misconduct but also the percentage of the Service member victims who are suspected of collateral misconduct and then receive an adverse action for the misconduct. These two sets of statistics would better inform policymakers about the frequency with which collateral misconduct is occurring and the likelihood of a victim’s receiving an adverse action for collateral misconduct once they are suspected of such misconduct.

DAC-IPAD Recommendation 22 – (March 2020) The Department of Defense should include in its report data on the number of collateral offenses that victims were suspected of by type of offense (using the methodology specified in section h of Recommendation 19) and the number and type of adverse actions taken for each of the offenses, if any. This additional information would aid policymakers in fully understanding and analyzing the issue of collateral misconduct and in preparing training and prevention programs.

DAC-IPAD Recommendation 23 – (March 2020) To facilitate production of the future collateral misconduct reports required by section 547, the Military Services should employ standardized internal documentation of sexual offense cases involving Service member victims suspected of engaging in collateral misconduct as defined for purposes of this reporting requirement.

DAC-IPAD Recommendation 24 – (June 2020) Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) enhance funding and training for SVCs/VLCs appointed to represent child victims, including authorization to hire civilian highly qualified experts (HQEs) with experience and expertise in representing child victims, including expertise in child development, within the SVC/VLC Programs.

DAC-IPAD Recommendation 25 – (June 2020) In conjunction with Recommendation 24, the Judge Advocates General of the Military Services including the Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps develop a cadre of identifiable SVCs/VLCs who have specialized training, experience, and expertise in representing child victims of sex-related offenses by utilizing military personnel mechanisms such as Additional Skill Identifiers.

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DAC-IPAD Recommendation 26 – (June 2020) The Department of Defense Office of the Inspector General and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) assess whether the MCIOs and FAPs currently are providing accurate and timely notification to child victims of their right to request SVC/VLC representation as soon as an allegation of a sexual offense is reported, and if necessary take corrective action.

DAC-IPAD Recommendation 27 – (June 2020) Congress amend 10 U.S.C. § 1044e to expand SVC/VLC eligibility to any child victim of a sex-related offense committed by an individual subject to the UCMJ.

DAC-IPAD Recommendation 28 – (June 2020) Congress amend the UCMJ to authorize the military judge to direct the appointment of an SVC/VLC for a child victim of a sex-related offense and/or of an independent best interest advocate to advise the military judge when they find that the child's interests are not otherwise adequately protected.

DAC-IPAD Recommendation 29 – (June 2020) The Secretary of Defense and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) develop a child victim advocate capability within each of the Services to support certain child victims of sexual offenses. The child victim advocate should reside within the SVC/VLC Programs and work as part of the SVC/VLC team in order to ensure that the child's legal interests are fully represented and protected. The child victim advocate should have expertise in social work, child development, and family dynamics.

DAC-IPAD Recommendation 30 – (June 2020) Congress amend Article 6b, UCMJ, to require that any representative who assumes the rights of the victim shall act to protect the victim's interests; any such representative should be appointed as early as possible in the military justice process.

DAC-IPAD Recommendation 31 – (June 2020) Provided that the Department of Defense adopts and implements DAC-IPAD Recommendations 24–30, it is not advisable or necessary to establish a military guardian ad litem program within the Department of Defense for child victims of alleged sex-related offenses in courts-martial.

DAC-IPAD Recommendation 32 – (October 2020) Congress amend Article 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.

DAC-IPAD Recommendation 33 – (December 2020) The Secretary of Defense designate the military personnel system as the primary data system in the DoD for the collection of demographic information such as race and ethnicity. All other DoD 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.

DAC-IPAD Recommendation 34 – (December 2020) 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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DAC-IPAD Recommendation 35 – (December 2020) 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.

DAC-IPAD Recommendation 36 – (December 2020) 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.

DAC-IPAD Recommendation 37 – (December 2020) 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.

DAC-IPAD Recommendation 38 – (December 2020) 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.

DAC-IPAD Recommendation 39 – (December 2020) Once the Department of Defense has implemented 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.

DAC-IPAD Recommendation 40 – (December 2020) 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.

Appendix E. DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters

Meeting Date and Location	Topics and Presenters
<p>DAC-IPAD Preparatory Session</p> <p>May 14, 2020</p> <p>Teleconference</p>	<p>Committee review of the draft DAC-IPAD <i>Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims of an Alleged Sex-Related Offense in the Military</i></p>
<p>DAC-IPAD PUBLIC MEETING 17</p> <p>May 15, 2020</p> <p>Teleconference</p>	<p>DAC-IPAD Professional Staff presentation to Committee, Committee deliberations, and Committee vote on the final DAC-IPAD <i>Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims of an Alleged Sex-Related Offense in the Military</i></p> <p>Committee deliberations and Committee vote on the DAC-IPAD response to the Department of Defense Sexual Assault Prevention and Response Office <i>Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims</i></p> <p>Policy Subcommittee, Case Review Subcommittee, and Data Subcommittee update</p>
<p>DAC-IPAD Preparatory Session</p> <p>August 20, 2020</p> <p>Teleconference</p>	<p>DAC-IPAD Professional Staff presentation to Committee on the FY20 NDAA–required study on racial and ethnic disparities within the military justice system</p> <p>Committee review of the draft DAC-IPAD <i>Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p>
<p>DAC-IPAD PUBLIC MEETING 18</p> <p>August 21, 2020</p> <p>Teleconference</p>	<p>DAC-IPAD Professional Staff presentation to Committee, Committee deliberations, and Committee vote on the final DAC-IPAD <i>Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p> <p>DAC-IPAD Professional Staff presentation to Committee on the FY20 NDAA–required study on racial and ethnic disparities within the military justice system</p> <p>Policy Subcommittee Update</p>

Appendix E. DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters

Meeting Date and Location	Topics and Presenters
<p>DAC-IPAD PUBLIC MEETING 19</p> <p>October 23, 2020</p> <p>Teleconference</p>	<p>DAC-IPAD Professional Staff presentation to Committee on the background, data results, and contents of the draft DAC-IPAD <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i></p>
<p>DAC-IPAD Preparatory Session</p> <p>November 5, 2020</p> <p>Teleconference</p>	<p>Committee review of the draft DAC-IPAD <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i></p>
<p>DAC-IPAD PUBLIC MEETING 20</p> <p>November 6, 2020</p> <p>Teleconference</p>	<p>Committee deliberations on the draft DAC-IPAD <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i></p> <p>DAC-IPAD Professional Staff presentation to Committee on restorative justice and victim impact statements at sentencing followed by Committee discussion as requested on the Joint Explanatory Statement of the FY20 NDAA</p> <p>Policy Subcommittee presentation on interviews with civilian prosecutors and defense counsel and status update of the Subcommittee timeline for review of military pretrial processes</p> <p>Professional Staff presentation to Committee on the draft DAC-IPAD Bylaws</p>
<p>DAC-IPAD PUBLIC MEETING 21</p> <p>December 4, 2020</p> <p>Teleconference</p>	<p>Committee vote on the final DAC-IPAD <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i></p>

Appendix E. DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters

Meeting Date and Location	Topics and Presenters
<p>Case Review Subcommittee Preparatory Session 19</p> <p>May 14, 2020</p> <p>Teleconference</p>	<p>Case Review Subcommittee discussion on proposed findings, observations, and recommendations from the investigative case file reviews for military adult penetrative sexual offense cases closed in fiscal year 2017</p>
<p>Case Review Subcommittee Preparatory Session 20</p> <p>May 22, 2020</p> <p>Teleconference</p>	<p>Case Review Subcommittee discussion on the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p>
<p>Case Review Subcommittee Preparatory Session 21</p> <p>May 29, 2020</p> <p>Teleconference</p>	<p>Case Review Subcommittee discussion on the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p>
<p>Case Review Subcommittee Preparatory Session 22</p> <p>June 26, 2020</p> <p>Teleconference</p>	<p>Case Review Subcommittee discussion on the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p>

Appendix E. DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters

Meeting Date and Location	Topics and Presenters
Case Review Subcommittee Preparatory Session 23 July 10, 2020 Teleconference	Case Review Subcommittee discussion on data and the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i> DAC-IPAD criminologist presentation to Subcommittee on the draft <i>Investigation of Adult Penetrative Sexual Offense Cases Closed in the Military Services During Fiscal Year 2017</i>
Case Review Subcommittee Preparatory Session 24 July 17, 2020 Teleconference	Case Review Subcommittee discussion on the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i>
Case Review Subcommittee Preparatory Session 25 July 31, 2020 Teleconference	Case Review Subcommittee final discussion on the draft <i>DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i>
Data Subcommittee Preparatory Session 5 September 28, 2020 Teleconference	Data Subcommittee discussion on the data section and development of the <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i> as required by section 540I of the National Defense Authorization Act for Fiscal Year 2020
Data Subcommittee Preparatory Session 6 October 30, 2020 Teleconference	Data Subcommittee discussion on the draft <i>Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military</i> as required by section 540I of the National Defense Authorization Act for Fiscal Year 2020

Appendix E. DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters

Meeting Date and Location	Topics and Presenters
<p>Policy Subcommittee Preparatory Session 4</p> <p>May 14, 2020</p> <p>Teleconference</p>	<p>Policy Subcommittee discussion on interviewing federal and state trial practitioners; the Article 32, UCMJ, data from fiscal years 2014, 2017, and 2018; and tasks for future Policy Subcommittee meetings in anticipation of releasing a report on pretrial processes</p>
<p>Policy Subcommittee Preparatory Session 5</p> <p>August 20, 2020</p> <p>Teleconference</p>	<p>Policy Subcommittee discussion on the interviews of federal and state trial practitioners; materials and information gathered to date on Article 32, UCMJ; and the way ahead for future Policy Subcommittee meetings</p>
<p>Policy Subcommittee Preparatory Session 6</p> <p>October 16, 2020</p> <p>Teleconference</p>	<p>Policy Subcommittee discussion on preliminary assessments of the issues related to Articles 32, 33, and 34, UCMJ, and identified follow-up issues</p>
<p>Policy Subcommittee Preparatory Session 7</p> <p>December 3, 2020</p> <p>Teleconference</p>	<p>Policy Subcommittee received testimony from Preliminary Hearing Officers and Staff Judge Advocates from across the military services in order to assist the Committee in evaluating potential reforms to Articles 32, 33, and 34, UCMJ</p> <p>Article 32, UCMJ, Preliminary Hearing Officer panel:</p> <ul style="list-style-type: none"> – <i>Commander Andrea Lockhart, U.S. Navy</i> – <i>Lieutenant Colonel Troy Campbell, U.S. Marine Corps</i> – <i>Lieutenant Colonel Matthew Talcott, U.S. Air Force</i> – <i>Major Katherine DePaul, U.S. Army</i> – <i>Commander Kismet Wunder, U.S. Coast Guard</i> <p>Staff Judge Advocate panel:</p> <ul style="list-style-type: none"> – <i>Captain Brian Ellis, U.S. Navy</i> – <i>Colonel Peter Rubin, U.S. Marine Corps</i> – <i>Colonel Shannon Sherwin, U.S. Air Force</i> – <i>Colonel Patrick Pflaum, U.S. Army</i> – <i>Captain Michael Fazio, U.S. Coast Guard</i>

Appendix F. Acronyms and Abbreviations

CRSC	Case Review Subcommittee
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DoD	Department of Defense
DoD GC	Department of Defense General Counsel
DSC	Data Subcommittee
FACA	Federal Advisory Committee Act of 1972
FY	fiscal year
HASC	Armed Services Committee of the U.S. House of Representatives
JPP	Judicial Proceedings Since Fiscal Year 2012 Amendments Panel
NDAA	National Defense Authorization Act
PSC	Policy Subcommittee
SAPRO	Sexual Assault Prevention and Response Office
SVC	special victims' counsel
UCMJ	Uniform Code of Military Justice
VLC	victims' legal counsel

1. U.S. Constitution

2. Legislative Sources

a. Enacted Statutes

5 U.S.C. App. §§ 1–16 (Federal Advisory Committee Act)

10 U.S.C. §§ 801–946a (Uniform Code of Military Justice) (2019)

Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014)

John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018)

National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1198 (2019)

b. Congressional Reports

Report 116-120 of the House Committee on Armed Services on H.R. 2500

3. Meetings and Hearings

Transcript of DAC-IPAD Public Meeting (Jan. 19, 2017)

Transcript of DAC-IPAD Public Meeting (Apr. 28, 2017)

Transcript of DAC-IPAD Public Meeting (July 21, 2017)

Transcript of DAC-IPAD Public Meeting (Oct. 19, 2017)

Transcript of DAC-IPAD Public Meeting (Oct. 20, 2017)

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

DAC-IPAD, *Initial Report* (Mar. 2017)

DAC-IPAD, *Annual Report* (Mar. 2018)

DAC-IPAD, *Third Annual Report* (Mar. 2019)

DAC-IPAD, *Court-Martial Adjudication Data Report* (Nov. 2019)

DAC-IPAD, *Fourth Annual Report* (Mar. 2020)

DAC-IPAD, *Report on the Advisability and Feasibility of Establishing a Guardian ad Litem Appointment Process for Child Victims of an Alleged Sex-Related Offense in the Military* (June 2020)

DAC-IPAD, *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017* (Oct. 2020)

DAC-IPAD, *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military* (Dec. 2020)

5. Letters, Memoranda, and Other Media

Letter from DAC-IPAD Chair Martha S. Bashford to the Secretary of Defense Regarding Article 140a, Uniform Code of Military Justice (Sept. 13, 2018)

Letter from Paul S. Koffsky, Senior Deputy General Counsel/Deputy General Counsel (Personnel & Health Policy), to DAC-IPAD Chair Martha S. Bashford (Jan. 23, 2019)

Letter from DAC-IPAD Chair Martha S. Bashford to the Secretary of Defense Regarding Collateral Misconduct Study (Sept. 16, 2019)

Memorandum from Secretary of Defense to Senior Pentagon Leadership Regarding Department of Defense Advisory Committees – Zero-Based Review (Jan. 30, 2021)

Letter from Acting General Counsel of the Department of Defense to the Honorable Adam Smith, Chairman of the Committee on Armed Services of the House of Representatives (Mar. 26, 2021)

Letter from Acting General Counsel of the Department of Defense to the Honorable Jack Reed, Chairman of the Committee on Armed Services of the Senate (Mar. 26, 2021)

Letter from General Counsel of the Department of Defense to the Honorable Adam Smith, Chairman of the Committee on Armed Services of the House of Representatives (Aug. 5, 2021)

Letter from General Counsel of the Department of Defense to the Honorable Jack Reed, Chairman of the Committee on Armed Services of the Senate (Aug. 5, 2021)

Appendix H. DAC-IPAD Professional Staff

PROFESSIONAL STAFF

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