

**DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES (DAC-IPAD)
PUBLIC MEETING AGENDA**

**January 19, 2017
Holiday Inn Arlington at Ballston, Arlington, Virginia**

- 8:30 - 10:00** **Administrative Work** (*41 C.F.R. § 102-3.160, not subject to notice & open meeting requirements*)
- 10:00 - 10:30** **Welcome and Introduction**
- *Alternate Designated Federal Official Opens Meeting*
 - *Remarks of the Chair*
 - *Remarks by DoD Official*
 - *Introduction of Members*
- 10:30 - 11:30** **Overview of the Court-Martial Process**
- *Mr. Dwight Sullivan, Office of the General Counsel, Department of Defense*
- 11:30 - 12:30** **Legislative Highlights and the History of Sexual Assault Issues in the Armed Forces Since 2012**
- *Captain Warren Record, JAGC, U.S. Navy, Chair, Joint Service Committee on Military Justice*
- 12:30 - 1:30** **Lunch**
- 1:30 - 2:30** **History of the Response Systems to Adult Sexual Assault Crimes Panel and the Judicial Proceedings Panel**
- *Ms. Maria Fried, Office of the General Counsel, Department of Defense*
- 2:30 - 3:45** **Committee Planning Session**
- 3:45 - 4:00** **Public Comment**
- 4:00** **Meeting Adjourned**

Staff Biographies

Captain Tammy Tideswell, JAGC, U.S. Navy, is the Staff Director for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Judicial Proceedings Panel (JPP). Captain Tideswell has served in numerous positions during her 29-year career on active duty, to include Acting Chief Prosecutor of the Navy and Chief Operating Officer of the JAG Corps; Force Judge Advocate, Commander, Navy Installations Command; Military Judge; Staff Attorney, Navy Office of Legislative Affairs; Trial Advocacy and Criminal Law Instructor, Naval Justice School; Special Assistant to the U.S. Attorney's Office; prosecutor; and defense counsel. Captain Tideswell holds a Masters of Law Degree in Environment Law (with highest honors) from the George Washington University School of Law. She is a graduate of Valparaiso University School of Law and is licensed to practice in the state of Indiana.

Julie Carson is an attorney-advisor and the legislative liaison for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). Ms. Carson began working on military sexual assault policy as a staff attorney for the Response Systems to Adult Sexual Assault Crimes Panel (RSP) in August 2013. She has continued this work on the staff of the Judicial Proceedings Panel (JPP) focusing on the special victims' counsel program, retaliation, and victims' appellate rights issues. Prior to her work at the Department of Defense, Ms. Carson was an attorney in private practice in Claremore, Oklahoma, where her practice focused on representation of abused and neglected children in the Oklahoma child welfare system and advocacy for the rights of children and foster parents. Ms. Carson was also involved in higher education policy, appointed by the Governor of Oklahoma in 2006 to serve as a State Regent on the Oklahoma State Regents for Higher Education, a position she held for six years, serving as its chair in 2012. Ms. Carson is a graduate of Vanderbilt University and the University of Tulsa College of Law.

Dr. Janice Chayt is an investigator and researcher supporting the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Judicial Proceedings Panel (JPP). Her duties include acting as a subject matter expert on the investigation of sexual assault in the military, and researching and writing on sexual assault issues. Previously she provided support for the Comparative Systems Subcommittee of the Response Systems Panel (RSP), from June 2013 until June 2014. Prior to these positions, Jan spent nearly 28 years in the U.S. Army serving as a Criminal Investigator and retiring as a Chief Warrant Officer Four. She served at every echelon of the Army's Criminal Investigation Command to include Operations Officer, Chief of Policy, and Instructor and Course Manager at the U.S. Army Military Police School for Criminal Investigations Courses. After retiring, Jan taught criminal justice courses, served as support staff for the Defense Task Force on Sexual Assault in the Military Service, and worked with the Army's SHARP office. Dr. Chayt received her doctorate in education from the University of Phoenix, as well as a Master of Public Administration from Jacksonville State University and a Master of Science in Education from Old Dominion University. She received her bachelor degree from the University of Maryland with a major in law enforcement.

Theresa Gallagher is an attorney-advisor for the Judicial Proceedings Panel (JPP) and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). Previously she was an attorney advisor for the Department of Commerce Inspector General's Office. Prior to these positions, Theresa spent nearly 25 years in the U.S. Army Judge Advocate General's Corps before retiring in late 2015 as a Colonel. During her military career, she served primarily in military justice positions including appellate judge on both the U.S. Army Court of Criminal Appeals and the U.S. Court of Military Commission Review, military trial judge, appellate counsel, chief of justice, senior defense counsel, trial counsel, defense counsel, command judge advocate, and training attorney for prosecutors. She also served for two years as a legal advisor to the U.S. Army Inspector General's Office. Ms. Gallagher graduated from California State University, Fresno and received her J.D. degree from University of the Pacific, McGeorge School of Law. She earned her masters of law degree in military law at The Judge Advocate General's Legal Center and School, U.S. Army.

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 the Judicial Proceedings Panel (JPP). 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 has also taught 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.

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 Judicial Proceedings Panel (JPP). Her duties and oversight include preparing all public and subcommittee hearings, drafting and reviewing public and subcommittee minutes and transcripts, archiving, and conducting legal research. Prior to joining the JPP staff, she was a Court Appointed Special Advocate who advocated on behalf of sexually abused children in the West Virginia child welfare system. She is currently serving in the U.S. Army Reserves as the Paralegal Non-Commissioned Officer in Charge (NCOIC) for the 38th Regional Support Group and has been deployed to multiple U.S. and overseas 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.

Lieutenant Colonel Patricia H. Lewis is currently the Deputy Staff Director for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), and the Judicial Proceedings Panel (JPP). She has served in numerous key leadership and other critical assignments around the world as a Soldier and attorney with the United States Army Judge Advocate General's (JAG) Corps since she was commissioned as a First Lieutenant in 1992. She has served as a Legal Advisor for the Convening Authority, Office of Military Commissions; Circuit Judge; Staff Judge Advocate; Deputy Staff Judge Advocate; Command Judge Advocate; Branch Chief, U.S. Army Claims Service; Chief, Administrative Law; Defense Appellate Attorney; and Chief of Military Justice. LTC Lewis is a graduate of the University of Florida and she received her Juris Doctor degree from Howard University School of Law. She earned her masters of law degree in military law at The Judge Advocate General's Legal Center and School, U.S. Army. LTC Lewis is admitted to practice law before the United States Supreme Court, the Supreme Court of the Commonwealth of Pennsylvania, the U.S. Court of Appeals for the Armed Forces, and the U.S. Army Court of Criminal Appeals.

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 Judicial Proceedings Panel (JPP). She joined the JPP staff in September 2014 and manages all staff support for the JPP's independent review and analysis of over 2,000 sexual assault prosecutions in the military. She drafted the JPP's April 2016 Report on Statistical Data Regarding the Adjudication of Sexual Assault in the Military. Additionally, Ms. Peters supports the JPP Subcommittee's review of issues related to the defense, prosecution, and investigation of sexual assault crimes in the military. Prior to joining the JPP staff, Ms. Peters served as a judge advocate in the U.S. Army Judge Advocate General's Corps for over 7 years, where she prosecuted a wide range of cases including rape, sexual assault, domestic violence, and trainee abuse, and advised combat commanders at the 82nd Airborne Division on administrative law and military justice issues. After leaving active duty in 2013, Ms. Peters spent 18 months as a civilian defense counsel representing Service members at courts-martial before joining the JPP staff. She is a graduate of the University of Richmond School of Law in Richmond, Virginia.

Stayce Rozell is the senior paralegal for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and 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 offenses. She has been the senior paralegal for the Judicial Proceedings Panel (JPP) since October 2014, and will continue in this role until September 2017, when the JPP terminates. Prior to working in these positions, Stayce spent over 22 years in the U.S. Air Force serving as a paralegal and retiring as a Master Sergeant. She served as a prosecution paralegal 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.

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 Judicial Proceedings Panel (JPP). Her duties include organizing and presenting information at public hearings, conducting legal research, and drafting reports for the DAC-IPAD and JPP. Ms. Saunders previously served as the Deputy Staff Director for the JPP's predecessor panel, the Response Systems to Adult Sexual Assault Crimes Panel, from July 2013 to June 2014. Prior to serving in this position, Ms. Saunders served as a judge advocate in the U.S. Air Force until her retirement in 2012. Ms. Saunders earned her J.D. degree from the University of Colorado School of Law in Boulder, Colorado.

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 Judicial Proceedings Panel (JPP). His duties and oversight include human and financial resources, information technology, logistics, administration, and workflow management. Previously he was Chief of Staff for the Response Systems Panel (RSP), from June 2013 until June 2014. Prior to these positions, Dale 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 and School, with multiple deployments. Mr. Trexler graduated from Excelsior College (summa cum laude) with a dual concentration in business and criminal justice.

Tiffany Williams is a supervisory paralegal for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the Judicial Proceedings Panel (JPP). Her duties include managing human and financial resources, information technology, logistics, administration, preparing public and subcommittee hearings, drafting and reviewing minutes and transcripts. Previously, she served in the United States Army for just over 9 years retiring as a Staff Sergeant. She served as a paralegal, court reporter, and clerk of court during this time. Ms. Williams has completed and is currently pending graduation from American Military University with a Bachelor of Science in Criminal Justice with a concentration in forensics.



Jennifer M. O'Connor

General Counsel of the Department of Defense



Jennifer M. O'Connor is General Counsel of the Department of Defense. Appointed by the President with the advice and consent of the Senate, she was sworn in on June 14, 2016.

By statute, the General Counsel is the chief legal officer of the Department. She is the principal legal advisor to the Secretary of Defense, has authority and responsibility for legal policy and determinations, and provides legal services within the Department of Defense and its components. She also serves as the Director of the Defense Legal Services Agency, which is comprised of the legal staffs assigned to the Defense Agencies and Department of Defense Field Activities. Previously, Ms. O'Connor served as Deputy General Counsel (Legal Counsel) at the Department from October 2015, until her confirmation. In that role, she had functional responsibility for legal advice and services in the broad areas of controversial legal problems, public affairs, administrative law, freedom of information, privacy, security plans and programs, investigative matters and the Department's litigation portfolio.

Ms. O'Connor earlier served in numerous positions and agencies throughout the federal government. Her past positions include service in the current 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 was previously a partner at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP in Washington, DC, where she was a member of its Defense and National Security practice group, and also a member of its litigation department. She represented clients in federal and state trial and appellate cases and investigations throughout the country. She joined the firm in 2002. Prior to that, she practiced at the law firms of Baker Botts and Miller Cassidy Larroca & Lewin.

Ms. O'Connor is the recipient of the Defender of Innocence award from the Mid-Atlantic Innocence Project and the Gideon Champion of Justice award from the New York State Association of Criminal Defense Lawyers for her pro bono representations while at WilmerHale. Prior to her current term of government service, she served on the Board of the Council for Court Excellence and the Board of the Mid-Atlantic Innocence Project and was a member of the Edward Bennett Williams Inn of Court.

Ms. O'Connor began her legal practice as a law clerk for the Honorable Judith W. Rogers at the United States Court of Appeals for the District of Columbia Circuit.

Ms. O'Connor received a Bachelor of Arts degree from Harvard University, a Masters in Public Administration from Columbia University's School of International and Public Affairs, and a Juris Doctor degree from Georgetown University. She is admitted to the New York State Bar and District of Columbia Bar.

Mr. Dwight H. Sullivan, DoD, Office of the General Counsel, is the DoD's Associate Deputy General Counsel for Military Justice. He is also an adjunct faculty member at the George Washington University Law School. In 2013, he retired from the Marine Corps Reserve following 30 years of commissioned service as an active duty and reserve Marine. From 2007-2013, Mr. Sullivan was a civilian counsel at the Air Force Appellate Defense Division. From 2005-2007, he served as the chief defense counsel of the military commissions system. He was previously a managing attorney with the ACLU of Maryland for six years. He spent the first ten years of his legal career as an active duty Marine judge advocate, including service as a trial counsel, appellate defense counsel, and Naval Justice School instructor. He is the co-author of *Military Justice Cases and Materials*, a casebook published by LexisNexis in 2007 with a second edition published in 2012. Mr. Sullivan is also the co-editor of *Evolving Military Justice*, an anthology published by the Naval Institute Press in 2002. He has authored more than a dozen law review and law journal articles about military and Maryland law. He is an elected member of the American Law Institute. Mr. Sullivan is a graduate of the University of Virginia School of Law (J.D. 1986) and the University of Maryland (B.A. 1982; M.A. 1987). He also holds an LL.M. from The Judge Advocate General's School, U.S. Army (1994).

Captain Warren A. ("Art") Record, Jr., is currently serving as Director, Office of Judge Advocate General (OJAG) Code 20 (Criminal Law Division). In this position, he leads a team of military and civilian personnel providing advice on criminal law and policy questions to Navy leadership. He is also the Chair of the Joint Services Committee on Military Justice. His previous positions include legal assistance attorney, staff judge advocate, defense counsel, senior defense counsel, executive officer, and staff attorney and working group member of the Joint Services Committee on Military Justice. In 2012, Captain Record assumed command of U.S. Naval Legal Service Office, Europe, Africa and Southwest Asia where he led a team of defense and legal assistance attorneys representing eligible clients on three continents and in two numbered fleet areas of responsibility. While in this position, he also oversaw realignment of the legal assistance mission and disestablishment of the command. Captain Record earned his juris doctor degree, with highest distinction, from Mississippi College School of Law. He holds a master's degree in national security and strategic studies from the Naval War College and he is admitted to the Mississippi bar.

Maria Avignone Fried is an Associate Deputy General Counsel, in the Office of General Counsel, for Personnel and Health Policy. In that capacity, she renders legal advice on a variety of issues, to include wounded warrior matters, sexual assault, labor law, health law, women in combat, and other military personnel matters. Prior to joining the Office of General Counsel, Ms. Fried was the General Counsel for the Federal Mediation and Conciliation Service. As the Chief Legal Advisor, Ms. Fried provided managers with legal advice pertaining to all aspects of employment law, fiscal law, and administrative law. After graduating from Georgetown University Law Center in June 1991, Ms. Fried received a direct commission, as a first lieutenant, in the Air Force Judge Advocate General's Corps. She served on active duty as an assistant staff judge advocate until July 2003. She transitioned into the Air Force reserve and retired in 2013 at the rank of lieutenant colonel. Throughout her military career, Ms. Fried served in numerous positions to include Chief of Military Justice at Travis Air Force Base, California, and at Bolling Air Force Base, District of Columbia. She also provided legal advice on plethora of issues, to include procurement matters, environmental law and personnel law. Ms. Fried also served as an executive officer to the 11th Wing Commander, Bolling Air Force Base, District of Columbia, and to the Staff Judge Advocate, Air Education and Training Command, Randolph, Air Force Base, Texas.

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

FY 2015 NDAA SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

(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

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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”.

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.”

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Sexual Assault in the Armed Forces

1. Committee's Official Designation: The Committee will be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces ("the Committee").
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 ("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) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Committee.
3. Objectives and Scope of Activities: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy 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. Description of Duties: Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel (GC) for the Department of Defense (DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
5. Agency or Official to Whom the Committee Reports: The Committee will report to the Secretary and Deputy Secretary of Defense, through the GC DoD.
6. Support: The DoD, through the GC DoD, the Washington Headquarters Services, and the DoD Components, will provide staffing and resources to support the Committee's functions, and will ensure compliance with requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended) ("the Sunshine Act"), governing Federal statutes and regulations, and established DoD policies and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, including travel, meetings, and contract support, is approximately \$2,000,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The Committee's Designated Federal Officer (DFO), pursuant to DoD policy, will be a full-time or permanent part-time DoD employee or military member, designated in accordance with established DoD policies and procedures.

The Committee's DFO is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly designated to the Committee

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according to DoD policies and procedures, will attend the entire duration of all of the Committee or subcommittee meetings.

The DFO, or the Alternate DFO, will call all of the Committee and its subcommittee meetings; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: The Committee will meet at the call of the Committee's DFO, in consultation with the GC DoD and the Committee's Chair. The Committee will meet at a minimum of once per year.
10. Duration: The Committee will remain in effect until terminated as provided for by sections 546(e)(1) and (2) of the FY 2015 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to sections 546(e)(1) and (2) of the FY 2015 NDAA, the Committee will terminate on the date that is five years after the date the Committee is established unless the Secretary of Defense determines that continuation of the Committee after that date is advisable and appropriate. If the Secretary of Defense determines to continue the Committee after that date, the Secretary of Defense will submit to the President and the Committees on Armed Services of the Senate and House of Representatives a report describing the reasons for that determination and specifying the new termination date for the Committee.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the 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 members of the Committee.

The appointment of Committee members will be authorized by the Secretary of Defense or the Deputy Secretary of Defense, and administratively certified by the GC DoD, for a term of service of one to four years, and their appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Members of the Committee who are not full-time or permanent part-time Federal officers or employees will 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 officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as regular government employee (RGE) members. No member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD federal advisory committees at one time.

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All members of the Committee are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

Consistent with authority delegated to DoD Sponsors, the GC DoD will appoint the Committee's Chair from among the membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

13. Subcommittees: The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Establishment of subcommittees will be based upon a written determination, including terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD as the DoD Sponsor.

Such subcommittees will not work independently of the Committee and will report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, orally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, orally or in writing, directly to the DoD or any Federal officers or employees. If a majority of Committee members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same notice and openness requirements of FACA which govern the Committee's operations.

Pursuant to Secretary of Defense policy, the GC DoD is authorized to administratively certify the appointment of subcommittee members if the Secretary of Defense or the Deputy Secretary of Defense has previously authorized the individual's appointment to the Committee or another DoD advisory committee. If the Secretary of Defense or the Deputy Secretary of Defense has not previously authorized the appointment of the individual to the Committee or another DoD advisory committee, then the individual's subcommittee appointment must first be authorized by the Secretary of Defense or the Deputy Secretary of Defense and subsequently administratively certified by the GC DoD.

Subcommittee members, with the approval of the Secretary of Defense, will be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member will serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time Federal officers or employees, will 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 officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as RGE members. With the exception of reimbursement for travel and per diem as it pertains to official travel related to

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the Committee or its subcommittees, subcommittee members will serve without compensation.

The Secretary of Defense authorizes the GC DoD to appoint the chair of any appropriately approved subcommittee from among the subcommittee membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

Each subcommittee member is appointed to provide advice on the basis of his or her best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Committee and its subcommittees will be managed in accordance with General Record Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policies and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. Filing Date: February 18, 2016

Federal Advisory Committee Act (FACA) Brochure

U.S. General Services Administration
Office of Governmentwide Policy
Committee Management Secretariat
Washington, DC 20417

<https://www.gsa.gov/portal/content/101010>

Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse.

Today, an average of 1,000 advisory committees with more than 60,000 members advise the President and the Executive Branch on such issues as the disposal of high-level nuclear waste, the depletion of atmospheric ozone, the national fight against Acquired Immune Deficiency Syndrome (AIDS), efforts to rid the Nation of illegal drugs, to improve schools, highways, and housing, and on other major programs.

Through enactment of the Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463), the U.S. Congress formally recognized the merits of seeking the advice and assistance of our nation's citizens. At the same time, the Congress also sought to assure that advisory committees:

- Provide advice that is relevant, objective, and open to the public;
- Act promptly to complete their work; and
- Comply with reasonable cost controls and record keeping requirements.

Role of Federal Advisory Committees

With the expertise from advisory committee members, federal officials and the nation have access to information and advice on a broad range of issues affecting federal policies and programs. The public, in return, is afforded an opportunity to provide input into a process that may form the basis for government decisions.

Federal Agency Responsibility

Each federal agency that sponsors advisory committees must adhere to the requirements established by the FACA, as well as regulations promulgated by the U.S. General Services Administration's (GSA) Committee Management Secretariat. GSA has had the responsibility for overseeing the FACA since 1977.

Complying with FACA

Any advisory group, with limited exceptions, that is established or utilized by a federal agency and that has at least one member who is not a federal employee, must comply with the FACA. To find out if a group comes under the FACA, contact the sponsoring agency's Committee Management Officer. The GSA Committee Management Secretariat is an additional resource.

Requirements for Establishing and Managing Advisory Committees

Under the Federal Advisory Committee Act, advisory committees can be created only when they are essential to the performance of a duty or responsibility conveyed upon the executive branch by law or Presidential Directive. Before committees can be set up, high-level officials within the sponsoring agency must review and approve the request. Once a committee is approved, a charter is prepared outlining the committee's mission and specific duties and forwarded to GSA's Committee Management Secretariat for final review. Following a required public notification period, and the filing of the charter with Congress, the committee may begin operation.

Committee Management Officer and Designated Federal Officer

The Federal Advisory Committee Act also provides that each agency sponsoring a federal advisory committee must appoint a Committee Management Officer to oversee the administration of the Act's requirements.

In addition, a Designated Federal Officer must be assigned to each committee to:

- Ensure compliance with FACA, and any other applicable laws and regulations;
- Call, attend, and adjourn committee meetings;
- Approve agendas;
- Maintain required records on costs and membership;
- Ensure efficient operations;
- Maintain records for availability to the public; and
- Provide copies of committee reports to the Committee Management Officer for forwarding to the Library of Congress.

Expiration of a Committee's Charter

Unless the renewal of a committee charter is justified under the FACA, the charter automatically expires after a two-year period (or as otherwise provided by law).

Advisory Committee Members

Federal advisory committee members are drawn from nearly every occupational and industry group and geographical section of the United States and its territories. The

FACA requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed."

As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. In balancing committee memberships, agencies are expected to consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and function of the advisory committee.

Appointing Committee Members

Agency officials, members of Congress, the general public, or professional societies or current and former committee members may nominate potential candidates for membership on a committee.

Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Final selection is made by the president or heads of departments or agencies.

Prior to accepting an appointment with a federal advisory committee, each prospective member should clarify his/her role, obligations, duties, allowable expenses, compensation limitations, and any ethics requirements with their committee's Designated Federal Officer and/or Committee Management Officer, as appropriate.

Federal Ethics and Conflict of Interest Laws

Agency officials must provide prospective advisory committee members with information regarding any applicable standards of conduct-including those imposed by federal conflict of interest statutes. In some instances, members may be subject to special limitations during the course of their service on an advisory committee. For some members, these restrictions also may apply (for limited periods) after their committee assignments have ended.

Some agencies may impose additional administrative requirements as well. To avoid potential conflicts, each advisory committee member should assure that he or she receives adequate information from the sponsoring agency and completes any required appointment papers and disclosure forms prior to service on a committee.

Oral briefings and other explanatory material may be obtained through the sponsoring agency's Committee Management Officer, Designated Agency Ethics Official, or from the Office of Government Ethics, which has government-wide jurisdiction on federal ethics issues.

Limits on Membership Terms

Each agency may set limits (unless provided by law or Presidential Directive) on the lengths of terms for serving on advisory committees to allow for new membership.

Open Access to Committee Meetings and Operations

Under the provisions of the Federal Advisory Committee Act, federal agencies sponsoring advisory committees must:

- Arrange meetings that are reasonably accessible and at convenient locations and times;
- Publish adequate advance notice of meetings in the *Federal Register*;
- Open advisory committee meetings to the public (with some exceptions-see the section on "Government in the Sunshine Act" below);
- Make available for public inspection, subject to the Freedom of Information Act, papers and records, including detailed minutes of each meeting; and
- Maintain records of expenditures.

Government in the Sunshine Act

Advisory committee meetings may be closed or partially closed to the public based upon provisions of the Government in the Sunshine Act of 1976 (Public Law 94-409).

Examples of meetings that may be closed under the FACA are:

- Those including discussions of classified information;
- Reviews of proprietary data submitted in support of Federal grant applications; and
- Deliberations involving considerations of personnel privacy.

For More Information...

For more information on the requirements of the Federal Advisory Committee Act, contact the General Services Administration's Committee Management Secretariat at cms@gsa.gov or via the internet at:

<http://www.gsa.gov/faca>; or

<http://www.gsa.gov/committeemanagement>

Examples of materials available on the Committee Management Secretariat website are:

- [Federal Advisory Committee Act](#)
- [GSA Final Rule on Federal Advisory Committee Management](#)
- [Guidance documents](#)
- [Access to the Federal Advisory Committee Act database](#)
- [Information on the Federal Advisory Committee Act Training course.](#)

Other materials, such as samples of nominating letters and committee reports, are available from each sponsoring agency.



U.S Department of Defense Standards of Conduct Office

AN ETHICS GUIDE FOR SPECIAL GOVERNMENT EMPLOYEES, INCLUDING CONSULTANTS AND EXPERTS (SUCH AS ADVISORY COMMITTEE MEMBERS)

At the Department of Defense (DoD or Department), we are fortunate to have many professionals and industry leaders provide advice to the Secretary as consultants and experts. Because many of these individuals retain ties to defense industries or other organizations related to national security, it is important to identify potential conflicts of interest that may arise while serving as a DoD consultant. This handout briefly summarizes the ethics rules. We encourage employees to consult an ethics official whenever they have questions or need more detailed information.

Good faith reliance on the advice of an ethics official will, in most cases, protect you from adverse administrative action and deter criminal prosecution. SOCO attorneys are available at (703) 695-3422 or by email at OSD.SOCO@MAIL.MIL. We have also posted considerable guidance, including information on financial disclosure reporting, on our website at: http://www.dod.mil/dodgc/defense_ethics/.

1. What does it mean to be a Special Government Employee?

In the Department, most employees appointed as consultants and experts, including members of advisory committees, serve as “Special Government Employees” (SGEs). Upon appointment, these consultants and experts assume many of the responsibilities, obligations, and, restrictions that are part of public service.

SGEs *are* Government employees, for purposes of the conflict of interest laws. Specifically, an SGE is “an officer or employee . . . who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Your status as an SGE is determined prospectively at the time of your appointment based upon a good faith estimate that you will not be expected to serve more than 130 days during the ensuing 365-day period. This 130-day period is an aggregate of all your Federal service, and not just your appointment to one office or advisory committee at DoD. For example, it includes days you serve as a consultant or expert in another Federal agency or department, and days you serve as a military reservist. If you have served in any capacity for a Federal agency or department within the last year or will serve in the coming 365-day period, please

share this information with the appropriate DoD official to ensure that you do not exceed the 130-day limit.

When counting days that you work as an SGE, you must count each day in which you perform services as a full day, even if you did not perform services for the entire workday. Brief non-substantive interactions, such as emails or phone calls to set up a meeting or coordinate travel, should not be counted as a day of duty. Any day for which you are paid by the Government (not including travel reimbursement) must be counted as a day.

2. Financial Disclosure

At DoD, the vast majority of SGEs are required to file a Confidential Financial Disclosure Report (OGE Form 450), or in some cases the DoD alternate form (DoD Confidential Conflict-of Interest Statement for DoD Advisory Committee Members). As the name implies, the OGE Form 450 (or DoD alternate form) is treated as confidential and is not available to members of the public. On very rare occasions, SGEs are required to file a Public Financial Disclosure Report (OGE Form 278e) because of the nature of the duties they are being asked to perform, the level of compensation for the position, or the statute authorizing the creation of the position mandates the filing of a public report. Again, as the name implies, the OGE Form 278e can be released to a member of the public upon request. The purpose of the financial disclosure report is to enable ethics officials to determine whether your financial interests may create a conflict of interest that would hinder or preclude your service for the Department.

3. Criminal Conflict of Interest Statutes

During your appointment you are required to comply with several criminal statutes. These statutes are codified at 18 U.S.C. §§ 203, 205, 207, and 208, and are divided into the following subject areas: (1) financial conflicts of interest; (2) representational activities; and (3) limits on representation after you leave the Government.

Financial Conflicts of Interest

The primary financial conflict of interest statute, **18 U.S.C. § 208(a)**, prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or on the financial interests of any person whose interests are imputed to them. The interests of the following persons are imputed to you: your spouse; minor child; general partner; organizations which you serve as an officer, director, trustee, general partner or employee; and a person or organization with whom you are negotiating or have an arrangement concerning prospective employment. Because SGEs are typically engaged in outside employment which is related to the subject area for which the Government requests their services, it is extremely important to take this conflict rule into consideration.

A conflict may arise in various ways. An SGE would be prohibited from participating in a discussion that involves whether a certain weapons program should be continued if the SGE works for the company that manufactures the weapon, or from reviewing a contract proposal

from an association for which the SGE serves as a member of the board of directors. In these instances the SGE would be required to recuse from participating in the matter.

If you become aware of a conflict of interest, you must disqualify yourself from acting in the matter and notify your supervisor. You should also consult a DoD ethics official, since there are several regulatory exemptions that may permit you to participate even when you have certain financial interests that cause a conflict of interest.

The statute and implementing Federal regulations provide for issuance of waivers that may allow you to work on matters in which you have a financial conflict of interest. Such waivers must be issued by an authorized authority before you participate in the matter. Since waivers are complex and rarely granted, you must seek advice from a DoD ethics official.

Representational Activities

Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including those in an SGE status, from representing another person or entity before any agency or court of the Executive or Judicial Branches. Specifically, as an SGE, section 203 prohibits the receipt of compensation for representational services only in particular matters involving a specific party: (1) in which an SGE has participated personally and substantially as a Government employee; or (2) which is pending in DoD if the SGE has served for more than 60 days in DoD (aggregating all days served at any DoD component or organization) during the immediately preceding 365 days. For example, this would include service within DoD as a regular employee, military member on active duty, and/or as an SGE. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence the Government. Section 205 parallels section 203, except that even uncompensated representations made by an SGE are prohibited.

Limits on Representations After You Leave the Government

Finally, 18 U.S.C. § 207, prohibits former employees, including SGEs from representing another person or entity to DoD or another Federal agency or court on any particular matter involving a specific party in which the SGE participated personally and substantially while employed at DoD. This bar lasts for the lifetime of the particular matter.

4. Standards of Ethical Conduct

The following items highlight some of the administrative Standards of Ethical Conduct regulations (5 C.F.R., Part 2635) that pertain to SGEs in DoD.

Teaching, Speaking, and Writing in a Personal Capacity

During your appointment, you may continue to receive fees, honoraria, and other compensation for teaching, speaking, and writing undertaken in your personal capacity on topics that are not directly related to your SGE position.

If you use your DoD title or position as one of several biographical details given to introduce yourself in connection with your personal teaching, speaking, or writing, and the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of DoD, you must use a disclaimer (at the beginning of your speech or prominently placed for written material), expressly stating that the views presented are yours and do not necessarily represent the views of DoD or its components.

Speaking on behalf of DoD

DoD advisory committee members provide Executive-level advice to the Secretary and the Deputy Secretary. These duties generally do ***not*** include representing DoD or its views to external entities. This means that advisory committee members may not represent the views of DoD, or give an official speech on behalf of DoD, as this is considered an inherently governmental function and as such can only be undertaken by a full-time or permanent part-time DoD employee or member of the military on active duty.

If you are asked to speak on behalf of DoD, for example, by Congress, the media, or an outside organization, please contact your supervisor or ethics official for further guidance.

Acceptance of Gifts from Outside Sources

Acceptance of gifts given to you because of your DoD position is generally prohibited. Because there are a number of exclusions or exceptions that permit the acceptance of a gift, you should consult an ethics official if you receive a gift in your SGE capacity.

Impartiality

While SGEs are prohibited from participating in matters in which they have a financial interest, there may be other circumstances in which an SGE's participation in a particular matter involving specific parties would raise a question regarding the SGE's impartiality. For example, if an SGE is asked to review a grant application submitted by their mentor or someone with whom the SGE has a close personal or professional relationship, this may raise concerns about the SGE's impartiality. In such circumstances, the SGE should seek the guidance of their supervisor or advisory committee staff to determine whether disqualification from the matter is appropriate.

Misuse of Position

SGEs are subject to a number of prohibitions intended to address the use, or appearance of "public office for private gain." These prohibitions include:

- Using your DoD title or referring to your Government position for your own private gain, the private gain of friends, relatives, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations at which you serve as an officer, member, employee, or in any other business relationship), or for the endorsement of any product, service, or enterprise.

- Using your DoD title or Government position to coerce or induce another person to provide a benefit to you or another person.
- Using non-public Government information in a financial transaction to further your private interests or those of another, or disclosing confidential or non-public information without authorization.

Fundraising

Generally, you may fundraise in your personal capacity. You may not, however, fundraise in the Federal workplace (except for collecting gifts-in-kind, such as food, clothing and toys), and you may not solicit funds from any person whom you know is a prohibited source and whose interests may be substantially affected by performance or non-performance of your DoD duties. Finally, you may not use or permit the use of your official title, position, or authority associated with your position to further any personal fundraising efforts.

Foreign Agents

You may not act as an agent or lobbyist of a foreign principal required to register under the Foreign Agents Registration Act or the Lobbying Disclosure Act of 1995 unless the head of the agency certifies that your employment is in the national interest. 18 U.S.C. § 219. If you have registered under either of these statutes, please contact SOCO.

Hatch Act

The Hatch Act limits the political activities of Federal civilian employees. SGEs are covered by the Hatch Act only when actually performing work for the Federal government. This means that an SGE may not engage in any political activities (activities associated with a partisan campaign) during the hours that he or she is "on-duty" for DoD.

Disclosure of Information

You may not disclose classified or proprietary information that you receive in the course of your DoD duties. Before disclosing information that is proprietary, not releasable under the Freedom of Information Act, protected by the Privacy Act, or otherwise restricted, please confirm that it may be released. 18 U.S.C. § 1905. Furthermore, you may not disclose Government information that is designated as confidential or has not been disseminated to the general public and is not authorized to be made available to the public on request. 5 C.F.R. § 2635.703.

CODE 20

SIDEBAR

FY17 NDAA AND THE MILITARY JUSTICE ACT OF 2016

Background. On 23 December 2016, the President signed the National Defense Authorization Act for Fiscal Year 2017 (FY17 NDAA) which included numerous military justice related legislative changes contained in the Military Justice Act of 2016 (MJA16) (Sections 5001-5542). The significant changes in MJA16 concern pretrial issuance of subpoenas by military judges and military magistrates, Article 32 pretrial hearing officer's disposition recommendations, punitive articles, plea agreement and sentencing, appeals, and professional development of judge advocates. The text of FY17 NDAA may be found at: - <http://docs.house.gov/billsthisweek/20161128/CRPT-114HRPT-S2943.pdf>.

Effective date. The FY17 NDAA authorizes the President to establish an effective date for the MJA16 but no later than the 1st day of the 1st month two years after enactment (1 Jan 19). The MJA16 requires the President to prescribe implementing regulations no later than one year after enactment (23 Dec 17).

Training. MJA16 specific training for the field is being developed by Code 20, AJAG 05 and NJS. Details of that training will be published in future Sidebars.

Major changes

- **Authorized punishment at NJP.** MJA16 eliminates the authority to award bread and water as a punishment.
- **Military Judge pre-referral authority.** Prior to referral, military judges or military magistrates may address specified legal issues such as investigative subpoenas, warrants or orders for electronic communications (may be reviewed only by military judge), or matters referred by an appellate court.
- **Fixed members panels.** Sets the panels size for members' cases. The panels will be 12 members for capital cases, 8 members for non-capital general courts-martial and 4 members for special courts-martial and, except for capital cases, three-fourths of members must agree on findings and sentence.
- **Special court-martial bench trial.** Creates a new military judge alone, or magistrate with the consent of the parties, special court-martial where the maximum punishment is six months confinement, reduction to E-1, and forfeitures of 2/3 pay, but no discharge is authorized.
- **Article 32 preliminary hearing.** The preliminary hearing officer must make a disposition recommendation in the preliminary hearing report and the hearing officer must also analyze any additional information submitted by the parties or by the victim that is relevant to disposition.
- **Restructured punitive articles of the UCMJ.** The punitive articles are reorganized and many forms of misconduct now addressed by Executive Order under Article 134 (General Article) are redesignated as new articles. There is a new punitive article criminalizing retaliation, and another modification of Article 120 eliminating the "bodily harm" element and replacing it with a new element of "without consent."
- **Sentencing.** If the accused elects sentencing by military judge alone, sentencing will be segmented with the military judge having discretion to run sentences concurrently or consecutive. Sentences by military members will remain unitary.
- **Expanded appeals.** Article 66 automatic review jurisdiction is raised to courts-martial that include a sentence of death, a punitive discharge, or confinement for more than 2 years, but a new affirmative right to appeal is extended to courts-martial that include a sentence of confinement of greater than six months and which are not otherwise subject to automatic review. The Government may appeal sentences with TJAG approval on grounds that the sentence is illegal or plainly unreasonable.

Summary of significant changes to the UCMJ

General provision

- **Sec. 5102.** Article 2 is amended to clarify when a reservist is subject to the UCMJ to include periods incident to inactive-duty training (drills), and during intervals between consecutive periods of inactive duty training.
- **Sec 5103.** Article 6 is amended to disqualify a staff judge advocate or legal officer for any convening authority if they served as a preliminary hearing officer, court member, military judge, magistrate, appellate judge or counsel in the same case.
- **Sec. 5104.** A conforming amendment to Article 6a adding military magistrate to the list of officials whose fitness to perform duties is subject to investigation and disposition under regulations prescribed by the President.
- **Sec. 5105.** Article 6b is amended to provide that the legal guardians or the representatives of a victim's estate, or any other person designated by the military judge may assume the rights of the victim. Also, clarifies the relationship between rights provided to victims under the UCMJ and the exercise of discretion under Art. 30 and Art. 34. Finally, counsel for the accused are required to make any request to interview a victim (for all offense not just the victim of sex-related offenses as previously required in Article 46(b)) through counsel for the victim (VLC or civilian) and, if requested by the alleged victim, any interview by counsel for the accused must take place in the presence of Government counsel, counsel for the victim, or a victim advocate.

Apprehension and Restraint

- **Sec. 5121.** Article 10 is amended to clarify the general provisions related to pretrial confinement and the requirement for prompt forwarding of charges and requires the President to establish timeframes in the Manual for Courts-Martial.
- **Sec. 5122.** Article 12 is amended to clarify that military servicemembers may not be held in "immediate association" with enemy prisoners or foreign nationals who are not members of the military and who are detained under the law of war.

Non-Judicial Punishment

- **Sec. 5141.** Article 15 is amended to preclude punishment in the form of a diet consisting only of bread and water.

Court-Martial Jurisdiction

- **Sec. 5161.** Article 16 is amended to provide that members' trials in non-capital general courts-martial will consist of 8 members, in capital cases 12 members, and in special courts-martial 4 members. The section also creates a non-member military judge alone court-martial if referred to it by the convening authority but with limitations on sentencing under Article 19.
- **Sec. 5162.** Article 18 is amended to include attempts to commit violations of Art. 120(a) and (b) and Art. 120b (a) and (b) as offenses that must be tried before general courts-martial.
- **Sec. 5163.** Article 19 is amended to conform with non-members judge alone trials created under Article 16 (these trials may be presided over by a military judge or a military magistrate, with the consent of the parties) but sentencing is limited to no punitive discharge and confinement and forfeitures to no more than six months.
- **Sec. 5164.** Article 20 is amended to specify that a summary court-martial is a non-criminal forum and that convictions at summary court-martial are not criminal convictions.

Composition of Courts-Martial

- **Sec. 5182.** Art. 25 is amended to expand eligibility to serve on special or general courts-martial by enlisted members eliminating the requirement that enlisted members be from a different unit than the accused. Also, in non-capital members cases an accused may request, after findings, to be sentenced by members. In capital cases, an accused will be sentenced by members on all capital offenses.
- **Sec. 5183.** Article 25a is amended to provide standard panel sizes in capital cases to no less than 12 members, unless prior to the members being impaneled the case becomes non-capital then the panel size will 8. However, if after 12 members are impaneled and the case becomes non-capital, the number of members remains at 12.
- **Sec. 5184.** Article 26 is amended to reflect current practice that a military judge is detailed to every general and special court-martial and provides that the Judge Advocate General certify officers to be military judges who are qualified by reason of education, training, experience and judicial temperament. The section allows the President to

implement rules for assignment of judges for minimum tour lengths subject to exceptions as may be prescribed. Also, Judge Advocates General shall designate a chief trial judge from the members of the trial judiciary.

- **Sec. 5185.** A new Article 26a is enacted providing the qualifications and duties of military magistrates.
- **Sec. 5186.** Article 27 is amended to provide for the disqualification of persons who have previously served in any capacity in a case and specifies, to the extent practicable, that at least one defense counsel in a capital case will be qualified to handle such cases or, if necessary, civilian counsel may be detailed and compensated to handle the case.
- **Sec. 5187.** Article 29 is amended to conform to minimum panel sizes established in Article 25. In addition, if authorized by the convening authority, alternate members will be impaneled and the procedure for impaneling alternate members is provided. If after the members are impaneled in non-capital cases and members are excused, the minimum number of members may be 6 members for general courts-martial and 4 members for special courts-martial. Procedures are established for presenting the prior trial proceedings to new members or a new military judge, if the detailed military judge is unable to proceed as a result of physical disability or otherwise.

Pre-Trial Procedure

- **Sec. 5202.** A new Article 30a was enacted authorizing military judges or, in most instances, military magistrates, to review pre-referral investigative subpoenas, warrants or orders for electronic communications (may be reviewed only by military judge), or matters referred by an appellate court. Such pre-referral decisions are reviewable subsequently by the detailed military judge.
- **Sec. 5203.** Article 32 is amended to require a preliminary hearing officer to include a recommendation as to the disposition that should be made of the case and a detailed analysis of any post-hearing information submitted by the parties or by the victim that is relevant to disposition. Additionally, there is clarification that a victim's declination to participate in the Article 32 hearing "shall not serve as the sole basis for ordering a deposition" under Article 49.
- **Sec. 5204.** Article 33 is amended to require the Secretary of Defense to issue non-binding guidance regarding factors commanders, convening authorities, staff judge advocates, and judge advocates must take into account when exercising their duties with respect to disposition of charges and specifications taking into account military requirements, and the principles contained in official guidance of the Attorney General to attorneys for the Government in federal criminal cases.
- **Sec. 5205.** Article 34 amended to require in general courts-martial that staff judge advocates include a written recommendation to the convening authority that ties the staff judge advocate's disposition recommendation to the "interest of justice and discipline." Also, requires the convening authority, prior to referral of charges to special court-martial, to "consult with a judge advocate on relevant legal issues."
- **Sec. 5206.** Article 35 is amended to require the accused to object to commencement of trial before the completion of a statutory period following service of charges – three days for a special court-martial and five days for a general court-martial.

Trial Procedure

- **Sec. 5225.** Article 43 is amended to increase the statute of limitation for child abuse offenses from five years or the life of the child to ten years or the life of the child, whichever is longer and extending the statute of limitations for fraudulent enlistment or appointment to the length of the enlistment or appointment or five years, whichever is longer, and extends the statute of limitations for certain offenses when DNA testing implicates an identified person.
- **Sec. 5226.** Article 44 is amended to clarify when jeopardy attaches in courts-martial by military judge alone or with members.
- **Sec. 5227.** Article 45 is amended to add a provision for harmless error in cases where the error does not materially prejudice the substantial rights of the accused. The section also includes conforming amendments to 18 U.S.C. Sec. 2703 authorizing the issuance of subpoenas for wire or electronic communications from providers of those services.
- **Sec. 5228.** Article 46 is amended to authorize a military judge to issue investigative subpoenas for the production of evidence prior to referral.
- **Sec. 5229.** Article 47 is amended providing for criminal prosecution in U.S. district court of civilians, not subject to the UCMJ, who fail to comply with military subpoenas.
- **Sec. 5230.** Article 48 is amended to clarify that military appellate judges have contempt powers and removes contempt powers from summary court-martial officers.

- **Sec. 5235.** Article 52 is amended to require concurrence of three-quarters of the members for findings and sentencing in general and special courts-martial except in capital cases where the members must be unanimous on findings of guilty and during sentencing for offenses punishable by death.
- **Sec. 5236.** Article 53 is amended to provide a military judge shall sentence an accused if the accused elects a trial by military judge alone. In non-capital cases, tried to members an accused must elect after findings whether to be sentenced by members or military judge. In capital cases where the accused is convicted of an offense for which death is authorized sentencing shall be by members for that offense. However, if the accused is also convicted of other non-capital offenses the accused may still elect to be sentenced by members or military judge on those offenses.
- **Sec. 5237.** A new Article 53a was enacted making plea agreements binding on the parties and the military judge except for plea agreements that contain provisions not accepted by both parties, contain provisions not understood by the accused, or contains a sentence that is less than a mandatory minimum. However, plea agreements for an agreed upon sentence of less than the mandatory minimum sentence may be entered into upon the recommendation of the trial counsel in exchange for substantial assistance by the accused in the investigation or prosecution of another person.
- **Sec. 5238.** Article 54 is amended to provide basic rules and procedures for producing, certifying, and distributing records of trial in general, special and summary courts-martial. The court reporter, not the military judge or the prosecutor, will certify the record of trial in general and special courts-martial. Victims of any offense who testify at a court-martial will be notified of the opportunity to receive the records of the proceedings and will be given a copy of the proceedings as soon as the records are certified.

Sentences

- **Sec. 5301.** Article 56 is amended to add conspiracy to commit any of the listed sex-related offenses that require a mandatory dismissal or dishonorable discharge. The section lists several factors that a court-martial will consider when imposing “punishment that is sufficient but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces.” When sentencing is by military judge alone the military will announce segmented sentencing providing the term of confinement and amount of fine, if any, for each offense. For sentencing by members the court-martial will announce a unitary sentence for all the offenses for which the accused was found guilty. Sentenced for life without eligibility for parole is for the remainder of the accused’s life unless the sentence is set aside during post-trial proceedings or the accused is pardoned. With the approval of the Judge Advocate General the Government may appeal a sentence within 60 days of the judgment being entered to the Court of Criminal Appeals on the grounds that the sentence violates the law, or the sentence is plainly unreasonable.
- **Sec. 5302.** Article 57 is amended to consolidate Articles 57, 57a, and 71 to establish when general and special courts-martial sentences become effective. With the exception of death and punitive discharges, sentences become effective by operation of law without any additional approval upon entry of judgment. In summary courts-martial the sentence is effective when the convening authority acts on the sentence. Appellate review is complete when an Article 65 review is finished, or when the Court of Criminal Appeals has reviewed the case and any petition to a higher court for review has been addressed.
- **Sec. 5303.** Article 58a is amended to make reduction to E-1 mandatory for all Services when the adjudged sentence includes a punitive discharge, confinement, or hard labor without confinement.

Post-Trial Procedure and Review of Courts-Martial

- **Sec. 5321.** Article 60 is amended entirely requiring the military judge to enter into the record the Statement of Trial Results, consisting of the pleas of the accused, the findings and sentence of the court-martial, and any other information required by the President with copies to be provided to the convening authority, the accused and any victim of an offense. The President is to establish rules governing submission of post-trial motions to the military judge and the authority for the military judge to address post-trial motions that may affect a plea, a finding, a sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority.
- **Sec. 5322.** A new Article 60a retains current limitations on the convening authority’s post-trial actions in most general and special courts-martial with narrowly limited suspension authority. The section retains and clarifies limitations on the convening authority’s post-trial actions in courts-martial in which: (1) the maximum sentence of confinement for any offense is more than two years; (2) the adjudged confinement imposed, running consecutively, is more than six months; (3) the sentence includes a dismissal or discharge; or (4) the accused is found guilty of

designated sex-related offenses. Upon a recommendation of the military judge in the Statement of Trial Results a convening authority has limited authority to suspend a sentence of confinement in whole or in part, or to suspend a punitive discharge. The authority for a convening authority upon the recommendation of the trial counsel to reduce a sentence for substantial assistance in the investigation or prosecution of another person is retained. However, prior to acting to suspend or reduce an adjudged sentence a convening authority shall consider matters submitted in writing by the accused or any victim of an offense pursuant to rules prescribed by the President to include procedures for notice, deadlines for submission and procedures for providing the accused and any victim of a crime a copy of the recording of any open trial sessions of a court-martial and copies of, or access to, any admitted, unsealed exhibits.

- **Sec. 5323.** A new Article 60b addresses post-trial actions in summary courts-martial and any general or special courts-martial not covered under Article 60a. In those cases the convening authority is authorized to act on the findings and sentence, and to order rehearings, subject to certain limitations. The opportunity of the accused or a victim to submit matters for consideration as contained in Article 60a apply under Article 60b, as well.
- **Sec. 5324.** A new Article 60c requires a military judge in all general and special courts-martial to enter the judgment of the court-martial including the Statement of Trial Results and any modification of, or supplements to them, by reason of any post-trial action by the convening authority or any ruling, order, or other determination of the military judge that affects a plea, a finding or the sentence. Procedures will be implemented to provide the judgment to the accused, to any victim of the offense, and made available to the public. In summary courts-martial the findings and sentence, as modified by any post-trial action by the convening authority constitutes the judgment of the court-martial and shall be recorded and distributed as the President shall prescribe.
- **Sec. 5326.** Article 62 is amended to expand current Government interlocutory appeals to allow the Government to appeal when, upon defense motion, a military judge sets aside a panel's finding of guilty because of legally insufficient evidence. The Government may also appeal a ruling or order of a military magistrate in the same situations as had the ruling or order been issued by a military judge. The military courts are to liberally construe the provisions of Article 62 to effect its purposes.
- **Sec. 5327.** Article 63 is amended to remove the sentence limitation at a rehearing in cases in which: (1) an accused changes his or her plea from guilty to not guilty, or otherwise fails to comply with the terms of a pretrial agreement; or (2) a sentence is set aside based upon a Government appeal.
- **Sec. 5328.** Article 64 is amended to require a judge advocate to conduct an initial review of summary courts-martial.
- **Sec. 5329.** Article 65 is amended to require the record of trial in all special or general courts-martial where there is a finding of guilty to be transmitted to the Judge Advocate General. Cases involving a sentence of death, dismissal, a punitive discharge, or confinement for more than 2 years are subject to automatic review and a copy of the record of trial will be forwarded to the Court of Criminal Appeals. In cases subject to review under Article 66 a copy of the record of trial will be forwarded to an appellate defense counsel who shall be detailed to review the case, and upon request of the accused, will represent the accused on appeal. The Judge Advocate General is required to provide notice to the accused of the right to file an appeal. In cases not subject to automatic review or eligible for direct appeal review the Judge Advocate General shall complete a written review that focuses on: (1) whether the court-martial had jurisdiction over the accused and the offense; (2) whether each charge and specification stated an offense; and (3) whether the sentence was within the limits prescribed as a matter of law. This review would also respond to any allegation of error submitted by an accused in writing. In cases where an accused is eligible to file an appeal for direct review under Article 66 but waives or withdraws from appellate review, the Judge Advocate General must conduct a review under Article 69. Following the review, corrective action may be taken and the sentence and findings may be set aside in whole or in part, or a rehearing may be ordered by the Judge Advocate General.
- **Sec. 5330.** Article 66 is amended to require the President to establish minimum tour lengths, with appropriate exceptions, for military appellate judges, and requires the Judge Advocate General of each service to certify the qualifications of appellate judges consistent with Article 26 regarding assignment and qualifications for military judges. An accused may file a timely appeal of a court-martial judgment not otherwise subject to automatic review: (1) where the sentence to confinement is more than six months; (2) any case that was previously the subject of an appeal by the Government; and (3) any case in which an application for discretionary review under Article 69(e)(2) was granted. The Court of Criminal Appeals will have jurisdiction to review any case in which the Judge Advocate General orders sent to the Court for review under Article 56(d) (Government sentencing appeal). The Court of Criminal Appeals also has jurisdiction to automatically review all cases in which the judgment includes a dismissal, punitive discharge, or confinement for more than two years.

- **Sec. 5331.** Article 67 is amended to require notification by a Judge Advocate General to other Judge Advocates General that the Judge Advocate General intends to certify to the Court of Appeals for the Armed Forces (CAAF). CAAF is limited to review a petition with respect to - (1) the findings and sentence as affirmed or set aside as incorrect in law by the CCA; (2) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the CCA.
- **Sec. 5333.** Article 69 is amended to authorize the Judge Advocate General upon application of an accused to conduct a post-trial review of courts-martial not subject to direct review under Article 66. The application for review must be filed within one year after the completion of review under Article 54 or 65, extendable to three years for good cause. Review is limited to setting aside the findings and sentence, in whole or in part on the grounds of newly discoverable evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. An accused may file for discretionary review after a decision is issued by the Judge Advocate General and the Judge Advocate General has the authority to certify cases for review to the CCA. In a case where an accused is eligible to file an appeal for direct review under Article 66 but waives or withdraws from appellate review the Judge Advocate General must conduct a review that is limited to determine whether the waiver, withdrawal, or failure to file an appeal as invalid.
- **Sec. 5334.** Article 70 is amended to require, to the greatest extent practicable, at least one appellate defense counsel shall be learned in the law applicable to capital cases in any case in which the death penalty was adjudged at trial.
- **Sec. 5335.** Article 72 is amended and authorizes a special court-martial convening authority to appoint a judge advocate qualified under Article 27(b) to preside at a vacation hearing, which must be held before a suspended sentence may be vacated.
- **Sec. 5336.** Article 73 is amended to extend from two years to three years the time to petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court.
- **Sec. 5337.** Article 75 is amended ordering the President to prescribe rules and procedures governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

Punitive Articles

- **Sec. 5401.** The punitive articles are reorganized by transferring and redesignating 16 articles of the UCMJ. The offenses migrated from Article 134 and redesignated as articles elsewhere no longer need the terminal element of Article 134 (that the conduct was prejudicial to good order and discipline or service discrediting) as the basis for its criminality.
- **Sec. 5402.** Article 79 is amended to authorize the President to designate any lesser included offense by regulation that would be “reasonably included in the greater offense.”
- **Sec. 5402.** Article 82 is retitled “Soliciting commission of an offense” and migrates the general solicitation offense under Article 134 to Article 82.
- **Sec. 5404.** Article 83 - “Malingering” is migrated from Article 134.
- **Sec. 5405.** Article 84 - “Quarantine: medical, breaking” is migrated from Article 134.
- **Sec. 5406.** Article 87 - consolidates “Missing movement” and “Jumping from vessel into water” from Article 134.
- **Sec. 5407.** A new Article 87a migrates and consolidates the offenses of “Restriction, breaking” and “Correctional custody - offenses against” from Article 134 to Article 87a - “Offenses against correctional custody and restriction.”
- **Sec. 5408.** Article 89 is amended and retitled “Disrespect toward superior commissioned officer; assault of superior commissioned officer” and includes the offense of “Assaulting a superior commissioned officer,” which is transferred from Article 90.
- **Sec. 5409.** Article 90 is amended by transferring the offense of “Assaulting a superior commissioned officer” to Article 89 and retitles the statute as “Willfully disobeying superior commissioned officer.”
- **Sec. 5410.** A new Article 93a entitled “Prohibited activities with military recruit or trainee by person in position of special trust” covering military recruiters and trainers who knowingly engage in prohibited sexual activity with prospective recruits or junior members of the armed forces in initial training environments. Consent is not a defense to this offense.
- **Sec. 5411.** Article 95 migrates the loitering portion of the offense of “Sentinel or lookout: offenses against or by” from Article 134 to the redesignated Article 95 “Offenses by sentinel or lookout.”
- **Sec. 5412.** A new Article 95a (Disrespect toward a sentinel or lookout). The new statute includes the disrespect portion of the offense of “Sentinel or lookout: offenses against or by,” which is migrated from Article 134.
- **Sec. 5413.** Article 96 is amended and retitled as “Release of prisoner without authority; drinking with prisoner.” As amended, Article 96 includes the offense of “Drinking liquor with prisoner,” which is migrated from Article 134.

- **Sec. 5414.** Article 103 - “Spies” is amended by replacing the mandatory death penalty currently required with a discretionary death penalty.
- **Sec. 5415.** Article 104 - “Public record: altering, concealing, removing, mutilating, obliterating, or destroying” is migrated from Article 134 to redesignated Article 104 “Public records offenses.”
- **Sec. 5416.** A new Article 105a – “False or unauthorized pass offenses.” The new statute includes the offense of “False or unauthorized pass offenses,” which is migrated from Article 134.
- **Sec. 5417.** Redesignated Article 106 and migrates the offense of “Impersonating a commissioned, warrant, noncommissioned, petty officer or agent of official” from Article 134 into the redesignated Article 106 – “Impersonation of officer, noncommissioned or petty officer, or agent or official.”
- **Sec. 5418.** A new Article 106a – “Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button”, and migrates the offense of “Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button” from Article 134.
- **Sec. 5419.** Article 107 is amended and retitled as “False official statements; false swearing.” As amended, Article 107 includes the offense of “False swearing,” which is migrated from Article 134.
- **Sec. 5420.** A new Article 107a - “Parole violation”, and migrates the offense of “Parole, Violation of” from Article 134.
- **Sec. 5421.** A new Article 109a – “Mail matter: wrongful taking, opening, etc.”, and migrates the offense of “Mail: taking, opening, secreting, destroying, or stealing” from Article 134.
- **Sec. 5422.** Article 110 – “Improper hazarding of vessel” is amended to also prohibit improper hazarding of an aircraft.
- **Sec. 5423.** Article 111 is amended and retitled “Leaving scene of vehicle accident.” As amended, the statute includes the offense of “Fleeing the scene of an accident,” which is migrated from Article 134.
- **Sec. 5424.** Article 112 is amended and retitled “Drunkenness and other incapacitation offenses.” As amended, Article 112 includes the offenses of “Drunkenness—incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug” and “Drunk prisoner,” which are migrated from Article 134.
- **Sec. 5425.** Article 113 – “Drunken or reckless operation of vehicle, aircraft, or vessel” is amended and transferred from Article 111 and sets the BAC limits in the offense at .08 but also authorizes the DoD to prescribe lower limits should scientific developments or changes in federal civilian law lead to lower limits.
- **Sec. 5426.** Article 114 is amended and retitled “Endangerment offenses” and migrates “Firearm, discharging—willfully, under such circumstances as to endanger human life,” and “Weapon: concealed carrying” from Article 134.
- **Sec. 5427.** Article 115 is redesignated and migrates “Threat, communicating,” and “Threat or hoax designed or intended to cause panic or public fear” from Article 134 to the redesignated Article 115 – “Communicating threats.”
- **Sec. 5429.** A new Article 119b – “Child endangerment,” and migrates the offense of “Child endangerment” from Article 134.
- **Sec. 5430.** Article 120 is amended with modified definitions of “sexual act” and “sexual contact.” The Article 120(b) element of “causing bodily harm to that other person” for sexual assault is eliminated adding the element “without consent of the other person.” “Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent” and a new definition of “incapable of consenting” were added.
- **Sec. 5431.** Article 120a is redesignated as “Mails: deposit of obscene matter” and migrates the offense of “Mails: depositing or causing to be deposited obscene materials in” from Article 134.
- **Sec. 5432.** A new Article 121a – “Fraudulent use of credit cards, debit cards, and other access devices” addresses the misuse of credit cards, debit cards, and other electronic payment technology, also known as “access devices.”
- **Sec. 5433.** A new Article 121b – “False pretenses to obtain services” migrates the offense of “False pretenses, obtaining services under” from Article 134.
- **Sec. 5434.** Article 122 is amended to remove the words “with intent to steal” from robbery eliminating the requirement to show the accused intended to permanently deprive the victim of the victim’s property.
- **Sec. 5435.** A new Article 122a – “Receiving stolen property,” and migrates the offense of “Stolen property: knowingly receiving, buying, concealing) from Article 134.
- **Sec. 5436.** Article 123 is retitled “Offenses concerning Government computers” and creates a new offense to address computer-related offenses that apply only to persons subject to the UCMJ and offenses directed at U.S. government computers and U.S. Government protected information.
- **Sec. 5437.** A new Article 124a – “Bribery” and migrates the offense of “Bribery” from Article 134.
- **Sec. 5438.** A new Article 124b – “Graft” migrates the offense of “Graft” from Article 134.

- **Sec. 5439.** Article 125 is redesignated and migrates the offense of “Kidnapping” from Article 134.
- **Sec. 5440.** Article 126 – “Arson; burning property with intent to defraud” is redesignated and migrates the offense of “burning with intent to defraud” from Article 134 creating two forms of aggravated arson and one form of simple arson.
- **Sec. 5441.** Article 128 is amended to focus attention on the malicious intent of the accused as opposed to the speculative “likelihood” of the act actually resulting in harm. Also, the offense of “Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking” is migrated from Article 134 to Article 128.
- **Sec. 5442.** Article 129 is amended and retitled as “Burglary; unlawful entry” and incorporates the offense of “Housebreaking.” The offense of “Unlawful entry” is migrated from Article 134.
- **Sec. 5443.** Article 130 is redesignated as “Stalking” and updates current law to address cyberstalking and threats to intimate partners.
- **Sec. 5444.** A new Article 131a – “Subornation of perjury” migrates the offense of “Perjury: subornation of” from Article 134.
- **Sec. 5445.** A new Article 131b – “Obstructing justice” migrates the offense of “Obstructing justice” from Article 134.
- **Sec. 5446.** A new Article 131c – “Misprision of serious offense” migrates the offense of “Misprision of serious offense” from Article 134.
- **Sec. 5447.** A new Article 131d – “Wrongful refusal to testify” migrates the offense of “Testify: wrongful refusal” offense from Article 134.
- **Sec. 5448.** A new Article 131e – “Prevention of authorized seizure of property” migrates the offense of “Seizure: destruction, removal, or disposal of property to prevent” from Article 134.
- **Sec. 5449.** A new Article 131g – “Wrongful interference with adverse administrative proceeding” migrates the offense of “Wrongful interference with adverse administrative proceeding” from Article 134.
- **Sec. 5450.** Article 132 is amended and retitled as “Retaliation” and provides added protection for witnesses, victims, and persons who report or plan to report a criminal offense to law enforcement or military authority.
- **Sec. 5451.** Article 134 is amended to cover all non-capital federal crimes regardless of where the federal crime is committed.

Miscellaneous Provisions

- **Sec. 5503.** Article 137 is amended to require that officers, in addition to enlisted personnel, receive training on the UCMJ upon entry to service, and periodically thereafter. The amendment requires specific military justice training for military commanders and convening authorities, and requires the Secretary of Defense to prescribe regulations for additional specialized training on the UCMJ for combatant commanders and commanders of combined commands. The Secretary of Defense is also required to maintain an electronic version of the UCMJ and Manual for Courts-Martial that would be updated periodically and made available on the Internet.
- **Sec. 5504.** A new Article 140(a) requires the Secretary of Defense no later than two years after enactment of MJA16 to prescribe uniform standards and criteria for case processing and management, military justice data collection, production and distribution of records of trial, and access to case information. The purpose of this section is to enhance the management of cases, the collection of data necessary for evaluation and analysis, and to provide appropriate public access to military justice information at all stages of court-martial proceedings. At a minimum, the system developed for implementation should permit timely and appropriate access to docket information, filings, and records, of courts-martial.
- **Sec. 542.** Requires the Services to establish military justice experience and skill identifiers and pilot programs to “assess the feasibility and advisability of establishing a deliberate and professional development process for judge advocates that leads to military justice experience to prosecute and defend complex cases.” Each pilot project is to be for period of five years with each Service Secretary to provide a progress report to Congress within four years of the enactment of MJA16.

Military Justice Review Panel and Annual Reports

- **Sec 5521.** Article 146 is amended and retitled “Military Justice Review Panel” requiring the Secretary of Defense to establish a panel to conduct independent reviews and assessments of the UCMJ. The Panel will be comprised of thirteen members, one from the following: the Secretary of Defense, the Attorney General, each service, including the Coast Guard; with the remaining members selected by the Secretary of Defense based upon recommendations

from the House and Senate Armed Services Committee, the Chief Justice of the U.S., and the Chief Judge of CAAF. The Panel will have a full-time staff. The Panel will issue a report during FY2020 focusing on the implementation of any amendments to the UCMJ and the Manual for Courts-Martial during the previous five years. During FY 2020 the Panel is to gather and analyze sentencing data collected from the services from general and special courts-martial. During FY 2024 the Panel will issue a comprehensive review of the UCMJ and MCM and then every 8 years thereafter.

- **Sec. 5522.** A new Article 146a requires annual reports by CAAF and the Judge Advocates General, and the Staff Judge advocate to the Commandant of the Marine Corps. The Service reports will include data on cases pending, timeliness of the appellate review process, the reasons for reversal of convictions based upon command influence, denial of the right to speedy review or loss of records of trial or other administrative deficiencies, and the number of cases reversed where provisions of the UCMJ were held to be unconstitutional. The annual service report will also address measures implemented to ensure the competence of judge advocates as trial and defense counsel, military judges and victims' legal counsel

This Sidebar has been posted to Code 20's page on the JAG Portal at:
<https://portal.secnav.navy.mil/orgs/JAG/20/SitePages/Home.aspx>.

Please direct any questions to James S. Martinson, HQE, Code 20, at james.martinson@navy.mil, or (202) 685-8504.

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
Measuring the Scope of Sexual Assault			
RSP R-1 Jun 2014	<u>CRIME SURVEYS</u> (SecDef) Use of BJS Coordinated Crime Victimization Survey	<i>Recommendation 1:</i> The Secretary of Defense direct the development and implementation of a military crime victimization survey, in coordination with the Bureau of Justice Statistics, that relies on the best available research methods and provides data that can be more readily compared to other crime victimization surveys than current data.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-2 Jun 2014	<u>WGRS SURVEYS</u> (Congress/SecDef) Not to Use WGRS Survey for Sexual Assault Incidence Data	<i>Recommendation 2:</i> Congress and the Secretary of Defense utilize results from the Workplace and Gender Relations Survey of Active Duty Members for its intended purpose—to assess attitudes, identify areas for improvement, and revise workplace policies as needed - rather than to estimate the incidence of sexual assault within the military.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-3A Jun 2014	<u>DATA ON CONVICTION RATES</u> (SecDef/Services) Standardize Prosecution and Conviction Rate Method Across Services	<i>Recommendation 3A:</i> The Secretary of Defense direct the Service Secretaries to use a single, standardized methodology to calculate prosecution and conviction rates. The Panel recommends a methodology, based on the current Army model, which will provide accurate and comparable rates by tracking the number and rates of acquittals and alternate dispositions in sexual assault cases.	Dec 15, 2014- DoD Approved (DoD GC)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-3B Jun 2014	<p><u>DATA AND STUDY OF DISPOSITION PROCESS</u> (SecDef) Have HQE External to the Military Study Disposition Process in Sexual Assault Cases</p>	<p><i>Recommendation 3B:</i> Once the Services standardize definitions, procedures, and calculations for reporting prosecution and conviction rates in sexual assault cases, the Secretary of Defense direct a highly qualified expert (HQE), external to the military, to study the disposition process in sexual assault cases.</p> <p>The study should at least assess the following:</p> <ul style="list-style-type: none"> - the rate at which the Services unfound sexual assault reports using the Uniform Crime Reporting Program definition and the characteristics of such cases to determine whether any additional changes to policies or procedures are warranted; - the rates at which referral of cases to courts-martial against the advice of the Article 32 investigating or hearing officer resulted in acquittal or conviction; and - the role victim cooperation plays in determining whether to refer or not refer a case to court-martial, and whether the case results in a dismissal, acquittal or conviction. 	Dec 15, 2014- DoD Approved (DoD GC)
RSP R-4 Jun 2014	<p><u>DATA ON CIV-MIL CONVICTION RATES</u> (Congress/SecDef) Not to Compare Civilian and Military Prosecution and Conviction Rates</p>	<p><i>Recommendation 4:</i> Congress and the Secretary of Defense not measure success solely by comparing military and civilian prosecution and conviction rates.</p>	Dec 15, 2014- DoD Approved

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-5 Jun 2014	<p><u>“UNFOUNDED” REPORTS IN ANNUAL SAPRO REPORT</u></p> <p>(Congress) Include “Unfounded” Sex Assault Cases in SAPRO Annual Report Including Synopses</p>	<p><i>Recommendation 5:</i> Congress enact legislation to amend Section 1631(b)(3) of the NDAA for FY 2011 and the related provisions in the NDAA for FY 2012 and the NDAA for FY 2013 to require the Service Secretaries provide the number of “unfounded cases,” (i.e., those cases that were deemed false or baseless), as well as a synopsis of all other unrestricted reports of sexual assault with a known offender within the military’s criminal jurisdiction. Eliminating the requirement to provide information about “substantiated cases” will result in DoD and the Services providing information that more accurately reflects the disposition of all unrestricted reports of sexual assault within the military’s jurisdiction.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-6 Jun 2014	<p><u>INDEPENDENT SURVEY DATA ASSESSMENT AND MARKERS FOR RISK</u></p> <p>(SecDef) Independent Research Professionals Should Assess WGRS and Crime Victimization Data/Identify Markers for Increased Risk</p>	<p><i>Recommendation 6:</i> The Secretary of Defense direct that raw data collected from all surveys related to workplace environments and crime victimization be analyzed by independent research professionals to assess how DoD can improve responses to military sexual assault. For example: the survey’s non-response bias analysis plan should be published so that independent researchers can evaluate it; the spectrum of behaviors included in “unwanted sexual contact” should be studied to inform targeted prevention efforts; and environmental factors such as time in service, location, training status, and deployment status should be analyzed as potential markers for increased risk.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-7 Jun 2014	<p><u>SURVEY ADVISORY PANEL</u></p> <p>(SecDef) Creation of Advisory Panel of Experts from BJS and Nat’l Academy of Sciences to Consult on WGRS Survey</p>	<p><i>Recommendation 7:</i> The Secretary of Defense direct the creation of an advisory panel of qualified experts from the Bureau of Justice Statistics and the National Academy of Sciences’ Committee on National Statistics to consult with the RAND Corporation, selected to develop and administer the 2014 Workplace and Gender Relations Survey of Active Duty Members, and any other agencies or contractors that develop future surveys of crime victimization or workplace environments, to ensure effective survey design.</p>	Dec 15, 2014- DoD Approved in Part (USD (P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-8 Jun 2014	<u>CRIME SURVEY USE UCMJ DEFINITIONS</u> (SecDef) Use UCMJ Definitions of Sex Offenses in Crime Victimization Survey	<i>Recommendation 8:</i> If implemented, the Secretary of Defense direct that military crime victimization surveys use the Uniform Code of Military Justice's (UCMJ) definitions of sexual assault offenses, including: rape, sexual assault, forcible sodomy, and attempts to commit these acts.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-9 Jun 2014	<u>IMPROVED SURVEY RESPONSE RATES</u> (SecDef) Seek To Improve Response Rates	<i>Recommendation 9:</i> The Secretary of Defense seek to improve response rates to all surveys related to workplace environments and crime victimization to improve the accuracy and reliability of results.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-10 Jun 2014	<u>SURVEY FATIGUE</u> (DoD/Services) Monitor Survey Fatigue	<i>Recommendation 10:</i> DoD and the Services be alert to the risk of survey fatigue, and DoD SAPRO and Defense Equal Opportunity Management Institute monitor and assess what impact increased survey requirements have on survey response rates and survey results.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-11 Jun 2014	<u>SENTENCING DATA ON WEB</u> (SecDef/Services) Provide Sentencing Data In A Searchable Web Site	<i>Recommendation 11:</i> The Secretary of Defense direct the Service Secretaries to provide sentencing data, categorized by offense type, particularly for all rape and sexual assault offenses under Article 120 of the UCMJ, forcible sodomy under Article 125 of the UCMJ, or attempts to commit those acts under Article 80 of the UCMJ, into a searchable DoD database, to: (1) conduct periodic assessments, (2) identify sentencing trends, or (3) address other relevant issues. This information should be posted to a website or made available in a forum that is easily accessible to the public.	Dec 15, 2014- DoD Approved (Services)
RSP R-12 Jun 2014	<u>DATA ON SENTENCING RELEASED MONTHLY</u> (SecDef/Services) Release Monthly Courts-Martial Results	<i>Recommendation 12:</i> The Secretary of Defense direct the Services to release sentencing outcomes in <u>all cases</u> on a monthly basis to increase transparency and confidence in the military justice system.	Dec 15, 2014- DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
Role of the Commander in Sexual Assault Prevention			
RSP R-13 Jun 2014	<u>MALE VICTIM POLICY</u> (SecDef/Services) Need for Male-On- Male Sexual Assault Prevention Efforts	<i>Recommendation 13:</i> The Secretary of Defense direct DoD SAPRO and the Services to enhance their efforts to prevent and respond to male-on-male sexual assault. - Prevention efforts should ensure commanders directly acknowledge the potential for male-on-male sexual assault in their commands and directly confront the stigma associated with it. - Prevention efforts should also ensure Service members understand that sexually demeaning or humiliating behaviors that may have been minimized as hazing or labeled as “horseplay” in the past are not tolerated and may constitute punishable offenses. - DoD SAPRO should fund research on and seek expert assistance to understand the risk and protective factors that are unique to male-on-male sexual assault in the military and should develop targeted prevention programs for male-on-male sexual assault offenses.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-14 Jun 2014	<u>SAPR POLICY/ COMMANDER EFFORTS</u> (Services) Ensure Commanders Support Prevention Efforts	<i>Recommendation 14:</i> The Service Secretaries ensure commanders focus on effective prevention strategies. Commanders must demonstrate leadership of DoD’s prevention approach and its principles, and they must ensure members of their commands are effectively trained by qualified and motivated trainers who are skilled in teaching methods that will keep participants tuned in to prevention messages.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-15 Jun 2014	<u>SAPR POLICY/ ALCOHOL MITIGATION</u> (SecDef) Implement Alcohol-Mitigation Strategies for SAPR	<i>Recommendation 15:</i> The Secretary of Defense direct appropriate DoD authorities to work with researchers to determine how best to implement promising, evidence-based alcohol mitigation strategies (e.g., those that affect pricing, outlet density, and the availability of alcohol). The Secretary of Defense should ensure DoD’s strategic policies emphasize these strategies and direct DoD SAPRO to coordinate with the Services to evaluate promising programs some local commanders have initiated to mitigate alcohol consumption.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-16 Jun 2014	<p><u>SAPR POLICY/ PRIOR VICTIMIZATION</u></p> <p>(SecDef) Develop Risk-Management Programs Directed Toward Prior-Victimization</p>	<p><i>Recommendation 16:</i> The Secretary of Defense direct DoD SAPRO to evaluate development of risk-management programs directed toward populations with particular risk and protective factors that are associated with prior victimization. In particular, DoD SAPRO should work with researchers to determine to what extent prior sexual victimization increases Service members' risk for sexual assault in the military to develop effective programs to protect against re-victimization.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-17 Jun 2014	<p><u>SAPR POLICY/ PRIOR VICTIMIZATION</u></p> <p>(SecDef) Develop Services For Prior Sexual Abuse</p>	<p><i>Recommendation 17:</i> The Secretary of Defense direct DoD SAPRO to consult with the Centers for Disease Control and Prevention and other appropriate agencies to develop and expand services for military members who experienced sexual abuse prior to joining the military, and to develop strategies to encourage utilization of these services to prevent re-victimization and develop or maintain skills necessary to fully engage in military activities and requirements.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-18 Jun 2014	<p><u>SAPR POLICY/ BYSTANDER INTERVENTION</u></p> <p>(SecDef/Services) Review Bystander Intervention Programs for Misconceptions</p>	<p><i>Recommendation 18:</i> The Secretary of Defense and Service Secretaries direct DoD SAPRO and the Services, respectively, to review bystander intervention programs to ensure they do not rely upon common misconceptions or overgeneralized perceptions. In particular, programs should not overemphasize serial rapists and other sexual "predators" and should instead emphasize preventive engagement, encouraging Service member attention and vigilance toward seemingly harmless attitudes and behaviors that increase the potential for sexual assault.</p>	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-19 Jun 2014	<u>SAPR POLICY / BYSTANDER RETALIATION</u> (SecDef) Establish Specific Training Addressing Retaliation Against Bystanders	<i>Recommendation 19:</i> The Secretary of Defense direct DoD SAPRO to establish specific training and policies addressing retaliation toward peers who intervene and/or report. - Bystander intervention programs for service members include training that emphasizes the importance of guarding against such retaliation. - DoD and Service policies and requirements ensure protection from retaliation against not just victims, but also the peers who speak out and step up on their behalf. - Commanders encourage members to actively challenge attitudes and beliefs that lead to offenses and interrupt and/or report them when they occur.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-20 Jun 2014	<u>SAPR POLICY/ MALE VICTIMS</u> (SecDef) Develop Specific Training Addressing Male-on- Male Assault	<i>Recommendation 20:</i> The Secretary of Defense continue to develop and implement training for all members of the military, including new recruits, with examples of male-on-male sexual assault, including hazing and sexual abuse by groups of men. The training should emphasize the psychological damage done by sexual assault against male victims.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-21 Jun 2014	<u>SAPR POLICY/ TRAINING NEW RECRUITS</u> (Services) Provide Sexual Assault Training For New Recruits	<i>Recommendation 21:</i> The Service Secretaries direct commanders of military entrance processing stations to determine how to best provide sexual assault prevention information to new recruits immediately upon entry into the Service that include the definition of sexual assault, possible consequences of a conviction for sexual offenses in the military and information about the DoD Safe Helpline and other avenues for assistance. This recommendation expands upon the Defense Task Force on Sexual Assault in the Services' recommendation to make available, and to visibly post, sexual assault prevention and awareness campaign materials at military entrance processing stations.	Dec 15, 2014- DoD Approved (USD(P&R))

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Number	Brief Description	Recommendation	Action
RSP R-22 Jun 2014	<u>SAPR POLICY/ TRAINING</u> (SecDef) Continue To Develop Sexual Assault Training For All Members	<i>Recommendation 22:</i> The Secretary of Defense continue to develop and implement training for all members of the military, including new recruits, emphasizing that reporting instances of sexual assault is essential for good order and discipline and protects rather than undermines morale. It is also essential that training continue to emphasize that good order and discipline require that the military justice system carries out its mission of determining guilt or innocence in an environment free from bias against an accuser or accused Service member.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-23 Jun 2014	<u>RETALIATION TRAINING</u> (SecDef) Develop Training for All Members That Retaliation Violates Good Order and Discipline	<i>Recommendation 23:</i> The Secretary of Defense continue to develop and implement training for all members of the military, including new recruits, that retaliation or harassment by Service members in response to an allegation of sexual assault violates good order and discipline.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-24 Jun 2014	<u>SAPR POLICY/ TRAINING ON COERCIVE RELATIONSHIPS</u> (SecDef) Develop Training for All Members That Demands For Sex by Superiors Are Unlawful	<i>Recommendation 24:</i> The Secretary of Defense continue to develop and implement training for all members of the military, including new recruits, explaining that implicit or explicit invitations or demands for sex or sexualized interactions from commanders or superiors are not lawful orders, should not be obeyed, violate the code of military conduct, and will be punished.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-25 Jun 2014	<u>SAPR POLICY / NO FORMAL STATEMENT</u> (DoD) Not Promulgate a Formal Sexual Assault Accountability Statement	<i>Recommendation 25:</i> The Department of Defense not promulgate at this time an additional formal statement of what accountability, rights, and responsibilities a member of the Armed Forces has with regard to matters of sexual assault prevention and response.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-26 Jun 2014	<u>CLIMATE SURVEY OF SUBORDINATE LEADERS</u> (DoD) Ensure Climate Surveys Accurately Assess Subordinate Leaders	<i>Recommendation 26:</i> DoD SAPRO and the Defense Equal Opportunity Management Institute ensure survey assessments and other methods for assessing command climate accurately assess and evaluate the effectiveness of subordinate organizational leaders and supervisors in addition to commanders.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-27 Jun 2014	<u>PLAN AFTER CLIMATE SURVEY</u> (SecDef/Services) Commanders Develop Action Plans After Climate Surveys	<i>Recommendation 27:</i> The Secretary of Defense and Service Secretaries ensure commanders are required to develop action plans following completion of command climate surveys that outline steps the command will take to validate or expand upon survey information and steps the command will take to respond to issues identified through the climate assessment process.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-28 Jun 2014	<u>ADDITIONAL CLIMATE ASSESSMENT</u> (DoD/Services) Identify Additional Means to Assess Climate	<i>Recommendation 28:</i> DoD and the Services identify and utilize means in addition to surveys to assess and measure institutional and organizational climate for sexual assault prevention and response.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-29 Jun 2014	<u>SAPR PROGRAM ASSESSMENT</u> (DoD/Services) Use More than Surveys to Obtain Information on SAPR Program Effectiveness	<i>Recommendation 29:</i> In addition to personnel surveys, DoD, the Services, and commanders identify and utilize other resources to obtain information and feedback on the effectiveness of Sexual Assault Prevention and Response programs and local command climate.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

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Number	Brief Description	Recommendation	Action
RSP R-30 Jun 2014	<p><u>CLIMATE ASSESSMENT AFTER INCIDENT</u> (Congress) Not Adopt Section 3(d) of 2014 VPA (Climate Assessment After Each Incident of Sexual Assault) (SecDef) Establish Safety Reviews After Incidents</p>	<p><i>Recommendation 30:</i> Congress not adopt Section 3(d) of the Victim's Protection Act of 2014. Alternatively, the Secretary of Defense should direct the formulation of a review process to be applied following each reported instance of sexual assault to determine the non-criminal factors surrounding the event. Such reviews should address what measures ought to be taken to lessen the likelihood of recurrence (e.g.; physical security, lighting, access to alcohol, off-limits establishments, etc.).</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-31 Jun 2014	<p><u>COMMANDER PERFORMANCE METRICS</u> (DoD/Services) Accountability Metrics Included in Commander Performance Assessments</p>	<p><i>Recommendation 31:</i> DoD and the Services consider opportunities and methods for effectively factoring accountability metrics into commander performance assessments, including climate survey results, indiscipline trends, sexual assault statistics, and equal opportunity data.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-32 Jun 2014	<p><u>SUBORDINATE LEADER ASSESSMENT</u> (Services) SAPR Performance Assessment Includes Subordinate Leaders</p>	<p><i>Recommendation 32:</i> The Service Secretaries ensure sexual assault prevention and response performance assessment requirements extend below unit commanders to include subordinate leaders, including officers, noncommissioned officers, and civilian supervisors.</p>	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-33 Jun 2014	<p><u>COMMANDER ASSESSMENT</u> (Services) Commander SAPR Assessment Includes More than Survey Results</p>	<p><i>Recommendation 33:</i> The Service Secretaries ensure assessment of commander performance in sexual assault prevention and response incorporates more than results from command climate surveys.</p>	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-34 Jun 2014	<u>CLEAR OBJECTIVES FOR COMMANDERS</u> (DoD/Services) Ensure SAPR Objectives Clearly Defined for Leaders	<i>Recommendation 34:</i> To ensure military leaders clearly understand their duties and responsibilities, DoD SAPRO and the Service Secretaries ensure SAPR programs and initiatives are clearly defined and establish objective standards when possible.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-35 Jun 2014	<u>COMMANDERS TRAINED ON CLIMATE</u> (SecDef/Services) Commanders Trained to Monitor SAPR Climate by More Than Surveys	<i>Recommendation 35:</i> The Secretary of Defense and Service Secretaries ensure commanders are trained in methods for monitoring a unit's sexual assault prevention and response climate, and they should ensure commanders are accountable for monitoring their command's sexual assault prevention and response climate outside of the conduct of periodic surveys.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-36 Jun 2014	<u>DISPOSITION DECISION</u> (Congress) Not Adopt Proposed STOP Act or MJIA	<i>Recommendation 36:</i> Congress not adopt the proposals in the Sexual Assault Training Oversight and Prevention (STOP) Act or the Military Justice Improvement Act (MJIA) to modify the authority vested in convening authorities to refer sexual assault charges to courts-martial.	Dec 15, 2014- DoD Approved
RSP R-37 Jun 2014	<u>DISPOSITION DECISION</u> (Congress) Not Further Limit Role of The Commander to Refer Charges	<i>Recommendation 37:</i> Congress not further limit the authority under the UCMJ to refer charges for sexual assault crimes to trial by court-martial beyond the recent amendments to the UCMJ and DoD policy.	Dec 15, 2014- (DoD OGC) Referred to MJRG
RSP R-38 Jun 2014	<u>DISPOSITION DECISION</u> (SecDef) Ensure Legal Training for Senior Officers	<i>Recommendation 38:</i> The Secretary of Defense ensure all officers preparing to assume senior command positions at the grade of O-6 and above receive dedicated legal training that fully prepares them to exercise authorities assigned to them under the UCMJ.	Dec 15, 2014- DoD Approved (Services)

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Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-39 Jun 2014	<p><u>DISPOSITION REVIEW</u></p> <p>(Congress) Repeal FY14 § 1744 (Higher Authority Review of Some Commander Non-Referrals)</p>	<p><i>Recommendation 39:</i> Congress repeal Section 1744 of the National Defense Authorization Act for Fiscal Year 2014, which requires a convening authority's decision <i>not</i> to refer certain sexual assault cases be reviewed by a higher general court-martial convening authority or the Service Secretary, depending on the circumstances, due to the real or perceived undue pressure it creates on staff judge advocates to recommend referral, and on convening authorities to refer, in situations where referral does not serve the interests of victims or justice.</p>	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-40 Jun 2014	<p><u>DISPOSITION DECLINATION FORM</u></p> <p>If FY14 § 1744 Not Repealed (SecDef) Develop Standard Form for Declining Prosecution</p>	<p><i>Recommendation 40:</i> If Congress does not repeal Section 1744 of the National Defense Authorization Act for Fiscal Year 2014, and the requirement for elevated review of non-referred case files continues, the Secretary of Defense direct a standard format be developed for declining prosecution in a case, modeled after the contents of civilian jurisdiction declination statements or letters. The DoD should coordinate with the Department of Justice, or with state jurisdictions that are more familiar with the sensitive nature of sexual assault cases, to develop a standard format for use by all Services. Any such form should require a sufficient explanation without providing too much detail so as to ensure the written reason for declination to prosecute does not jeopardize the possibility of a future prosecution or contain victim-blaming language.</p>	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-41 Jun 2014	<p><u>DISPOSITION REVIEW</u></p> <p>(Congress) Not Enact Section 2 of 2014 VPA (Sr. Trial Counsel May Request Higher Authority Review for Non-Referral)</p>	<p><i>Recommendation 41:</i> Congress not enact Section 2 of the Victim's Protection Act of 2014, which would require the next higher convening authority or Service Secretary to review a case if the senior trial counsel disagreed with the staff judge advocate's recommendation against referral or the convening authority's decision not to refer one of these sexual assault cases. The staff judge advocate is the general court-martial convening authority's legal advisor on military justice matters; there is no evidence that inserting the senior trial counsel into the process will enhance the fair administration of military justice.</p>	Dec 15, 2014 (DoD OGC) Referred to MJRG

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Number	Brief Description	Recommendation	Action
RSP R-42 Jun 2014	<u>ARTICLE 60/ CLEMENCY</u> (Congress) Not Further Amend Art 60	<i>Recommendation 42:</i> Congress not adopt additional amendments to Article 60 of the UCMJ beyond the significant limits on discretion already adopted, and the President should not impose additional limits to the post-trial authority of convening authorities.	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-43 Jun 2014	<u>ARTICLE 60/ CLEMENCY</u> (Congress) Amend FY14 § 1702(b) (Allowing Commanders to Grant Clemency to Protect Dependents From Forfeitures)	<i>Recommendation 43:</i> Congress amend Section 1702(b) of the National Defense Authorization Act for Fiscal Year 2014 to allow convening authorities to grant clemency as formerly permitted under the UCMJ to protect dependents of convicted Service members by relieving them of the burden of automatic and adjudged forfeitures.	Dec 15, 2014 (DoD OGC) Referred to MJRG
Victim Counsel, Rights, Support, and Services			
RSP R-44 Jun 2014	<u>SVC / DURATION OF REPRESENTATION</u> (SecDef/Services) Extend SVC Representation as Long as a Right is at Issue	<i>Recommendation 44:</i> The Secretary of Defense direct the Services to extend the opportunity for special victim counsel representation, although not necessarily the same special victim counsel, to a victim so long as a right of the victim exists and is at issue.	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-45 Jun 2014	<u>ACCESS TO INFORMATION</u> (JPP/JSC) Clarify Extent of Victim's Right to Information	<i>Recommendation 45:</i> The Judicial Proceedings Panel and the Joint Services Committee should review and clarify the extent of a victim's right to access information that is relevant to the assertion of a particular right.	Dec 15, 2014 (DoD OGC) Referred to JSC

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Number	Brief Description	Recommendation	Action
RSP R-46 Jun 2014	<u>ARTICLE 6B / RIGHT TO BE HEARD THROUGH COUNSEL</u> (SecDef/EO) Clarify Victims' Right to Be Heard Through Counsel	<i>Recommendation 46:</i> The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to clarify a victim's right to be heard includes the right to be heard on legal issues through counsel.	Dec 15, 2014 (DoD OGC) Referred to JSC
RSP R-47 Jun 2014	<u>SVC / SELECTION CRITERIA</u> (SecDef/Services) Additional SVC Selection Criteria	<i>Recommendation 47:</i> The Secretary of Defense direct the Services to implement additional selection criteria for their individual Special Victim Counsel programs to require that counsel have appropriate trial experience, whenever possible, prior to being selected as special victim counsel.	Dec 15, 2014- DoD Approved (Services)
RSP R-48 Jun 2014	<u>SVC / IMPACT ON MJ</u> (Services) Assess Effects of SVC Program on Military Justice	<i>Recommendation 48:</i> In addition to assessing victim satisfaction with the Special Victim Counsel program, the Service Secretaries survey convening authorities, staff judge advocates, prosecutors, defense counsel, military judges, and investigators to assess the effects of the program on the administration of military justice.	Dec 15, 2014- DoD Approved (Services)
RSP R-49 Jun 2014	<u>SVC / FUNDING</u> (Congress) Appropriate Adequate Funding for SVC Programs	<i>Recommendation 49:</i> Congress appropriate sufficient funds and personnel authorizations annually to DoD to ensure the Services are able to sustain a robust Special Victim Counsel program.	Dec 15, 2014- DoD Approved
RSP R-50 Jun 2014	<u>SVC / WEB SITE</u> (Services) Ensure SVC Program Collaboration and an Inter-Service Resource Web Site	<i>Recommendation 50:</i> The Service Secretaries establish and disseminate collaborative methods for special victim counsel between and among the Services, including an inter-Service website where special victim counsel may access resources and training materials, and receive training on best practices including the provision of advice and resources to sexual assault victims for issues related to negative personnel actions encountered as a result of being a victim or seeking treatment.	Dec 15, 2014- DoD Approved (Services)

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Number	Brief Description	Recommendation	Action
RSP R-51 Jun 2014	<u>SVC/PROGRAM ASSESSMENT</u> (Services) Develop Standard Metrics to Evaluate SVC Program	<i>Recommendation 51:</i> The Service Secretaries develop a standard evaluation mechanism in consultation with an independent evaluator with appropriate metrics to determine the effectiveness of the Special Victim Counsel program in each Service on an annual basis. This includes annually evaluating the effectiveness of the organizational structure of the Service Special Victim Counsel programs and assessing the individual Service policies on eligibility requirements for obtaining a special victim counsel.	Dec 15, 2014- DoD Approved (Services)
RSP R-52 Jun 2014	<u>SVC / COLLABORATION</u> (SecDef) Establish Inter-Service SVC Working Group	<i>Recommendation 52:</i> The Secretary of Defense establish an inter-Service working group to assess the practices of all Service Special Victim Counsel programs. The inter-Service working group should discuss, deliberate, and decide upon the best practices being utilized by all the Services. The working group should then ensure each Service implements the best practices of the Special Victim Counsel programs. The working group should consist of, at a minimum, the Special Victim Counsel program heads from each Service. The first meeting should occur within twelve months from the date of this report. Thereafter, the working group should meet at least annually.	Dec 15, 2014- DoD Approved (DoD OGC)
RSP R-53 Jun 2014	<u>ARTICLE 6B/ STANDING</u> (SecDef) Clarify Victim Standing Pre, During, and Post-Trial Under 6b of the UCMJ	<i>Recommendation 53:</i> The Secretary of Defense clarify that victims have legal standing to enforce their rights listed in Article 6b of the UCMJ at any relevant time in the proceedings, including before, during, and after trial.	Dec 15, 2014 (DoD OGC) Referred to JSC
RSP R-54A Jun 2014	<u>ARTICLE 6B/ PTA RIGHT TO BE HEARD</u> (SecDef/EO) Provide Victim Right to be Heard on PTA	<i>Recommendation 54A:</i> The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations that provide victims a right to be heard regarding a pretrial agreement.	Dec 15, 2014- (DoD OGC) Referred to JSC

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Number	Brief Description	Recommendation	Action
RSP R-54B Jun 2014	<u>ARTICLE 6B/ PTA RIGHT TO BE HEARD</u> (SecDef/EO) Provide Victim Right To Be Heard By CA on PTA	<i>Recommendation 54B:</i> The proposed changes provide victims the right to be heard by the convening authority regarding a plea, with appropriate consideration to account for military pretrial agreement practice.	Dec 15, 2014- (DoD OGC) Referred to JSC
RSP R-54C Jun 2014	<u>ARTICLE 6B/ PTA RIGHT TO BE HEARD</u> (SecDef/EO) Ensure Victim Right to be Heard Before CA Decision on PTA	<i>Recommendation 54C:</i> The recommended changes ensure the right to be heard before the convening authority decides to accept, reject, or propose a counteroffer to a pretrial agreement offer submitted by an accused. The convening authority should retain discretion to determine the best means to comply with this right and consider the victim's opinion (e.g., submission in writing, in person).	Dec 15, 2014- (DoD OGC) Referred to JSC
RSP R-55 Jun 2014	<u>ARTICLE 6B/ DISPOSITION PREFERENCE</u> (SecDef) Trial Counsel Must Convey Victim's Disposition Preferences to CA	<i>Recommendation 55:</i> The Secretary of Defense direct the creation and implementation of mechanisms, where not currently in place, requiring trial counsel to convey the victim's specific concerns and preferences to the convening authority regarding case disposition. These procedures will take into account the convening authority's role in the disposition of cases under the military justice system and create a process more analogous to a victim's right to confer with a prosecutor under the Crime Victim's Rights Act.	Dec 15, 2014- (DoD OGC) Referred to JSC

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Number	Brief Description	Recommendation	Action
RSP R-56 Jun 2014	<p><u>ARTICLE 6B/ VICTIM IMPACT STATEMENT</u></p> <p>(SecDef/EO) Recommend Changes to UCMJ to Allow Victim Unsworn Impact Statement</p>	<p><i>Recommendation 56:</i> The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to provide victims the right to make an unsworn victim impact statement, not subject to cross examination during the presentencing proceeding, with the following safeguards:</p> <ul style="list-style-type: none"> - The members should be instructed similarly to the instruction they receive when the accused makes an unsworn statement; - The substance of the unsworn statement, including all material facts, should be in writing, available to the defense counsel before sentencing and be subject to the same objections available to the government regarding the accused's unsworn statement; and - If there is "new matter" that could affect the sentence brought up in the victim's unsworn statement, a military judge may take appropriate corrective action. 	Dec 15, 2014- (DoD OGC) Referred to JSC
RSP R-57 Jun 2014	<p><u>ARTICLE 6B</u></p> <p>(Services) Judge to Ensure Trial Counsel Affords Victim's Rights Under 6b</p>	<p><i>Recommendation 57:</i> The Service Secretaries ensure trial counsel comply with their obligations to afford military crime victims the rights set forth in Article 6b of the UCMJ and DoD policy by, in cases tried by courts-martial, requiring military judges to inquire, on the record, whether trial counsel complied with statutory and policy requirements.</p>	Dec 15, 2014- DoD Approved (Services)
RSP R-58 Jun 2014	<p><u>ARTICLE 6B</u></p> <p>(SecDef/EO) Recommend Changes to UCMJ to Ensure Victim Afforded 6b Rights</p>	<p><i>Recommendation 58:</i> The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to ensure that military investigators, prosecutors and other DoD military and civilian employees engaged in the detection, investigation, or prosecution of crime use their best efforts to notify and accord victims the rights specified in Article 6b of the UCMJ.</p>	Dec 15, 2014- (DoD OGC) Referred to JSC

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Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-59 Jun 2014	<u>ARTICLE 6B / COMPLAINT PROCESS</u> (SecDef) Assess Effectiveness of 6b Non-Compliance Complaint Process	<i>Recommendation 59:</i> The Secretary of Defense assess the effectiveness of the processes to receive and investigate complaints relating to violations of or failures by military and civilian employees of all the Services to provide the rights guaranteed by Article 6b, UCMJ, and to determine whether a more uniform process is needed.	Dec 15, 2014-DoD Approved (Services) Dec 3, 2015 DoD Update-(USD(P&R))
RSP R-60 Jun 2014	<u>COLLATERAL MISCONDUCT</u> (SecDef) Study of Collateral Misconduct and Options for Immunity	<i>Recommendation 60:</i> The Secretary of Defense direct an expedited study of what constitutes low-level collateral misconduct in sexual assault cases and examine whether a procedure for granting limited immunity should be implemented in the future.	Dec 15, 2014-(DoD OGC) Referred to JSC
RSP R-61 Jun 2014	<u>SVC</u> (SecDef) Right to Consult With SVC Before Deciding on Restricted or Unrestricted Report	<i>Recommendation 61:</i> The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with a special victim counsel before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.	Dec 15, 2014-DoD Approved (USD(P&R))
RSP R-62 Jun 2014	<u>SVC/RESTRICTED REPORT</u> (SecDef) MPs Must Refer Victim to SVC, and Victim Retains Right to Make a Restricted Report	<i>Recommendation 62:</i> The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that she or he has the right to speak with a special victim counsel before determining whether to file a restricted or unrestricted report, or no report at all.	Dec 15, 2014-DoD <u>Disapproved</u>

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Number	Brief Description	Recommendation	Action
RSP R-63 Jun 2014	<p style="text-align: center;"><u>MCIO</u> <u>INFORMATION ON</u> <u>RESTRICTED</u> <u>REPORT</u></p> <p>(SecDef) Develop Policy to Allow Victim to Provide Information on Restricted Report to MCIO</p>	<p><i>Recommendation 63:</i> The Secretary of Defense direct DoD SAPRO, in coordination with the Services and the DoD Inspector General, to change restricted reporting policy to allow a victim who has made a restricted report to provide information to a military criminal investigative organization agent, but only when a victim advocate and/or special victim counsel is present, without the report automatically becoming unrestricted and triggering a law enforcement investigation. This should be a voluntary decision on the part of the victim. The policy should prohibit military criminal investigative organizations from using information obtained in this manner to initiate an investigation or title an alleged offender as a subject, unless the victim chooses, or changes, his or her preference to an unrestricted report. The Secretary of Defense should require this information be provided the same safeguards as other criminal intelligence data to protect against misuse of the information.</p>	<p>Dec 15, 2014- Included in FY15 NDAA</p> <p>Dec 3, 2015- DoD Approved (USD(P&R))</p>
RSP R-64 Jun 2014	<p style="text-align: center;"><u>PROTECT VICTIM</u> <u>CAREER</u></p> <p>(SecDef) Policy to Protect Victim's Military Career</p>	<p><i>Recommendation 64:</i> The Secretary of Defense implement policy that protects victims of sexual assault in the military from suffering damage to their military careers (including but not limited to weakened performance evaluations or lost promotions, security clearances, or personnel reliability certifications) based on having been a victim of sexual assault, having reported sexual assault, or having sought mental health treatment for sexual assault.</p>	<p>Dec 15, 2014- DoD Approved (USD(P&R))</p>
RSP R-65 Jun 2014	<p style="text-align: center;"><u>SAPR POLICY/</u> <u>REPORTING</u></p> <p>(SecDef) Clarify Reporting Options and Reporting Channels</p>	<p><i>Recommendation 65:</i> The Secretary of Defense direct DoD SAPRO to ensure sexual assault reporting options are clarified to ensure all members of the military, including the most junior personnel, understand their options for making a restricted or unrestricted report and the channels through which they can make a report.</p>	<p>Dec 15, 2014- DoD Approved (USD(P&R))</p>

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Number	Brief Description	Recommendation	Action
RSP R-66 Jun 2014	<u>FAP ADDED TO ANNUAL SAPRO REPORT</u> (SecDef) All Adult Sexual Assault Incidents Reported in Annual SAPRO Report	<i>Recommendation 66:</i> The Secretary of Defense direct that adult unwanted sexual contact reports handled by the Family Advocacy Program and recorded in its database be included in the annual DoD SAPRO report of adult unwanted sexual contact cases.	Dec 15, 2014- (USD(P&R)) Referred to Working Group
RSP R-67 Jun 2014	<u>SAPR POLICY/ RESTRICTED REPORT DATA</u> (SecDef) Develop Policy On Providing Restricted Report Data in DSAID to Identify Serial Offenders	<i>Recommendation 67:</i> The Secretary of Defense direct DoD SAPRO to develop policy and procedures for sexual assault response coordinators to input information into the Defense Sexual Assault Incident Database on alleged sexual assault offenders identified by those victims who opt to make restricted reports. These policies should include procedures on whether to reveal the alleged offender's personally identifying information to the military criminal investigative organization when there is credible information the offender is identified or suspected in another sexual assault, providing safeguards for that personally identifiable information.	Dec 15, 2014- Included in FY15 NDAA Dec 3, 2015- DoD Approved (USD(P&R))
RSP R-68 Jun 2014	<u>SAPR POLICY/ RESTRICTED REPORT</u> (SecDef) Process to Provide Information on Restricted Reports to Installation Commander	<i>Recommendation 68:</i> The Secretary of Defense direct DoD SAPRO to develop and implement a process to provide the installation commander, the first O-6 and first general or flag officer in the victim's chain of command with information on status and services provided to victims filing restricted reports of sexual assault within eight days of a report. When restricted reports are made, DoD SAPRO should work with the Services to ensure adequate measures are in place to protect the identity of the victim while providing sufficient information to track the victim's care.	Dec 15, 2014- DoD Approved in Part (USD(P&R))
RSP R-69 Jun 2014	<u>EXPEDITED TRANSFER/ RESTRICTED REPORTS</u> (Services) Develop Expedited Transfer Option For Restricted Report	<i>Recommendation 69:</i> Service Secretaries create a means by which sexual assault victims who file a restricted report may request an expedited transfer without have to make their report unrestricted.	Dec 15, 2014- (USD(P&R)) Referred to Working Group Oct 21, 2015 USD(P&R) Memorandum

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Number	Brief Description	Recommendation	Action
RSP R-70 Jun 2014	<u>EXPEDITED TRANSFER OPTIONS</u> Train Medical and SAPR Personnel About Commander Options to Transfer Members	<i>Recommendation 70:</i> Training for medical personnel, sexual assault response coordinators, and victim advocates, include the options that a commander has available to make or affect transfers when an unrestricted report is made.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-71A Jun 2014	<u>SAFE HELPLINE</u> (Services) Provide Guidance that DoD Hotline is only 24/7 Hotline	<i>Recommendation 71A:</i> The Service Secretaries set forth clear guidance that the DoD Safe Helpline is the single military 24/7 sexual assault crisis hotline for Service members.	Dec 15, 2014- DoD Approved (Services)
RSP R-71B Jun 2014	<u>SAFE HELPLINE</u> (DoD) Easy To Remember Number for SAFE Helpline	<i>Recommendation 71B:</i> The DoD Safe Helpline establish an easily remembered number similar to its website name of SafeHelpline.org.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-71C Jun 2014	<u>SAFE HELPLINE</u> (DoD/Services) Ensure Safe Helpline Has 24/7 Contact Information for Installation Services	<i>Recommendation 71C:</i> DoD require the Services to provide the Safe Helpline with sufficient contact information at each installation or deployed location so that local victim service providers can be reached on a 24/7 basis.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-72 Jun 2014	<u>MENTAL HEALTHCARE</u> (Services) Assess Options for Mental Healthcare in SAPR Program	<i>Recommendation 72:</i> The Service Secretaries evaluate the availability of, and access to, adequate and consistent mental healthcare for victims of sexual assault, and the option of incorporating counselors into the Sexual Assault Prevention and Response program in a manner similar to the integration in the Family Advocacy Program.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-73 Jun 2014	<u>LOCAL VICTIM SUPPORT</u> (Services) Greater Coordination With Victim Support Agencies	<i>Recommendation 73:</i> The Service Secretaries direct further development of local coordination requirements both on and off the installation, and expand requirements for installation commanders to liaison with victim support agencies.	Dec 15, 2014- DoD Approved (USD(P&R)) (Services)
RSP R-74 Jun 2014	<u>VA STAFFING AND CASELOADS</u> (SecDef) Determine Appropriate Victim Advocate Staffing & Caseloads	<i>Recommendation 74:</i> The Secretary of Defense direct DoD SAPRO to determine necessary victim advocate staffing for each Service and appropriate caseload for each victim advocate to ensure that victim advocates become and remain proficient in their duties. Victim advocate duties should include partnering with or observing other professionals who provide victim services (including community providers) or other experiential work to gain further practical skills and confidence while awaiting assignment to a case.	Dec 15, 2014- DoD Approved (Services)
RSP R-75 Jun 2014	<u>EFFECTIVENESS OF SARC/VA TRAINING</u> (SecDef) Periodic Evaluations Of Uniformity And Effectiveness Of SARC/VA Training	<i>Recommendation 75:</i> The Secretary of Defense direct that the periodic evaluations of training provided for Services' sexual assault response coordinators and victim advocates be conducted and include an assessment as to whether the training and curriculum across the Services is uniform, is effective, and reflects all existing initiatives, programs, and policies.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-76 Jun 2014	<u>INDEPENDENT ADVISORY COMMITTEE</u> (SecDef) Establish An Advisory Panel	<i>Recommendation 76:</i> The Secretary of Defense establish an advisory panel, comprised of persons external to the DoD, to offer to the Secretary and other senior leaders in DoD independent assessment and feedback on the effectiveness of DoD's sexual assault prevention and response programs and policies.	Dec 15, 2014- DoD Deferred
RSP R-77 Jun 2014	<u>SAPR PROGRAM ASSESSMENT</u> (SecDef) Evaluate Programs To Determine Need and Funding For Each	<i>Recommendation 77:</i> The Secretary of Defense direct DoD SAPRO to evaluate and assess all programs and initiatives dealing with sexual assault and measure the effectiveness of each to determine which programs and initiatives are effective, which should be continued, expanded, and preserved, and how best to allocate funding for the effective programs and initiatives.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-78 Jun 2014	<u>EXTERNAL SAPR PROGRAM ASSESSMENT</u> (SecDef) Direct Evaluations By Outside Agencies to Validate Internal Assessments	<i>Recommendation 78:</i> The Secretary of Defense direct periodic and regular evaluations of individual DoD, Service, or local Sexual Assault Prevention and Response programs and performance, to be conducted by independent organizations, which would serve to validate or disprove DoD's own internal assessments and would provide useful feedback to the Department and enhance public confidence in Sexual Assault Prevention and Response programs and initiatives.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-79 Jun 2014	<u>OVERLAPPING VICTIM ASSISTANCE ROLES</u> (SecDef) Assess Role Of Victim Assistance Personnel to Reduce Overlap	<i>Recommendation 79:</i> The Secretary of Defense direct DoD SAPRO or the DoD Inspector General to assess the roles and responsibilities of sexual assault response coordinator, victim advocate, victim witness liaison, and Family Advocacy Program personnel, to ensure advocacy personnel are effectively utilized, their roles are properly delineated to allow for excellence; overlap is minimized; that sufficient positions are designated and to determine whether their roles should be modified, and whether all current victim assistance related programs should be sustained in this resource constrained environment.	Dec 15, 2014- DoD Approved (USD(P&R))
Ensuring Fairness and Due Process			
RSP R-80 Jun 2014	<u>SAPR TRAINING CONCERN</u> (SecDef/Services) Ensure SAPR Training Does not Create Unlawful Command Influence	<i>Recommendation 80:</i> The Secretary of Defense and Service Secretaries ensure prevention programs address concerns about unlawful command influence. In particular, commanders and leaders must ensure sexual assault prevention and response training programs and other initiatives do not create perceptions among those who may serve as panel members at courts-martial that commanders expect particular findings and/or sentences at trials or compromise an accused Service member's presumption of innocence, right to fair investigation and disposition, and access to witnesses or evidence. Judge advocates with knowledge and expertise in criminal law should review sexual assault prevention training materials to ensure the materials neither taint potential panel members (military jurors) nor present inaccurate legal information.	Dec 15, 2014- DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-81 Jun 2014	<u>INDEPENDENT DEFENSE INVESTIGATORS</u> (SecDef) Provide Independent Defense Investigators	<i>Recommendation 81:</i> The Secretary of Defense direct the Services to provide independent, deployable defense investigators in order to increase the efficiency and effectiveness of the defense mission in sexual assault cases and the fair administration of justice.	Dec 15, 2014- (DoD OGC) Referred to JSC
RSP R-82 Jun 2014	<u>DEFENSE COUNSEL RESOURCES</u> (Services) Ensure Adequate Resourcing for Defense Counsel	<i>Recommendation 82:</i> The Service Secretaries ensure military defense counsel organizations are adequately resourced in funding resources and personnel, including defense supervisory personnel with training and experience comparable to their prosecution counterparts, and direct the Services assess whether that is the case.	Dec 15, 2014- DoD Approved (Services)
RSP R-83 Jun 2014	<u>DEFENSE COUNSEL/ TRAINING</u> (Services) Review Defense Counsel Training and Funding	<i>Recommendation 83:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps review military defense counsel training for adult sexual assault cases to ensure funding of defense training opportunities is on par with that of trial counsel.	Dec 15, 2014- DoD Approved (Services)
RSP R-84 Jun 2014	<u>DEFENSE COUNSEL/ TRAINING</u> (Services) Sustain Current Training For Defense Counsel	<i>Recommendation 84:</i> The Service Secretaries direct that current training efforts and programs be sustained to ensure that military defense counsel are competent, prepared, and equipped.	Dec 15, 2014- DoD Approved (Services)
RSP R-85 Jun 2014	<u>DEFENSE COUNSEL EXPERIENCE</u> (Services) Ensure Defense Counsel Are Experienced	<i>Recommendation 85:</i> The Services continue to provide experienced defense counsel through regional defense organizations and from personnel with extensive trial experience and expertise in the Reserve component.	Dec 15, 2014- DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-86 Jun 2014	<u>DEFENSE COUNSEL EXPERIENCE</u> (Services) Ensure Lead Defense Counsel Are Experienced, Set Minimum Tour Length of 2 Years	<i>Recommendation 86:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps permit only counsel with litigation experience to serve as lead counsel defense counsel in a sexual assault case as well as set the minimum tour length of defense counsel at two years or more, except when a lesser tour length is approved by the Service Judge Advocate General or Staff Judge Advocate to the Commandant of the Marine Corps, or designee, because of exigent circumstances or to specifically enable training of defense counsel under supervision of experienced defense counsel.	Dec 15, 2014- DoD Approved in Part. (Services)
RSP R-87 Jun 2014	<u>DEFENSE COUNSEL PERFORMANCE</u> (SecDef) Assess Defense Performance To Identify Areas For Improvement	<i>Recommendation 87:</i> The Secretary of Defense direct the Services to assess military defense counsels' performance in sexual assault cases similar to performance assessment of prosecutors and identify areas that may need improvement.	Dec 15, 2014- DoD Approved (Services)
5. Improving Military Justice Procedures			
RSP R-88 Jun 2014	<u>MCIO / COLLATERAL MISCONDUCT</u> (SecDef) Uniform Requirements for MCIOs to Advise Victims of Their Rights For Collateral Misconduct	<i>Recommendation 88:</i> The Secretary of Defense direct the standardization of procedures regarding the requirement for military criminal investigative organization investigators to advise victim and witness Service members of their rights under Article 31(b) of the UCMJ for minor misconduct uncovered during the investigation of a felony to ensure there is a clear process that complies with law, throughout the Services.	Dec 15, 2014- DoD Approved (DoD IG)
RSP R-89 Jun 2014	<u>NON-MCIOs FOR CONTACT OFFENSES</u> (SecDef) Utilize Non MCIO Investigators For Non-Penetrative Sex Offenses	<i>Recommendation 89:</i> The Secretary of Defense direct the commanders and directors of the military criminal investigative organizations to authorize the utilization of Marine Corps Criminal Investigation Division, military police investigators, or security forces investigators to assist in the investigation of some non-penetrative sexual assault cases under the direct supervision of a special victim unit investigator to retain oversight.	Dec 15, 2014- DoD Approved in Part (DoD IG)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-90 Jun 2014	<u>MCIO COORDINATION WITH SVI</u> (SecDef) Require Non-SV Investigators Coordinate With A SV Investigator	<i>Recommendation 90:</i> The Secretary of Defense direct commanders and directors of the military criminal investigative organizations to require special victim investigators not assigned to a dedicated special victim unit coordinate with a senior special victim unit agent on all sexual assault cases.	Dec 15, 2014- DoD Approved in Part (USD(P&R)) (DoD IG)
RSP R-91 Jun 2014	<u>MCIO / PRETEXT PHONE CALLS</u> (SecDef) Review Policy To Approve Pretext Phone Calls	<i>Recommendation 91:</i> The Secretary of Defense direct a review of the Services' procedures for approving military criminal investigative organizations agent requests to conduct timely pretext phone calls and text messages and establish a standardized procedure to facilitate and expedite military criminal investigative organizations' use of this investigative technique, in accordance with law.	Dec 15, 2014- DoD Approved in Part (Services)
RSP R-92 Jun 2014	<u>SANE/SAFE</u> (SecDef) Eliminate Collection of Plucked Hair Samples	<i>Recommendation 92:</i> The Secretary of Defense direct the appropriate agency to eliminate the requirement to collect plucked hair samples as part of a sexual assault forensic examination.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-93 Jun 2014	<u>MCIO / STANDARDIZE UNFOUNDING</u> (SecDef/Services) Standardized Process To Unfound a Cases Based on UCR	<i>Recommendation 93:</i> Secretary of Defense direct the Service Secretaries to standardize the process for determining a case is unfounded. The decision to unfound reports should apply the Uniform Crime Reporting (UCR) Program standard to determine if a case should be unfounded. Only those reports determined to be false or baseless should be unfounded.	Dec 15, 2014- (DoD IG) Referred to Working Group

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-94A Jun 2014	<u>SVIP/ STANDARDIZE COORDINATION</u> (SecDef/Services) Standardize Investigator Coordination with Trial Counsel	<i>Recommendation 94A:</i> The Secretary of Defense direct military criminal investigative organizations to standardize their procedures to require that military criminal investigative organization investigators coordinate with the trial counsel to review all of the evidence, and to annotate in the case file, that the trial counsel agrees all appropriate investigation has taken place, before providing a report to the appropriate commander for a disposition decision. Neither the trial counsel, nor the investigator, should be permitted to make a dispositive opinion whether probable cause exists.	Dec 15, 2014- (Services) Referred to Working Group (DoD IG)
RSP R-94B Jun 2014	<u>SVIP/ MCIO CASES REMAIN OPEN</u> (Services) Ensure Investigators Are Trained That Sexual Assault Cases Are Open Until Receipt Of Final Disposition	<i>Recommendation 94B:</i> To ensure investigators continue to remain responsive to investigative requests after the commander receives the case file, the military criminal investigative organization commanders and directors continue to ensure investigators are trained that all sexual assault cases remain open for further investigation until final disposition of the case.	Dec 15, 2014- (DoD IG) Referred to Working Group
RSP R-95 Jun 2014	<u>SVIP/ MCIO AUDIT</u> (SecDef) Audit of Sexual Assault Investigations By Non- DoD Agency	<i>Recommendation 95:</i> The Secretary of Defense direct an audit of sexual assault investigations by persons or entities outside DoD specifically qualified to conduct such audits.	Dec 15, 2014- DoD Approved (USD(P&R)) (DoD IG)
RSP R-96 Jun 2014	<u>SVIP/ MCIO CIVILIAN OVERSIGHT</u> (SecDef/Services) Emphasis on Civilian Oversight and Competence of Investigators	<i>Recommendation 96:</i> The Secretary of Defense direct military criminal investigative organization commanders and directors to carefully select and train military investigators assigned as investigators for special victim units, and whenever possible, utilize civilians for specialized investigative oversight to maximize continuity and expertise. Military criminal investigation organization commanders and directors ensure that military personnel assigned to a special victim unit have the competence and commitment to investigate sexual assault cases.	Dec 15, 2014- DoD Approved in Part (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-97 Jun 2014	<u>MCIO TRAINING ON BIAS</u> (SecDef/Services) Training on Potential Bias And Use of Appropriate Language in Reports	<i>Recommendation 97:</i> The Secretary of Defense direct commanders and directors of the military criminal investigative organizations to continue training of all levels of law enforcement personnel on potential biases and inaccurate perceptions of victim behavior. The Secretary of Defense direct the military criminal investigation organizations to also train investigators against the use of language that inaccurately or inappropriately implies consent of the victim in reports.	Dec 15, 2014- DoD Approved (Services) (DoD IG)
RSP R-98 Jun 2014	<u>SVIP/ MCIO TRAINING FUNDING</u> (Congress/SecDef/Services) Fund SVU Training	<i>Recommendation 98:</i> Congress appropriate funds for training of sexual assault investigation personnel. The Secretary of Defense direct the Service Secretaries to program and budget funding, as allowed by law, for the military criminal investigative organizations to provide advanced training on sexual assault investigations to special victim unit investigators.	Dec 15, 2014- DoD Approved (Services)
RSP R-99 Jun 2014	<u>SANes/SAFEs</u> (Services) Recommend Most Effective Staffing for 24/7 ACCESS to SAFEs	<i>Recommendation 99:</i> The Service Secretaries direct their Surgeons General to: (1) review Section 1725 of the National Defense Authorization Act for Fiscal Year 2014, which requires the assignment of at least one full-time sexual assault nurse examiner to each military medical facility with a 24 hour, seven days a week emergency room, and (2) provide recommendations to amend the legislation so as to permit the most effective way to provide sexual assault forensic examinations at their facilities, given that many civilian medical facilities have more experienced forensic examiners than are typically located on a military installation and those facilities serve as the community's center of excellence for sexual assault forensic examinations.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-100 Jun 2014	<u>SANes/SAFEs</u> (SecDef) Exempt Lab Examiners From Furloughs	<i>Recommendation 100:</i> The Secretary of Defense exempt DNA and other examiners at the Defense Forensic Science Center, as well as other critical civilian members of the criminal investigative process, from future furloughs, to the extent allowed by law.	Dec 15, 2014- DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-101 Jun 2014	<u>SANes/SAFEs</u> (SecDef/Services) Consider Creating a Joint Medical Forensics Course	<i>Recommendation 101:</i> The Secretary of Defense direct the Services to create a working group to coordinate the Services' efforts, leverage expertise, and consider whether a joint forensic exam course open to all military and DoD practitioners, perhaps at the Joint Medical Education and Training Center, or portable forensic training and jointly designed refresher courses would help to ensure a robust baseline of common training across all Services.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-102 Jun 2014	<u>SVIP PROSECUTOR NOTIFICATION</u> (SecDef) Requirement for MCIO to Notify Prosecutor Within 24 Hours and Consult within 48 Hours of Sexual Assault Report	<i>Recommendation 102:</i> The Secretary of Defense maintain the requirement for an investigator to notify the prosecution section of the staff judge advocate's legal office of an unrestricted sexual assault report within 24 hours, and for the special victim prosecutor to consult with the investigator within 48 hours, and monthly, thereafter. Establish milestones to insert the prosecutor into the investigative process early and to ensure that the special victim prosecutor contacts the victim or the victim's counsel as soon as possible after an unrestricted report.	Dec 15, 2014- DoD Approved in Part (USD(P&R)) (DoD IG)
RSP R-103 Jun 2014	<u>SVIP</u> (SecDef) Revise SVIP DTM Definition of Covered Offenses to Match UCMJ	<i>Recommendation 103:</i> The Secretary of Defense direct that the Directive-Type Memorandum 14-003, the policy document that addresses the Special Victim Capability, be revised so that definitions of "covered offenses" accurately reflect specific offenses listed in the relevant version(s) of Article 120 of the UCMJ.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-104 Jun 2014	<u>SVIP</u> (SecDef/Services) Not Require SVP Be Lead On All Sexual Assault Cases	<i>Recommendation 104:</i> The Secretary of Defense and Service Secretaries develop policy that does not require special victim prosecutors to handle every sexual assault under Article 120 of the UCMJ. Due to the resources required, the wide range of conduct that falls within current sexual assault offenses in the UCMJ, and the difficulty of providing the capability in remote locations, a blanket requirement for special victim prosecutors to handle every case undermines effective prevention, investigation, and prosecution.	Dec 15, 2014- DoD Approved (USD(P&R))

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-105 Jun 2014	<u>SVIP EXPERTISE</u> (Services) Further Develop and Sustain Expertise of SVIP Capability	<i>Recommendation 105:</i> The Service Secretaries continue to fully implement the special victim prosecutor programs within the Special Victim Capability and further develop and sustain the expertise of prosecutors, investigators, victim witness liaisons, and paralegals in large jurisdictions or by regions for complex sexual assault cases.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-106 Jun 2014	<u>SVIP TRAINING</u> (Services) Assess and Meet Need for Well-Trained SV Prosecutors	<i>Recommendation 106:</i> The Service Secretaries continue to assess and meet the need for well-trained prosecutors to support the Services' special victim capabilities, especially if there is increased reporting of sexual assaults.	Dec 15, 2014- DoD Approved (Services)
RSP R-107A Jun 2014	<u>SVIP CO-LOCATION MODELS</u> (SecDef) Assess Existing Co-Location Models for Best Practices	<i>Recommendation 107A:</i> The Secretary of Defense assess the various strengths and weaknesses of different co-location models at locations throughout the Armed Forces to continue to improve the efficiency and effectiveness of investigation and prosecution of sexual assault offenses.	Dec 15, 2014- DoD Approved (USD(P&R)) (DoD IG)
RSP R-107B Jun 2014	<u>SVIP CO-LOCATION</u> (Services) Consider Colocation of SV Investigators and Prosecutors (But not With SAPR or SVC)	<i>Recommendation 107B:</i> The Service Secretaries direct that each Service's Judge Advocate General Corps and military criminal investigative organizations work together to co-locate prosecutors and investigators who handle sexual assault cases on installations where sufficient caseloads justify consolidation and resources are available. Additionally, locating a forensic exam room with special victims' prosecutors and investigators, where caseloads justify such an arrangement, can help minimize the travel and trauma to victims while maximizing the speed and effectiveness of investigations. Because of the importance of protecting privileged communication with victims, the Panel does not recommend that the sexual assault response coordinator, victim advocate, special victim counsel or other victim support personnel be merged with the offices of prosecutors and investigators.	Dec 15, 2014- (USD(P&R)) Referred to Working Group (DoD OGC)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-108 Jun 2014	<u>SVIP DUTY TITLES</u> (SecDef) Standardize SVIP Duty Titles	<i>Recommendation 108:</i> The Secretary of Defense require standardization of Special Victim Capability duty titles to reduce confusion and enable comparability of Service programs, while permitting the Service Secretaries to structure the capability itself in a manner that fits each Service's organizational structure.	Dec 15, 2014- DoD Approved (USD(P&R))
RSP R-109 Jun 2014	<u>SVIP ASSESSMENT</u> (SecDef) Review SVIP Capability Annually	<i>Recommendation 109:</i> The Secretary of Defense assess the Special Victim Capability annually to determine the effectiveness of the multidisciplinary approach and the resources required to sustain the capability, as well as continue to develop metrics such as the victim "drop-out" rate, rather than conviction rates, to determine success.	Dec 15, 2014- DoD Approved in Part (USD(P&R))
RSP R-110 Jun 2014	<u>SVIP/ SVP TRAINING</u> (Services) Increase SVP Training To Litigate Adult Sexual Assault Cases	<i>Recommendation 110:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps sustain or increase training of judge advocates to maintain the expertise necessary to litigate adult sexual assault cases in spite of the turnover created by personnel rotations within the Services' Judge Advocate General Corps.	Dec 15, 2014- DoD Approved (Services)
RSP R-111 Jun 2014	<u>SVP / DEFENSE COUNSEL SHARED RESOURCES</u> (Services) Emphasize Shared Resources and Expertise in Sexual Assault Crimes	<i>Recommendation 111:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps sustain and broaden the emphasis on developing and maintaining shared resources, expertise, and experience in prosecuting and defending adult sexual assault crimes.	Dec 15, 2014- DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-112 Jun 2014	<p><u>SVP/ DEFENSE COUNSEL/ TRAINING WORKING GROUP</u></p> <p>(SecDef) Create Working Group on SVP/DC Sexual Assault Training and Report Annually for 5 Years</p>	<p><i>Recommendation 112:</i> The Secretary of Defense direct the establishment of a DoD judge advocate criminal law joint training working group to optimize sharing of best practices, resources, and expertise for prosecuting and defending adult sexual assault cases. The working group should produce a concise written report, delivered to the Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps at least annually, for the next five calendar years.</p> <p>The working group should identify best practices, strive to eliminate redundancy, consider consolidated training, consider ways to enhance expertise in litigating sexual assault cases, and monitor training and experience throughout the Services. The working group should review training programs such as: the Army’s Special Victim Prosecutor program; the Navy’s Military Justice Litigation Career Track program; the Highly Qualified Expert programs used for training in the Army, Navy, and Marine Corps; the Trial Counsel Assistance and Defense Counsel Assistance Programs; the Navy’s use of quarterly judicial evaluations of counsel; and any other potential best practices, civilian or military.</p>	<p>Dec 15, 2014-DoD Approved (USD(P&R))</p> <p>(DoD OGC) referred to JSC</p>
RSP R-113 Jun 2014	<p><u>ARTICLE 120</u></p> <p>(JPP) Consider Bifurcating Penetrative And Non-Penetrative Offenses</p>	<p><i>Recommendation 113:</i> The Judicial Proceedings Panel and Joint Service Committee consider whether to recommend legislation that would either split sexual assault offenses under Article 120 of the UCMJ into different articles that separate penetrative and contact offenses from other offenses or narrow the breadth of conduct currently criminalized under Article 120.</p>	<p>Dec 15, 2014-DoD Approved in Part (DoD OGC)</p> <p>Referred to MJRG</p>
RSP R-114 Jun 2014	<p><u>CIVILIAN VS. MILITARY COURT</u></p> <p>(Congress) not enact Sect 3(b) VPA 2014 (Preference for Civilian vs. Military Court)</p>	<p><i>Recommendation 114:</i> Congress not enact Section 3(b) of the Victim’s Protection Act of 2014, which requires the convening authority to give “great weight” to a victim’s preference where the sexual assault case be tried, in civilian or military court. The Services do not have control over the civilian justice system, and jurisdiction must be based on legal authority, not the victim’s personal preferences, so this decision should remain within the discretion of the civilian prosecutor’s office and the convening authority.</p>	<p>Dec 15, 2014-(DoD OGC) Referred to MJRG</p>

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-115 Jun 2014	<u>DEPOSITIONS</u> (JPP) Asses Use of Depositions	<i>Recommendation 115:</i> The Judicial Proceedings Panel assess the use of depositions in light of changes to the Article 32 proceeding, and determine whether to recommend changes to the deposition process, including whether military judges should serve as deposition officers.	Dec 15, 2014 DoD Approved (DoD OGC) Referred to MJRG
RSP R-116 Jun 2014	<u>ARTICLE 32</u> (SecDef/MJRG) Evaluate if CA Should Not Be Able to Override Art 32 Recommendation	<i>Recommendation 116:</i> The Secretary of Defense direct the Military Justice Review Group or Joint Service Committee to evaluate if there are circumstances when a general court-martial convening authority should not have authority to override an Article 32 investigating officer's recommendation against referral of an investigated charge for trial by court-martial.	Dec 15, 2014 DoD Approved (DoD OGC) Under Review by MJRG
RSP R-117 Jun 2014	<u>PTA PROCESS</u> (JPP) Study Plea Bargaining Process	<i>Recommendation 117:</i> The Judicial Proceedings Panel study whether the military plea bargaining process should be modified.	Dec 15, 2014 DoD Approved (DoD OGC)
RSP R-118 Jun 2014	<u>MILITARY JUDGES PRE-REFERRAL</u> (SecDef/MJRG) Look at Involving Judges Earlier in Process	<i>Recommendation 118:</i> It is the sense of the Panel that military judges should be involved in the military justice process at an earlier stage to better protect the rights of victims and the accused. The Secretary of Defense direct the Military Justice Review Group or Joint Services Committee to evaluate the feasibility and consequences of involving military judges at an earlier stage.	Dec 15, 2014 DoD Approved (DoD OGC) Already Being Studied by MJRG
RSP R-119 Jun 2014	<u>SVP/ DEFENSE COUNSEL CIVILIAN EXPERTS</u> (Services) Continue to Fund Civilian Experts to Assist Military Lawyers	<i>Recommendation 119:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps continue to fund and expand programs that provide a permanent civilian presence in the training structure for both trial and defense counsel. The Services should continue to leverage experienced military Reservists and civilian attorneys for training, expertise, and experience.	Dec 15, 2014 DoD Approved (Services)

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-120 Jun 2014	<u>MILITARY JUDGES TRAINING</u> (Services) Fund More Training for Military Judges	<i>Recommendation 120:</i> The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps continue to fund sufficient training opportunities for military judges and consider more joint and consolidated programs.	Dec 15, 2014 DoD Approved (Services)
RSP R-121 Jun 2014	<u>GOOD MILITARY CHARACTER/ RCM 404</u> (Congress) Enact Sect 3(g) VPA 2014 (Military Character Not Admissible to Show Probability of Innocence)	<i>Recommendation 121:</i> Congress should enact Section 3(g) of the Victim's Protection Act of 2014 because it may increase victim confidence. Further changes to the military rules of evidence regarding character evidence are not necessary at this time.	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-122 Jun 2014	<u>JUDGE ALONE SENTENCING</u> (SecDef) Direct Study Regarding Judge Alone Sentencing	<i>Recommendation 122:</i> The Secretary of Defense direct a study to analyze whether changes should be made to the Manual for Courts-Martial, the UCMJ, and Service regulations, respectively, to make military judges the sole sentencing authority in sexual assault and other cases in the military justice system.	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-123 Jun 2014	<u>SENTENCING BY OFFENSE</u> (SecDef) Recommend Change to UCMJ to Require Sentencing Enumerated by Offense	<i>Recommendation 123:</i> The Secretary of Defense recommend amendments to the Manual for Courts-Martial and UCMJ to impose sentences which require the sentencing authority to enumerate the specific sentence awarded for each offense and to impose sentences for multiple offenses consecutively or concurrently to the President and Congress, respectively.	Dec 15, 2014 (DoD OGC) Referred to MJRG
RSP R-124 Jun 2014	<u>NO SENTENCING GUIDELINES</u> Do Not Adopt Sentencing Guidelines	<i>Recommendation 124:</i> The Panel does not recommend the military adopt sentencing guidelines in sexual assault or other cases at this time.	Dec 15, 2014 (DoD OGC) Referred to MJRG

Response Systems Panel Report Recommendations

Response Systems Panel Report (June 2014)			
Number	Brief Description	Recommendation	Action
RSP R-125 Jun 2014	<u>NO FURTHER MANDATORY MINIMUMS</u> (Congress) Not Enact Further Mandatory Minimums	<i>Recommendation 125:</i> Congress not enact further mandatory minimum sentences in sexual assault cases at this time.	Dec 15, 2014 (DoD OGC) Referred to MJRG

Judicial Proceedings Panel Recommendations

JPP Initial Report (February 2015)

Number	Brief Description	Recommendation and Implementation Status	Action
Executive Order Review Process			
JPP R-1 Feb 2015	(Secretary of Defense) Improve Executive Order Review Process	<p><i>Recommendation 1:</i> The Secretary of Defense examine the DoD and interagency review process for establishing guidance for implementing statutory provisions of the UCMJ and explore options to streamline the procedures.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2016 NDAA § 543 - The Secretary of Defense shall examine the DoD process for implementing statutory changes to the UCMJ for the purpose of developing options for streamlining such process. <u>The Secretary shall adopt procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the UCMJ are implemented.</u></p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved.</p>	<p>FY 2016 NDAA § 543 Effective Nov 25, 2015</p> <p>Sep 2, 2016 DoD Approved</p>
SVC Program			
JPP R-2 Feb 2015	(Services) Implement Additional Selection Criteria for SVCs	<p><i>Recommendation 2:</i> The Secretary of Defense direct the Services to implement additional selection criteria requiring that judge advocates have adequate criminal justice experience before they are assigned as special victims' counsel.</p> <p>IMPLEMENTATION: (DoD) (Sep 2, 2016 DSD Memo) Approved in part. The Secretaries of the Military Departments shall implement additional selection criteria, to include selection and training of optimal candidates to effectively and zealously perform SVC duties.</p>	<p>Sep 2, 2016 DoD Approved in Part (Services)</p>

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<p>JPP R-3 Feb 2015</p>	<p>(Secretary of Defense) Establish Requirements for Content and Timing of SVC Training</p>	<p><i>Recommendation 3:</i> The Department of Defense develop a policy to standardize both the time frame within which to receive SVC training and the substantive requirements of SVC training.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2016 NDAA § 535(a)(2) - The Secretary of Defense shall (A) <u>develop a policy to standardize the time period within which a SVC receives training</u>; and (B) establish the baseline training requirements for a SVC.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved as required by FY16 NDAA.</p>	<p>FY 2016 NDAA § 535 Effective Nov 25, 2015</p> <p>Sep 2, 2016 DoD Approved</p>
<p>JPP R-4 Feb 2015</p>	<p>(Services) Optimize SVC Assignments to Maximize Face-to- Face Contact</p>	<p><i>Recommendation 4:</i> The Secretary of Defense direct the Services to perform regular evaluations to ensure SVCs' assignment to locations that maximize the opportunity for face-to-face interactions between SVCs and clients, and to develop effective means for SVCs to communicate with clients when face-to-face communication is not possible.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2016 NDAA§ 535(b)(3) - The Secretary of Defense in collaboration with the Secretaries of the military departments shall establish (A) <u>guiding principles</u> for the SVC program, to include ensuring that – (i) SVC are assigned to locations that maximize the opportunity for face-to-face-communication between counsel and clients; and (ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved as required by FY16 NDAA.</p>	<p>FY 2016 NDAA § 535 Effective Nov 25, 2015</p> <p>Sep 2, 2016 DoD Approved</p>

Judicial Proceedings Panel Recommendations

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<p>JPP R-5 Feb 2015</p>	<p>(Secretary of Defense) Establish SVC Guiding Principles and Performance Measures</p>	<p><i>Recommendation 5:</i> The Secretary of Defense establish appropriate SVC program performance measures and standards, including evaluating, monitoring, and reporting on the SVC programs; establishing guiding principles for the Services; and ensuring centralized, standardized assessment of SVC program effectiveness and client satisfaction.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2016 NDAA § 535(b)(3) - The Secretary of Defense in collaboration with the Secretaries of the military departments shall establish (B) <u>performance measures and standards</u> to measure the effectiveness of the SVC program and client satisfaction with the program; and (C) <u>processes</u> by which the Secretaries of the military departments will <u>evaluate and monitor</u> the SVC program using such guiding principles and performance measures and standards.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved as required by FY16 NDAA.</p>	<p>FY 2016 NDAA § 535 Effective Nov 25, 2015</p> <p>Sep 2, 2016 DoD Approved</p>
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Judicial Proceedings Panel Recommendations

JPP Initial Report (February 2015)

<p>JPP R-6 Feb 2015</p>	<p>(Services) Ensure SVC Access to Docketing Information and Case Filings</p>	<p><i>Recommendation 6:</i> The Secretary of Defense direct the Services to ensure SVCs and victims have appropriate access to docketing information and case filings. In part, this could be accomplished by adopting an electronic system akin to the civilian PACER (Public Access to Court Electronic Records) service.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2017 NDAA § 5504 - Creates a new Article 140a, UCMJ that requires the Secretary of Defense to prescribe uniform standards and criteria using, insofar as practicable, the best practices of Federal and State courts for: (1) collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under article 146, UCMJ; (2) case processing and management; (3) timely, efficient, and accurate production and distribution of records of trial within the military justice system; and (4) facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved. The Secretaries of the Military Departments will develop guidance for their respective Departments to ensure victims of alleged offenses and their counsel have appropriate access to docketing information and case filings.</p>	<p>Sep 2, 2016 DoD Approved (Services)</p> <p>FY 2017 NDAA § 5504</p> <p>Must be Carried Out Within 2 Years of Final Passage</p> <p>Standards and Criteria Take Effect Within 4 Years</p>
<p>JPP R-7 Feb 2015</p>	<p>(Services) Establish Uniform SVC Participation Policies</p>	<p><i>Recommendation 7:</i> The Secretary of Defense direct the Services to establish uniform practices and procedures concerning SVCs' participation for all military judicial proceedings.</p> <p>IMPLEMENTATION:</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved. The Secretaries of the Military Departments will establish uniform practices and procedures for their respective Departments concerning participation by counsel for victims of alleged offenses in military justice proceedings.</p>	<p>Sep 2, 2016 DoD Approved (Services)</p>

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JPP Initial Report (February 2015)

<p>JPP R-8 Feb 2015</p>	<p>(Secretary of Defense) Consider Mandatory Interlocutory Review to CCA</p>	<p><i>Recommendation 8:</i> The Secretary of Defense consider establishing expedited procedures for victims to seek mandatory interlocutory review in the Service Courts of Criminal Appeals of any alleged violation of victims' rights.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2015 NDAA § 535 - Amends Article 6b, UCMJ by adding: If victim believes that a court-martial ruling violates victim's rights afforded by MRE 412 or 513, victim may petition the Court of Criminal Appeals for a writ of mandamus to require the court-martial to comply with the MRE.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Congress controls the jurisdiction of the military justice system's appellate courts. The FY16 NDAA § 531, expands the ability of victims of alleged offenses to seek review of claims of violations of their rights through petitions for writs of mandamus.</p>	<p>FY 2015 NDAA §535 Effective Dec 19, 2014</p> <p>Sep 2, 2016 DoD Disapproved</p>
<p>JPP R-9 Feb 2015</p>	<p>(Secretary of Defense) Extend Length of Time for SVC Representation</p>	<p><i>Recommendation 9:</i> The Secretary of Defense propose timely revisions to statutes, the MCM, and/or regulations to extend eligibility for SVC representation so long as a right of the victim exists and is at issue.</p> <p>IMPLEMENTATION: (DoD) (Sep 2, 2016 DSD Memo) Approved in modified form. The Secretaries of the Military Departments will determine the point at which eligibility to receive SVC services ends in their respective Military Departments.</p>	<p>Sep 2, 2016 DoD Approved in Modified Form (Services)</p>
<p>JPP R-10 Feb 2015</p>	<p>(President) Eliminate "Constitutionally Required" Exception to MRE 412 at Article 32 Hearings</p>	<p><i>Recommendation 10:</i> The President sign an executive order eliminating the "constitutionally required" exception within M.R.E. 412 at Article 32 hearings.</p> <p>IMPLEMENTATION: (PRESIDENT) Executive Order 13696 (June 17, 2015) - Re-write of R.C.M. 405.</p> <p>(DoD) (Sep 2, 2016 DSD Memo) Approved as implemented by Executive Order 13696 (June 17, 2015).</p>	<p>E.O. 13696 June 17, 2015</p> <p>Sep 2, 2016 DoD Approved</p>

Judicial Proceedings Panel Recommendations

JPP Initial Report (February 2015)

Mental Health Records (MRE 513)			
<p>JPP R-11 Feb 2015</p>	<p>(Secretary of Defense) Additional Guidance for Protection of Mental Health Records</p>	<p><i>Recommendation 11:</i> The Secretary of Defense issue specific, uniform guidance to ensure that mental health records are neither sought from a medical treatment facility by investigators or military justice practitioners nor acknowledged or released by medical treatment facility personnel until a military judge or Article 32 hearing officer has ordered their production.</p> <p>IMPLEMENTATION:</p> <p>(DoD) (Sep 2, 2016 DSD Memo). Approved in part. The General Counsel directed the Joint Service Committee on Military Justice to recommend uniform guidance regarding release of mental health records to ensure an appropriate balance between the interests of law enforcement and privacy interests of victims of an alleged sex-related offense.</p>	<p>Sep 2, 2016 DoD Approved in Part (DoD OGC) Referred to JSC</p>

Judicial Proceedings Panel Recommendations

JPP Report on Restitution and Compensation (February 2016)

Number	Brief Description	Recommendation and Implementation Status	Action
Restitution and Compensation			
JPP R-12 Feb 1, 2016	(DoD) Develop Program to Cover Unreimbursed Expenses	<i>Recommendation 12:</i> The Department of Defense establish a new, uniform program that provides compensation for unreimbursed out-of-pocket expenses of victims of sexual assault crimes committed by Service members. IMPLEMENTATION: None to date.	No Action
JPP R-13 Feb 1, 2016	(Congress) Do Not Amend UCMJ to Add Restitution as a Punishment	<i>Recommendation 13:</i> Congress not amend the Uniform Code of Military Justice to add restitution as an authorized punishment that may be adjudged at courts-martial. IMPLEMENTATION: None to date.	No Action
JPP R-14 Feb 1, 2016	(Services) Provide Recurring Training on Availability of Restitution	<i>Recommendation 14:</i> The military Services provide recurring training to trial practitioners and victim assistance personnel on the availability and use of restitution in pretrial agreements between the government and the accused. IMPLEMENTATION: None to date.	No Action
JPP R-15 Feb 1, 2016	(President) Enact E.O. to Modify R.C.M. 705(d)(3)	<i>Recommendation 15:</i> The President enact the Department of Defense's recently proposed executive order to modify Rule for Courts-Martial 705(d)(3) to provide victims the right to be heard before a convening authority enters into a pretrial agreement. IMPLEMENTATION: None to date.	No Action
JPP R-16 Feb 1, 2016	(Congress) Do not Amend UCMJ to Direct Forfeited Wages be Used to Pay Compensation	<i>Recommendation 16:</i> Congress not amend the Uniform Code of Military Justice to direct that the forfeited wages of incarcerated members of the Armed Forces be used to pay compensation to victims of sexual assault crimes committed by Service members. IMPLEMENTATION: None to date.	No Action
JPP R-17 Feb 1, 2016	(Congress) Do Not Amend UCMJ to Include Compensation for Bodily Harm	<i>Recommendation 17:</i> Congress not amend Article 139 of the Uniform Code of Military Justice to include bodily harm among the injuries meriting compensation for redress. IMPLEMENTATION: None to date.	No Action

Judicial Proceedings Panel Recommendations

JPP Report on Article 120 of the UCMJ (February 2016)

Number	Brief Description	Recommendation and Implementation Status	Action
Article 120			
JPP R-18 Feb 4, 2016	(Congress) Amend the Definition of "Consent"	<p><i>Recommendation 18:</i> Congress should amend the definition of "consent" in Article 120(g)(8) of the Uniform Code of Military Justice.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 5430(b)(4) - The new provision follows the JPP recommended language exactly.</p>	FY 2017 NDAA § 5430(b)(4) Effective Upon Final Passage
JPP R-19 Feb 4, 2016	(President) Allow "Consent" and "Mistake of Fact" to be Raised as Defenses	<p><i>Recommendation 19:</i> The President should amend the Manual for Courts-Martial to specifically state that consent (as an attack on proof) and mistake of fact as to consent (as a clearly delineated defense) may be raised in any case in which they are relevant.</p> <p>IMPLEMENTATION: None to date.</p>	No Action
JPP R-20 Feb 4, 2016	(Congress) Define "Incapable of Consent" (President) Provide Additional Guidance	<p><i>Recommendation 20:</i> Congress should amend Article 120 of the Uniform Code of Military Justice to provide a definition of the term "incapable of consenting" for cases under Article 120(b) and (d), and the President should provide further executive guidance about the circumstances to consider when considering whether a victim was incapable of consenting.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 5430(b)(5) - Though the NDAA added a definition for "incapable of consenting" as the JPP recommended, the provision includes different language than that proposed by the JPP. The definition adopted by Congress is based on federal statute 18 U.S.C. § 2242 (Sexual abuse). The JPP Subcommittee considered the federal definition, but determined that it was too narrow and based its recommended definition on <i>United States v. Pease</i>, 74 M.J. 763 (N-M. Ct. Crim. App. 2015).</p>	FY 2017 NDAA § 5430(b)(5) Effective Upon Final Passage

Judicial Proceedings Panel Recommendations

JPP Report on Article 120 of the UCMJ (February 2016)

<p>JPP R-21 Feb 4, 2016</p>	<p>(Congress) Remove Element of “Bodily Harm”</p>	<p><i>Recommendation 21:</i> Congress should amend and replace the reference in Article 120(b)(1)(B) of the Uniform Code of Military Justice to “causing bodily harm” and should remove the definition of “bodily harm” from Article 120(g)(3). IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 5430(b)(3) - The definition and element of “bodily harm” were deleted from Article 120 as recommended by the JPP.</p>	<p>FY 2017 NDAA § 5430(b)(3) Effective Upon Final Passage</p>
<p>JPP R-22 Feb 4, 2016</p>	<p>(Congress) Amend Definition of “Sexual Act” and “Sexual Contact”</p>	<p><i>Recommendation 22:</i> Congress should amend the definitions of “sexual act” and “sexual contact” in Article 120(g)(1)–(2) of the Uniform Code of Military Justice. IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 5430(b)(1), (2) - The NDAA revision to the definition of “sexual act” reflects the JPP recommended definition exactly and the definition of “sexual contact” is nearly identical to the JPP recommendation, though slightly less clear. The NDAA does not specify “intent” to arouse or gratify, as does the JPP recommended definition.</p>	<p>FY 2017 NDAA § 5430(b)(1), (2) Effective Upon Final Passage</p>
<p>JPP R-23 Feb 4, 2016</p>	<p>(Congress) Adopt New Theory of Liability for Coercive Sex Acts Based on Perpetrator Position or Authority</p>	<p><i>Recommendation 23:</i> Congress should adopt a new theory of liability in Article 120(b)(1)(E) of the Uniform Code of Military Justice for coercive sexual acts or contact in which a perpetrator has used position, rank, or authority to obtain compliance by the other person. IMPLEMENTATION: <u>Included in Senate version of NDAA (S.2943); this provision is NOT included in conference report for FY 2017 NDAA. This was a House amendment and the conferees noted that this conduct is prohibited under Article 93a, UCMJ, as added in the FY 17 NDAA.</u></p>	<p>Not Adopted in FY 2017 NDAA</p>

Judicial Proceedings Panel Recommendations

JPP Report on Retaliation (February 2016)

Number	Brief Description	Recommendation and Implementation Status	Action
Retaliation			
JPP R-24 Feb 11, 2016	(DoD) Specify Processes for Reporting and Investigating, Monitoring, and Tracking Retaliation	<p><i>Recommendation 24:</i> In the Department of Defense's strategy addressing retaliation related to sexual assault, the Secretary of Defense specify (1) processes for reporting and investigating retaliation, (2) responsibility for the collection and monitoring of reports, and (3) mechanisms for tracking retaliation complaints and outcomes.</p> <p>IMPLEMENTATION: None to date.</p>	No Action
JPP R-25 Feb 11, 2016	(SECRETARY OF DEFENSE/Service Secretaries) Develop Standardized Form to Track Retaliation in DSAID	<p><i>Recommendation 25:</i> The Secretary of Defense and Service Secretaries develop a standardized form for reporting retaliation. The standardized form should be linked to DD Form 2910 in the Defense Sexual Assault Incident Database to properly track retaliation allegations related to sexual assault offenses, should provide victims of retaliation with the option to file an informal or formal retaliation report, and should be updated throughout the investigative and judicial process to ensure that the retaliation allegation is monitored and resolved.</p> <p>IMPLEMENTATION: None to date.</p>	No Action
JPP R-26 Feb 11, 2016	(SECRETARY OF DEFENSE/Service Secretaries) Provide Multiple Reporting Channels and Task SARC to Track and Report Retaliation	<p><i>Recommendation 26:</i> The Secretary of Defense and Service Secretaries continue to provide multiple channels for Service members to report retaliation. In addition, the Secretary of Defense and Service Secretaries formally task installation sexual assault response coordinators (SARCs) with consolidating information from reports on retaliation, recording information on retaliation reports in the Defense Sexual Assault Incident Database, and ensuring that information about the investigation and resolution of retaliation claims is properly and fully monitored.</p> <p>IMPLEMENTATION: None to date.</p>	No Action

Judicial Proceedings Panel Recommendations

JPP Report on Retaliation (February 2016)

<p>JPP R-27 Feb 11, 2016</p>	<p>(Congress) Require Secretary of Defense to Track Retaliation and Include in Annual SAPRO Report</p>	<p><i>Recommendation 27:</i> Congress require the Secretary of Defense and Service Secretaries to track retaliation allegations related to sexual assault offenses and publish information regarding retaliation complaints, investigations, and final dispositions in the Department’s annual report to Congress on sexual assault prevention and response.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2017 NDAA § 543 - Requires DoD to include in the SAPRO report information on each claim of retaliation in connection with a report of sexual assault in the Armed Force made by or against a member of such Armed Force as follows: (1) a narrative description of each complaint; (2) the nature of each, including whether the complainant claims professional or social retaliation; (3) the gender of the complainant; (4) the gender of the individual claimed to have committed the retaliation; (5) the nature of the relationship between the complainant and the individual claimed to have committed the retaliation; (6) the nature of the relationship, if any, between the individual alleged to have committed the sexual assault concerned and the individual claimed to have committed the retaliation; (7) the official or office that received the complaint; (8) the organization that investigated or is investigating the complaint; (9) the current status of the investigation; (10) if the investigation is complete, a description of the results of the investigation, including whether the results of the investigation were provided to the complainant; and (11) if the investigation determined that retaliation occurred, whether the retaliation was an offense under the UCMJ.</p>	<p>FY 2017 NDAA § 543 Effective Upon Final Passage</p>
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Judicial Proceedings Panel Recommendations

JPP Report on Retaliation (February 2016)

<p>JPP R-28 Feb 11, 2016</p>	<p>(Secretary of Defense) Require DoDIG Investigate Professional Retaliation Related to Sexual Assault Report</p>	<p><i>Recommendation 28:</i> The Secretary of Defense establish a policy that requires the DoD Office of Inspector General to investigate all complaints of professional retaliation related to sexual assault. The Secretary of Defense ensure that these investigations are prioritized and conducted by personnel with specialized training. The Secretary of Defense require the inspectors general to report the status of the investigations to the installation sexual assault response coordinators (SARCs) prior to each monthly case management group meeting.</p> <p>IMPLEMENTATION: New DoD policy announced July 29, 2016.</p>	<p>New DoD Policy Announced July 29, 2016</p>
<p>JPP R-29 Feb 11, 2016</p>	<p>(Service Secretaries) Policy to Train Personnel Assigned to Investigate Retaliation</p>	<p><i>Recommendation 29:</i> The Service Secretaries establish policies to ensure that personnel assigned by commanders to investigate retaliation complaints are properly trained on issues regarding retaliation relating to sexual assault.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 546 - Requires that DoD personnel who investigate claims of retaliation receive training on the nature and consequences of retaliation, and, in cases involving reports of sexual assault, the nature and consequences of sexual assault trauma.</p>	<p>FY 2017 NDAA § 546 Effective Upon Final Passage</p>
<p>JPP R-30 Feb 11, 2016</p>	<p>(Secretary of Defense/Service Secretaries) Expand Expedited Transfer Program to Include Job Retraining</p>	<p><i>Recommendation 30:</i> The Secretary of Defense and Service Secretaries expand the expedited transfer program to include job retraining for Service members who belong to small specialty branches and to be made available, on a case-by-case basis, to bystanders and witnesses of sexual assault who experience retaliation.</p> <p>IMPLEMENTATION: None to date.</p>	<p>No Action</p>

Judicial Proceedings Panel Recommendations

JPP Report on Retaliation (February 2016)

<p>JPP R-31 Feb 11, 2016</p>	<p>(Secretary of Defense) Establish Guidelines on Release of Disposition Information to Complainants</p>	<p><i>Recommendation 31:</i> The Secretary of Defense establish specific guidelines clarifying what information can be released to a person who files a retaliation complaint related to a sexual assault.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 547 - Under regulations prescribed by the Secretary of Defense, upon the conclusion of an investigation by an office, element, or personnel of DoD or of the Armed Forces of a complaint by a member of the Armed Forces of retaliation, the member shall be informed in writing of the results of the investigation, including whether the complaint was substantiated, unsubstantiated, or dismissed.</p>	<p>FY 2017 NDAA § 547 Effective Upon Final Passage</p>
<p>JPP R-32 Feb 11, 2016</p>	<p>(Secretary of Defense) Track Implementation of GO/FO Review of Involuntary Separations of Sexual Assault Victims</p>	<p><i>Recommendation 32:</i> The Secretary of Defense begin tracking the Services' implementation of the statutory requirement that general or flag officers review proposed involuntary separations of Service members who made unrestricted reports of sexual assault within the preceding year.</p> <p>IMPLEMENTATION: None to date.</p>	<p>No Action</p>
<p>JPP R-33 Feb 11, 2016</p>	<p>(Service Secretaries) Revise Intent Requirement for Maltreatment</p>	<p><i>Recommendation 33:</i> The Service Secretaries revise their regulatory definitions of maltreatment, which currently contain an overly narrow intent requirement.</p> <p>IMPLEMENTATION: None to date.</p>	<p>No Action</p>
<p>JPP R-34 Feb 11, 2016</p>	<p>(Congress) Refrain from Creating UCMJ Offense for Social Retaliation</p>	<p><i>Recommendation 34:</i> Congress refrain from creating an enumerated offense prohibiting social retaliation in the Uniform Code of Military Justice.</p> <p>IMPLEMENTATION: None to date.</p>	<p>No Action</p>
<p>JPP R-35 Feb 11, 2016</p>	<p>(SECRETARY OF DEFENSE/Service Secretaries) Develop Training on Retaliation</p>	<p><i>Recommendation 35:</i> The Secretary of Defense and Service Secretaries develop innovative and effective training on retaliation for commanders and all other Service members, including targeted training that may be used in response to problems of retaliation within an organization.</p> <p>IMPLEMENTATION: None to date.</p>	<p>No Action</p>

Judicial Proceedings Panel Recommendations

JPP Report on Retaliation (February 2016)

JPP R-36 Feb 11, 2016	(SECRETARY OF DEFENSE) Parallel MWPA with that for DoD Civilians	<i>Recommendation 36:</i> The Secretary of Defense revise the elements and burdens of proof for reprisal claims made under the Military Whistleblower Protection Act so that they parallel the elements and burdens of proof outlined in the Whistleblower Protection Act for DoD civilians. IMPLEMENTATION: None to date.	No Action
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Judicial Proceedings Panel Recommendations

JPP Report on Court-Martial Data (April 2016)

Number	Brief Description	Recommendation and Implementation Status	Action
Court-Martial Data Trends			
JPP R-37 April 19, 2016	(DOD) Create Document-Based Case Adjudication Data System	<p><i>Recommendation 37:</i> The Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model, similar to systems used by the Judicial Proceedings Panel or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services.</p> <p>IMPLEMENTATION:</p> <p>(CONGRESS) FY 2017 NDAA § 5504 - Requires the Secretary of Defense to prescribe uniform standards and criteria using, insofar as practicable, the best practices of Federal and State courts for: (1) collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under article 146, UCMJ; (2) case processing and management; (3) timely, efficient, and accurate production and distribution of records of trial within the military justice system; and (4) facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.</p>	<p>FY 2017 NDAA § 5504</p> <p>Must be Carried Out Within 2 Years of Final Passage</p> <p>Standards and Criteria Take Effect Within 4 Years</p>

Judicial Proceedings Panel Recommendations

JPP Report on Court-Martial Data (April 2016)

<p>JPP R-38 April 19, 2016</p>	<p>(DOD) Include FAP Data in Annual SAPRO Report</p>	<p><i>Recommendation 38:</i> The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports.</p> <p>IMPLEMENTATION: (CONGRESS) FY 2017 NDAA § 544 - Extends SAPRO annual reporting requirement through March 2021 and requires the Secretary of Defense to ensure that the annual SAPRO reports are delivered to Congress simultaneously with the Family Advocacy Program report for that year regarding child abuse and domestic violence, as required by section 574 of the FY 2017 NDAA (requires an annual FAP report that includes intimate partner and child sexual abuse).</p>	<p>FY 2017 NDAA § 544</p> <p>First Report Due Not Later Than April 30, 2017, and Annually Thereafter</p>
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**Defense Advisory Committee on Investigation, Prosecution,
and Defense of Sexual Assault in the Armed Forces
(DAC-IPAD)**

Committee Planning Session Outline

I. Statutory Tasking

The Committee was established by the Secretary of Defense in February 2016 as required by section 546 of the National Defense Authorization Act for Fiscal Year 2015 and section 537 of the National Defense Authorization Act for Fiscal Year 2016. There are three statutory requirements for the Committee:

- A. 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;
- B. To review, on an ongoing basis, cases involving allegations of sexual misconduct (as described above), for purposes of advising the Secretary of Defense; and
- C. To submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives an annual report of the activities of the Committee during the preceding year. The annual reports are due by March 30th of each year.

II. Logistics and Administrative Questions

An important question to reach consensus on and one that the Committee is provided minimal statutory guidance to follow is how, administratively, we wish to operate. The Committee's charter requires that it meet at least once per year. It does not address whether the required meeting must be public or whether it may be administrative (and therefore not required by the Federal Advisory Committee Act to be open to the public).

Knowing that the Committee members all have busy schedules and that participation on the Committee is a valuable, but uncompensated commitment, it is important to discuss the frequency and type of meetings we would like to hold so we all have a clear understanding of, and agreement on, the time and workload that participation on this Committee will entail.

Here are a couple of key administrative questions suggested for the Committee to consider:

- A. The availability and preference of Committee members regarding the frequency, location, and duration of meetings
 - 1. Should Committee meetings be held quarterly, semi-annually, or annually?
 - 2. Should meetings be held in the Washington, D.C. area, or other locations?
 - 3. Are meetings shorter than a full business day desired or acceptable? Multi-day meetings?
 - 4. Should meetings always be in person?
 - 5. Are regular or as-needed conference calls desired?

- B. The availability and interest of members to serve on a subcommittee or working group that may review records and potentially require a more considerable time and travel commitment

- 1. See section IV for further discussion of subcommittees

III. Substantive Duties and Strategic Plan

Each of the Committee members has been selected by the Secretary of Defense to become a member of the Committee based on the member's specific expertise in an area related to the investigation, prosecution, and/or defense of sexual assault. For the Committee members to become acquainted with one another and to learn about the perspectives and priorities each member brings to this Committee, responses to the following introductory questions may be helpful to start the discussion:

- A. What is your area of expertise and what issue or issues is/are of greatest interest or concern to you with respect to sexual assault in the military?
- B. How do you interpret the statutory language establishing the Committee and its purpose?
 - 1. Does the Panel feel they need to hear from the sponsor of the bill, the sponsoring agency, or any other stakeholders to better understand the legislative mandate?
 - 2. Who would the Committee like to hear from to better understand its purpose?
- C. What knowledge or information do you believe you need, that you do not currently have, to best fulfill your responsibilities as a Committee member?
- D. Based on the authorizing statute, what first steps would you recommend the Committee take to execute its responsibilities?
- E. What goal or goals would you would like to see achieved by the work of this Committee?

A statutory mandate as broad as this Committee's allows for a wide range of ideas and decisions about how to best execute our mission. As a first step, we will need to interpret the statutory language and define the framework for carrying out the Committee's statutory tasks.

A. Defining the Terms

- 1. What constitutes a "case" for purposes of our statutorily directed review?
 - a. Unrestricted sexual assault report filed (*i.e.*, allegation made)
 - i. Should this include sexual harassment complaints?
 - b. Investigation opened for sexual misconduct
 - c. Sexual misconduct charge preferred
 - d. Sexual misconduct charge referred
 - e. Sexual misconduct allegation that goes to a court-martial (*e.g.*, contested trial, full plea, mixed plea)

- f. Sexual misconduct allegation that receives alternate disposition (*e.g.*, not pursued, nonjudicial punishment, administrative separation, withdrawn, dismissed)
2. What does it mean to “review” a case?
 - a. Review records and case files in their entirety
 - b. Request specific case documents be provided to the Committee for review
 - c. Designate other persons/groups to gather information from records and case files and prepare summaries or collect specified information for review by the Committee
 - d. Attend courts-martial/article 32 preliminary hearings/appellate arguments in person
 3. How should we “advise” the Secretary of Defense?
 - a. Annual reports (annual reports on activities of Committee are required by statute, but are not necessarily the same as the advice provided by the Committee to the Secretary of Defense)
 - b. Information papers
 - c. Policy proposals
 - d. Legislative proposals
 - e. Memorandums
 - f. Meetings
 - g. Presentations

B. Framing the Mission

1. What types of cases should we seek to review?
 - a. Cases with convictions/acquittals/nonjudicial punishment/other disposition
 - b. Cases where Article 32 preliminary hearing officer recommended not to refer to court-martial
 - c. Cases with specific types of information/offenses/other criteria involved
 - d. Cases involving children/adults/dependents/intimate partners/same gender
2. How many cases should we review?
 - a. Representative samples (by offense, by Service, by region, by installation)
 - b. All cases in a given period

- c. Random selection of cases
3. What types of records should we review?
 - a. Sexual assault/sexual harassment/retaliation reports
 - b. Investigation records
 - c. Article 32 preliminary hearing reports
 - d. Other information from prosecutor files
 - e. Records of trial
 4. At what point in a case should we review a record?
 - a. While the case is ongoing
 - b. After dismissal, acquittal, conviction, or authentication
 - c. Before appeal
 - d. After appeal is exhausted
 5. By what mechanism should we review cases?
 - a. Reviewing records in-person at the locations where they are maintained
 - b. Setting up a secure Sharepoint system to allow Committee or subcommittee members remote access
 - c. Requesting Services to provide records to the Committee office

To determine the best methods for review, the Committee may want to look to conviction integrity programs and other case-review entities established throughout the country.
 6. What specific issues or data should we seek to identify in cases?
 - a. Relationship of accused and victim
 - b. Military or civilian status of accused and victim
 - c. Length of investigation/trial/appellate process
 - d. Admission of mental health records/rape shield evidence
 - e. Improper sealing of case files
 7. How should the information collected from cases be used?
 - a. Develop a database or other system for statistical analysis of information (or build on the Judicial Proceedings Panel database)
 - b. Create case studies for individual analysis
 - c. Review and assess specific actions such as charging decisions
 8. What other types of information should we look at in conjunction with case reviews to develop the Committee's advice to the Secretary of Defense?

- a. Sexual Assault Prevention and Response Office (SAPRO) reports and data
- b. RAND Corp. sexual assault reports and data
- c. U.S. Government Accountability Office (GAO) and DoD Inspector General (DoD IG) reports
- d. Military Service and DoD policies
- e. Previous advisory committee reports
- f. Congressional and advocacy organization reports
- g. News articles
- h. Law review articles and case law
- i. Surveys, requests for information, or interviews conducted by Committee

IV. Subcommittees

Because of the size and logistics of the Committee, it may be most helpful for execution of the Committee's tasks to form subcommittees. The Committee may want to discuss whether it prefers to establish subcommittees or working groups composed of Committee members only or whether it would like to have additional individuals appointed to serve as subcommittee members.

A. Subcommittee Options

1. Investigation Subcommittee
 - a. Task: To review Military Criminal Investigation Organization (MCIO) investigative files involving sexual misconduct allegations
 - b. Recommended members: Former military prosecutors, civilian prosecutors, defense counsel, civilian police investigators from departments with identified best practices, and criminologists
2. Litigation Subcommittee (or possibly separate subcommittees for prosecution and defense)
 - a. Task: To review case files involving sexual misconduct allegations
 - b. Recommended members: Former military prosecutors, civilian prosecutors, defense counsel, victims' counsel, and criminologists
3. Data and Statistics Subcommittee
 - a. Task: To compile and analyze data obtained from case files or elsewhere and to develop a database or continue to improve upon the document-based database developed by the Judicial Proceedings Panel
 - b. Recommended members: criminologists, other data experts, and interested Committee members

B. Subcommittee Meeting Options

1. Monthly for one business day to review documents
2. Every-other-month or quarterly for more than one day to review documents
3. Meet via recurring conference calls in conjunction with in-person meetings



Legislative Highlights and the History of Sexual Assault Issues in the Armed Forces Since 2012

CAPT Art Record
JAGC, USN

Chair, Joint Service Committee on Military Justice

Joint Service Committee on Military Justice





Overview

- Holistic reviews – 1968-9 – 1983-4 – 2013-6
 - Public concern – Media coverage
 - Congressional scrutiny - National Defense Authorization Acts
 - Piece meal changes
 - FY 12: 4 Military Justice & Legal Matters; 6 SAPR Matters
 - FY 13: 11 Military Justice & Legal Matters; 10 SAPR Matters
 - FY 14: 33 SAPR and Related Reforms; 3 Sense of Congress; 4 Military Justice Matters
 - FY 15: 17 Military Justice, Including Sexual Assault and Domestic Violence Prevention and Response
 - FY 16: 15 Military Justice, Including Sexual Assault and Domestic Violence Prevention and Response
 - FY 17: Includes several retaliation and SAPR-related substantive matters AND Military Justice Act 2016
-
-



The Dialog

- 26,000 ‘rapes’ in the military
- Commanders sweep it under the rug
- Lack of accountability – offenders and commanders
- Must report to your boss, the commander
- Our allies did it
- Commanders are not legally trained or equipped to make these decisions
- Victims routinely suffer reprisal and retaliation



Military Justice Reviews

- Defense Task Force on Sexual Assaults in the Military Services
- Defense Legal Policy Board (DLPB)
- U.S. Commission on Civil Rights
- Joint Service Committee Sexual Assault Subcommittee
- Response Systems Panel (RSP)
 - Role of the Commander
 - Comparative Systems
 - Victim Services
- Judicial Proceedings Panel (JPP)
- Military Justice Review Group (MJRG)
- Collateral Misconduct Subcommittee (JSC-CM)
 - Studied whether to recommend automatic immunity for victim collateral misconduct in sexual assault cases.



SAPR Reports

- SAPR Report to the President of the United States
- DoD SAPRO Annual Report to Congress on Sexual Assault
- Military Service Academies Report
- RAND Survey
- Significant FOIAs



Recent Focus

- Reprisals and retaliation
- Comparisons with civilian prosecutions
- Military Justice Improvement Act (MJIA)
- Attention focused on victim declinations
- Special Victim Investigation and Prosecution (SVIP) Capability
- MCIO investigations of contact offenses
- Special Victims Counsel/Victims Legal Counsel
- Attention focused on restricted v. unrestricted reporting



The Process

- Authorities – statutory and regulatory
 - POTUS v. DoD
 - DoD v. Services (USMC – don't say Departmental!)
 - Judicial w/in Executive – “old role” of the JSC
- Strategies – proactive v. reactive v. results
 - Art 54e
 - SVC/VLC
 - Elevated Review of Referral Decisions
 - CVRA – policy v. executive order v. statutory
 - Character and military service of the accused
 - Art 60 – the two year exception
 - Art 32 – judge advocates as PHOs / active PHO / disclosure rule
 - Victims v. Sexual Assault Victims v. Accused

2014

Prevention & Response

- §1711 – Prevention of entry into service of convicted sex offenders
- §1722 – Shortened RSP deadline
- §1725 – Min. requirements for SAPR personnel
- §1746 – Service Academy initial SAPR training
- §1731 – Additional RSP duties
- §1725 – SANE availability at MTFs
- §1741 – Report to Congress on need for specific UCMJ article regarding prohibited relationships with recruits and trainees
- §1733 – Review of SAPR training
- §1741 – Regs on inappropriate conduct with recruits and trainees (mandatory separation processing)
- §1726 – Added DOD SAPRO responsibilities
- §1735 – SecDef review of how sexual harassment is handled (EO vs. SAPRO?)
- §1734 – SecDef review of retention of, and access to, evidence and records relating to sexual assault
- §1721 – Verification of command climate surveys
- §1747 – Completion of SF 86 by sexual assault victims

All phases of a court-martial

- §1701 – Add Crime Victims’ Rights Act to UCMJ
- §1704 – DC must go through TC to interview victim
- §1716 – Special Victims Counsel requirement
- §1701 – Crime Victims’ Rights Act implementing regulations
- §1703 – Eliminate SOL for sexual assault and sexual assault of a child
- §1707 – Repeal of consensual sodomy

Reporting

- §1724 – NG & Reserve access to SARCs
- §1751 – Sense of Congress on command climate free of retaliation for allegations of sexual assault
- §1712 – Expedited transfer for USCG
- §1715 – IG investigation of retaliation claims in sexual assault and sexual harassment cases
- §1743 – SecDef policy on use of 8-day incident report for alleged sexual assaults
- §1714 – Expanded whistleblower protection (e.g., broadens unfavorable personnel actions and covered communications)
- §1713 – Guidance on transfer of an accused following an allegation of sexual assault
- §1709 – Service regulations to prohibit retaliation against members who report a criminal offense
- §1723 – 50 year retention of restricted reports
- §1709 – Report due on establishing a new punitive article for retaliation offenses

Investigation

- §1732 – SecDef review of MCIO investigative practices
- §1742 – Immediate referral of sexual assault allegations to MCIO

Pre-Trial

- §1752 – Sense of Congress on disposition of sex offenses via court-martial
- §1753 – Sense of Congress on discharge in lieu of court-martial
- §1708 – Elimination of “character and military service of accused” as a factor in disposition decision
- §1702 – Complete revision of Article 32 (now a probable cause “preliminary hearing”)
- §1744 – Review of decisions not to refer sexual assaults

Trial

- §1705 – Mandatory GCM jurisdiction for penetration offenses
- §1705 – Mandatory dismissal for DD for penetration offense convictions

Post-trial

- §1702 – Complete revision to commander’s authority to take post-trial action
- §1706 – Victim participation in clemency phase
- §1745 – Inclusion and command review of records of sex-related offenses

Effective dates

- Immediate
- 25 Apr 14 (120 days)
- 24 Jun14 (180 days)
- June 2014
- 26 Dec 14 (1 year)

2014/15

Prevention & Response

§1711 – Prevention of entry into service of convicted sex offenders	§1722 – Shortened RSP deadline	§1725 – Min. requirements for SAPR personnel	§545 – Requires JPP to review & assess use of victims' mental health records
§1746 – Service Academy initial SAPR training	§1731 – Additional RSP duties	§1725 – SANE availability at MTFs	§1726 – Added DOD SAPRO responsibilities
§1741 – Regs on inappropriate conduct with recruits and trainees (mandatory separation processing)	§1741 – Report to Congress on need for specific UCMJ article regarding prohibited relationships with recruits and trainees	§1733 – Review of SAPR training	§546 – Provides that JPP will be succeeded by a 5-yr defense advisory committee
§1741 – Regs on inappropriate conduct with recruits and trainees (mandatory separation processing)	§1741 – Report to Congress on need for specific UCMJ article regarding prohibited relationships with recruits and trainees	§531 - Prohibition on relationships between recruiters & a potential recruit "who is pursuing or has recently pursued becoming a member of the Armed Forces"	
§1734 – SecDef review of retention of, and access to, evidence and records relating to sexual assault	§1721 – Verification of command climate surveys	§1735 – SecDef review of how sexual harassment is handled (EO vs. SAPRO?)	§531 - SVC/VLC prohibited from assisting w/ civil suits against US
	§1747 – Completion of SF 86 by sexual assault victims	§539 - Limits who may be a Sexual Assault Forensic Examiner & requires certification standards	§547 – Requires Secretaries of Military Depts to establish a confidential BCMR/BCNR process for SA victims to challenge terms of their discharges

All phases of a court-martial

§1701 – Add Crime Victims' Rights Act to UCMJ	§1704 – DC must go through VLC to interview victim	§1716 – Special Victims Counsel requirement	§540 – Moves the final day of a CAAF judge's term from 9/30 to 7/31	§537 – Adoption of Klemick standard for in camera reviews of MRE 513
§1701 – Crime Victims' Rights Act implementing regulations	§1703 – Eliminate SOL for sexual assault and sexual assault of a child	§1707 – Repeal of consensual sodomy	§531 - Crime victims' rights article limited to "an individual"	§533 - Expands access to SVC/VLC Reserve Component
§534 - Within 180 days, Military Rules of Evidence must be amended to provide that where the victim has the right to be heard, the victim may exercise that right through counsel, especially a SVC under section 1044e	§537 - R.C.M. 513 "Constitutionally required" exception stricken. Privilege must be expanded to cover other licensed mental health professionals	§534 - Service Secretaries must promulgate procedures to ensure that victims' counsel receive adequate notice of the scheduling of proceedings	§532 - Depos limited to circumstances where "it is in the interest of justice that the testimony of the prospective witness be taken and preserved for use at a preliminary hearing under section 832 of this title (Article 32) or a court-martial."	

Reporting

§1712 – Expedited transfer for USCG	§1724 – NG & Reserve access to SARCS	§1751 – Sense of Congress on command climate free of retaliation for allegations of sexual assault	§1714 – Expanded whistleblower protection (e.g., broadens unfavorable personnel actions and covered communications)
§1743 – SecDef policy on use of 8-day incident report for alleged sexual assaults	§1723 – 50 year retention of restricted reports	§1715 – IG investigation of retaliation claims in sexual assault and sexual harassment cases	§543 - Within a year, DoD must propose a plan to allow those who make restricted reports to have data about the offense and offender collected on a confidential basis to identify individuals who are suspected of perpetrating multiple sexual assaults. The plan must be executed within the next year.
§1713 – Guidance on transfer of an accused following an allegation of sexual assault	§1709 – Report due on establishing a new punitive article for retaliation offenses	§1709 – Service regulations to prohibit retaliation against members who report a criminal offense	
§1709 – Report due on establishing a new punitive article for retaliation offenses	§544 - Requires, within one year, a plan for a domestic violence database	§542 - Requires annual reports to include analysis of disposition of the most serious offense during a sexual assault that is the subject of an unrestricted report	

Investigation

§1732 – SecDef review of MCIO investigative practices	§1742 – Immediate referral of sexual assault allegations to MCIO
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Pre-Trial

§1752 – Sense of Congress on disposition of sex offenses via court-martial	§1753 – Sense of Congress on discharge in lieu of court-martial	§531 - Term "Legal Guardian" eliminated for judge-appointed designee to assert victim rights of minors	§534 - Victims must be consulted for preference as to exercise of military or civilian jurisdiction; CA must consider this preference
§1708 – Elimination of "character and military service of accused" as a factor in disposition decision	§1702 – Complete revision of Article 32 (now a probable cause "preliminary hearing") for all Article 32 hearings on or after 26 Dec 2015. Ability for Accused to waive Art 32 reinstated.	§1744 – Review of decisions not to refer sexual assaults, requires ISIC, or Secretary review, and Secretary review if requested by Service Chief Prosecutor	

Trial

§1705 – Mandatory GCM jurisdiction for penetration offenses	§1705 – Mandatory dismissal for DD for penetration offense convictions	§536 - Admissibility of good military character evidence limited to military-specific offenses	§535 - Victims can petition CCA for writ of mandamus if they believe military judge erred in MRE 412/513 ruling	§531 - CA authorized to take action on findings re: qualifying offenses
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Post-trial

§1702 – Complete revision to commander's authority to take post-trial action. Where a mandatory minimum punitive discharge was adjudged for a post 6/24/2014 offense, CA has old Article 60 powers where an accused is found guilty of offenses occurring before & after 6/24/2014	§1706 – Victim participation in clemency phase	§1745 – Inclusion and command review of records of sex-related offenses	§538 - Allows return of personal property seized as evidence upon conclusion of proceedings
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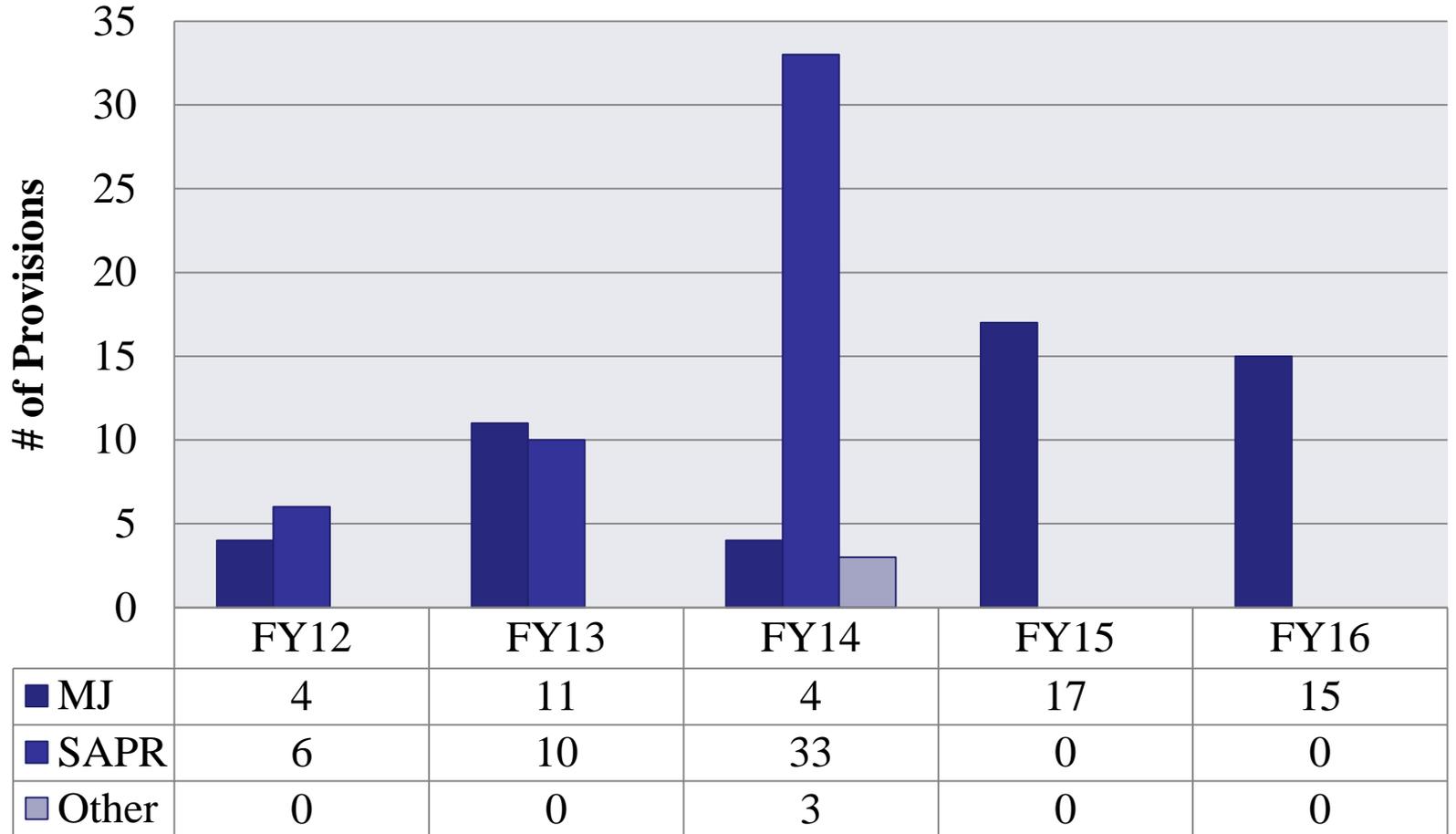
Effective dates

Immediate changes in FY14 NDAA	25 Apr 14 (120 days after FY14 NDAA)	24 Jun 14 (180 days after FY14 NDAA)	June 2014	26 Dec 14 (1 year after FY14 NDAA)	Immediate changes in FY15 NDAA	18 Apr 15 (120 days after FY15 NDAA)	16 Jun 15 (180 days after FY15 NDAA)	19 Dec 15 (1 year after FY15 NDAA)
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PIECE MEAL CHANGE

NDAAs PROVISIONS BY FY





FY14 NDAA

The FY14 NDAA was the “most extensive UCMJ revision since the Military Justice Act of 1968.”

-MG(Ret) John D. Altenburg, USA

Changes to the UCMJ

FY12 NDAA: 8 Articles
FY13 NDAA: 4 Articles
FY14 NDAA: 14 Articles
FY15 NDAA: 10 Articles
Total: 36 Articles



FY14 NDAA

- **Highlighted Issues/ Additions to the MCM:**
 - Extension and codification of Crime Victims' Rights
 - Elimination of 5 yr SOL for certain sex related offenses
 - DC interviews of victims via TC
 - Repeal of consensual sodomy
 - Reassignment of accused permitted for good order and discipline
 - COs must immediately report all reports of sex offenses to MCIO
 - Elevated Review of decisions not to refer charges to court-martial
 - SRB notations and CO reviews of sex offense convictions/NJPs
 - Prohibit retaliation for victims and witnesses who report a crime
 - Punitive policies on recruiter / recruits – mandatory processing
 - Restrictions on commander's post-trial Art 60 authority
 - Jurisdiction over certain sex offenses limited to GCM
 - Mandatory minimum of DD or Dismissal for certain sex offenses



FY14 NDAA (cont)

- Restrictions on commander's post-trial Art 60 authority
- Jurisdiction over certain sex offenses limited to GCM
- Mandatory minimum of DD or Dismissal for certain sex offenses
- Victim ability to participate in clemency phase of court-martial
- Removal of character and military service as factor COs should consider in disposition decision
- VLC to be provided for certain victims of sex related offenses
- New Article 32 preliminary hearing



FY 15 NDAA

- **Highlighted Issues:**

- Multiple Sections Related to Military Justice Corrected issues from FY 14 NDAA
 - Substantial changes to:
 - Article 60 (further modified)
 - Article 32 (modified/fixed)
 - Restored the ability of the accused to waive an Article 32 investigation.
 - Struck use of “trial counsel” and replaced it with “counsel for the government”
 - Article 56
 - Changes to Maximum Punishments for certain offenses
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FY16 NDAA

- **Highlighted Issues:**

- Timely notification to victims of sex-related offenses of the availability of assistance from Special Victims' Counsel.
 - Enhancement of confidentiality of restricted reporting of sexual assault in the military.
 - Modification of deadline for establishment of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.
 - Improved Department of Defense prevention and response to sexual assaults in which the victim is a male member of the Armed Forces.
 - Preventing retaliation against members of the Armed Forces who report or intervene on behalf of the victim of an alleged sex-related offence.
 - Retention of case notes in investigations of sex-related offenses involving members of the Army, Navy, Air Force, or Marine Corps.
 - Modification of Rule 304 of the Military Rules of Evidence relating to the corroboration of a confession or admission
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FY17 NDAA

- **Non-MJA16 Highlighted Issues:**

- Sec. 531. Improvements to whistleblower protection procedures.
 - Sec. 532. Modification of whistleblower protection authorities to restrict contrary findings of prohibited personnel action by the Secretary concerned.
 - Sec. 536. Comptroller General of the United States review of integrity of Department of Defense whistleblower program.
 - Sec. 541. United States Court of Appeals for the Armed Forces.
 - Sec. 542. Effective prosecution and defense in courts-martial and pilot programs on professional military justice development for judge advocates.
 - Sec. 543. Inclusion in annual reports on sexual assault prevention and response efforts of the Armed Forces of information on complaints of retaliation in connection with reports of sexual assault in the Armed Forces.
 - Sec. 544. Extension of the requirement for annual report regarding sexual assaults and coordination with release of Family Advocacy Program report.
 - Sec. 545. Metrics for evaluating the efforts of the Armed Forces to prevent and respond to retaliation in connection with reports of sexual assault in the Armed Forces.
 - Sec. 546. Training for Department of Defense personnel who investigate claims of retaliation.
 - Sec. 547. Notification to complainants of resolution of investigations into retaliation.
 - Sec. 548. Modification of definition of sexual harassment for purposes of investigations by commanding officers of complaints of harassment.
 - Sec. 549. Improved Department of Defense prevention of and response to hazing in the Armed Forces.
-
-



FY17 NDAA (MJA16)

- Signed by the President December 23, 2016
- Authorizes military judge or magistrate to issue investigative subpoenas and warrants for electronic communications prior to referral
- Requires preliminary hearing officer in Article 32 hearing to analyze additional matters submitted by the parties and the victim, and to make disposition recommendation
- Requires non-binding disposition guidance be issued for commanders, convening authorities, staff judge advocates and judge advocates
- Includes judge advocate consultation before SPCM referral
- Criminalizes sexual activity between recruiters and prospective recruits and junior military members in a training environment
- Criminalizes retaliation against a victim
- Eliminates “bodily harm” element from sexual assault offenses and adds element of “without consent”
- Statutory authorization for PTAs
- (New?) sentencing scheme
- Post-trial simplification
- Enhanced rights of appeal and review
- Allows Government appeals of sentences on grounds that the sentence violates the law or is plainly unreasonable
- New data collection requirements
- Replacement of the Code Committee



Current Status of Victim Rights

- **Article 6b: Rights of a Victim of an Offense under the UCMJ**
 - FY16 NDAA, Sect 531: Amends Art. 6b rights. If a sexual assault victim believes that a PHO or court-martial ruling violates delineated rights (Art6 6b rights; MRE 412, MRE 513, MRE 514, MRE 615), the victim may petition the Court of Criminal Appeals for a writ of mandamus for remedy.
 - FY17 NDAA, Sec 5105: Amends Art. 6b to allow the legal guardians or representatives of a victim's estate, or any other person designated by the military judge to assume the rights of the victim.
 - FY17 NDAA, Sec 5105: Defense counsel must make any request to interview the victim via VLC or civilian counsel, and, if requested by victim, must allow either VLC, VA, or trial counsel presence at the interview.
 - FY16 NDAA Sec 528: Mandates DoD-wide plan to improve prevention/response to male victims
- **Services**
 - FY16 NDAA: Right to Victims Legal Counsel (VLC) extended to DoD civilian employees
 - FY16 NDAA Sec 534: Victims must be notified of their right to VLC prior to MCIO or trial counsel interviews of the victim, or requests for any statement from the victim.
- **Collateral Misconduct**
 - Sexual Assault Initial Disposition Authority (SA-IDA) holds disposition authority for victim collateral misconduct.
 - MILPERSMAN 1910-704: Names the first flag officer in a sexual assault victim's chain of command as the separating authority, if the victim is recommended for involuntary separation within one year of the final disposition of the sexual assault case.
- **CNO SAPR Initiatives**
 - CNO directed processes to allow victims of sexual assault to request an expedited discharge from service, and prevent victims of sexual assault from being co-located with their alleged offender. Implementing MILPERSMAN sections in review.
- **Retaliation**
 - FY16 NDAA: Prohibition of retaliation against those who report or intervene on behalf of a victim of sexual assault. Mandated DoD-wide retaliation prevention and response strategy.



JSC Accomplishments Since 2012

- EO 13643 – Signed 15 May 2013
 - Complete MRE reissue
 - FRE rewrite effective 1 Dec 11
 - MRE 1102
 - Max Punishments – Art 120, 120b, 120c



JSC Accomplishments Since 2012

- EO 13669– Signed 13 June 2014
 - Implemented:
 - FY12 and FY14 NDAAAs
 - Changed:
 - R.C.M. 405, 1104, 1106, and 1306
 - Discussions for R.C.M. 306, 405, 703, 1103, 1104, 1105A, and 1106
 - Analysis of R.C.M. 1107
 - Major Provisions:
 - Authorized issuance of subpoena for electronically stored information
 - Provided ROTs to SA victims named in a specification
 - Provided victims the right to submit matters to the CA Action
-
-



JSC Accomplishments Since 2012

- EO 13696– Signed 17 June 2015
 - Implemented new Art. 32
 - Enhanced victims’ rights
 - Notice, presence, confer, be heard
 - Limitations on depositions
 - Victim’s unsworn statement in sentencing
 - Art. 60 changes
 - Elimination of GMC
-
-



JSC Accomplishments Since 2012

- EO 13730– Signed 20 May 2016
 - Changes to Part II, Part III, and Part IV
 - FY16 NDAA Sec. 544 (to modify R.C.M. 104)
 - Notable provisions
 - R.C.M. 104 – Ratings for SVC/VLC
 - R.C.M. 306 – Victim preference on jurisdiction
 - R.C.M. 705 – Victim consultation on PTAs
 - R.C.M. 907 – Failure to state an offense
 - R.C.M. 1103 – Preparation of verbatim transcript
 - R.C.M. 1107 – FY14 NDAA limits on CA actions
 - R.C.M. 1109 – Vacation hearing procedures
 - R.C.M. 1203 – Procedures for victim writs of mandamus
 - Mil.R.Evid. 304 – Admitting confessions or admissions
 - Mil.R.Evid. 311 – Exclusionary rule
 - Mil.R.Evid. 504 – Spousal privilege
 - Numerous Mil.R.Evids. – To conform with FRE amendments
 - Part IV, para. 4.e. Attempts – Mandatory punitive discharge for attempts of certain SA crimes
 - Part IV, para. 110.c. Communicating a Threat – Limits on criminalization of certain language
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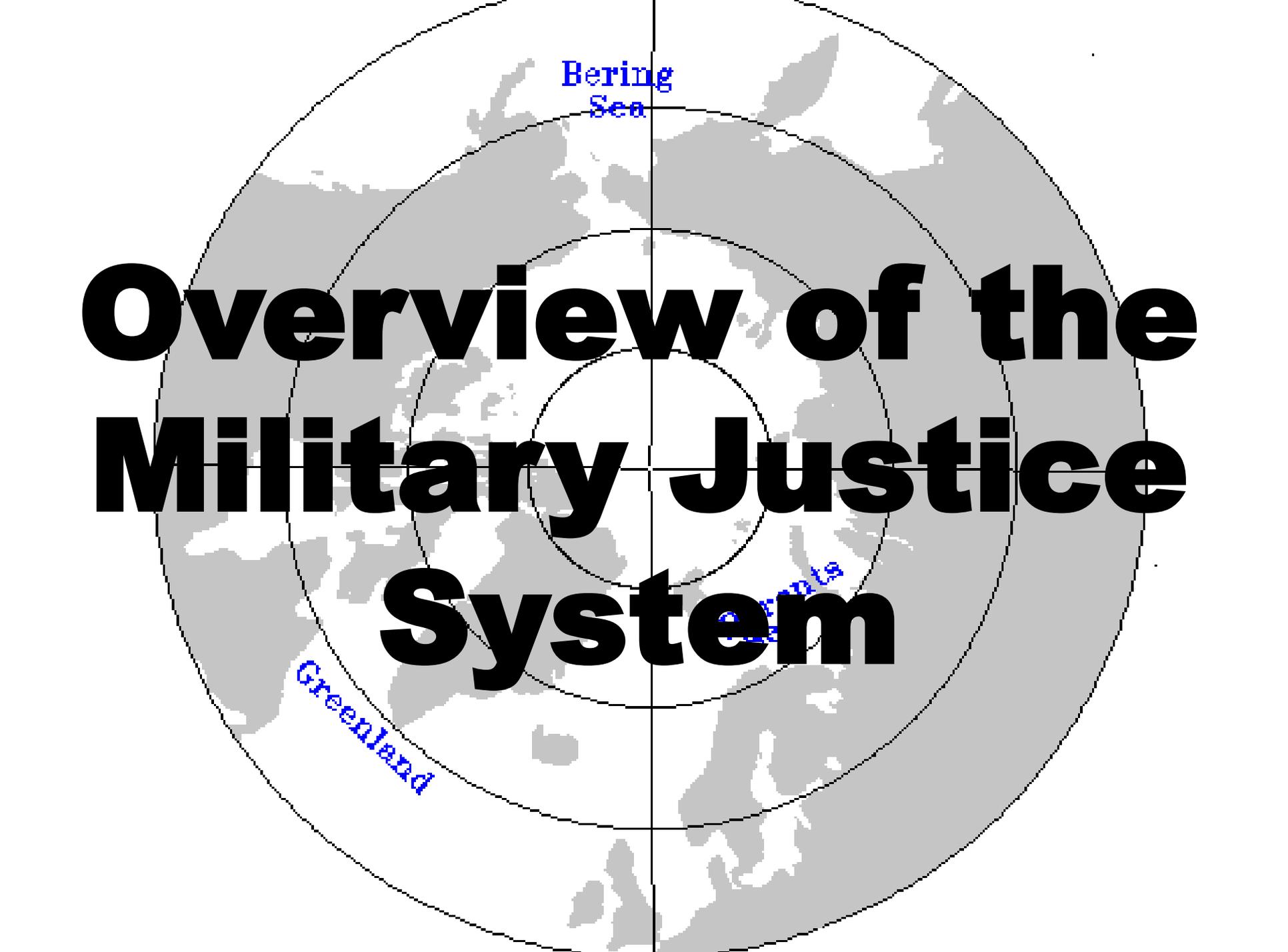


JSC Accomplishments Since 2012

- EO 13740– Signed 16 Sep 2016
 - Sometimes called the “Residuum”
 - Implements portions of FY12, FY14, and FY15 NDAAs
 - R.C.M. 201, 307, 701, 703, 906, 907, 916, 917, 920, 1003, and 1004
 - Part IV Art. 79, 118, 119, 120, 120b, 120c, 125, and 134 and various discussions
 - Discussions for R.C.M. 307, 701, 809, 906, 907, 910, 916, 918, 1003
 - Analyses of R.C.M. 307, 906, 907, 916, 920, 1001, 1004, and Art. 79, 118, 120, 120b, 120c, 125, and 134
 - Analysis of Military Rules of Evidence
 - Part IV – Art. 120
 - Repeals consensual sodomy
 - Addresses defense counsel interview of victims
 - Indecent conduct
 - Prior “Indecent Acts with Another,” but no requirement for the presence of another person
 - Changes due to *U.S. v. Fosler*
-
-



QUESTIONS?

The image features a stylized, grayscale map of the world centered on the North Pole. The map is overlaid with a grid of latitude and longitude lines. Four concentric circles are drawn around the center, creating a target-like appearance. The text "Overview of the Military Justice System" is prominently displayed in the center in a large, bold, black font. Several geographical labels are present in blue text: "Bering Sea" at the top, "Greenland" at the bottom left, and "Alaska" at the bottom right.

Overview of the Military Justice System

Bering
Sea

Greenland

Alaska

**Military justice system
governs conduct of more
than 1.35 million active
duty military members**



**Larger than the population
of 10 states (Wyoming,
Vermont, North Dakota,
Alaska, South Dakota,
Delaware, Montana, Rhode
Island, New Hampshire, and
Maine) and the District of
Columbia**

24/7, 365 days a year

**Military justice system
also applies to more than
800,000 Reservists when
performing duties and
National Guardsmen
when in Federal service.**

**Military justice system also
sometimes applies to civilians (e.g.):**

Military justice system also sometimes applies to civilians (e.g.):

- **Active duty retirees who are entitled to pay;**
- **Civilians accompanying U.S. forces in the field in time of declared war or contingency operations;**
- **“Persons in custody of the armed forces serving a sentence imposed by court-martial.”**

Rarely used.

United States Constitution



United States Constitution



Art. I, § 8. cl. 14:

“The Congress shall have Power . . . To make Rules for the Government and Regulation of the land and naval Forces”

Pre-UCMJ

Separate statutes governed the Army's and Navy's military justice systems

Army: Articles of War

**Navy: Articles for the Government of the Navy
("Rocks and Shoals")**

UNIFORM CODE
— of —
MILITARY JUSTICE

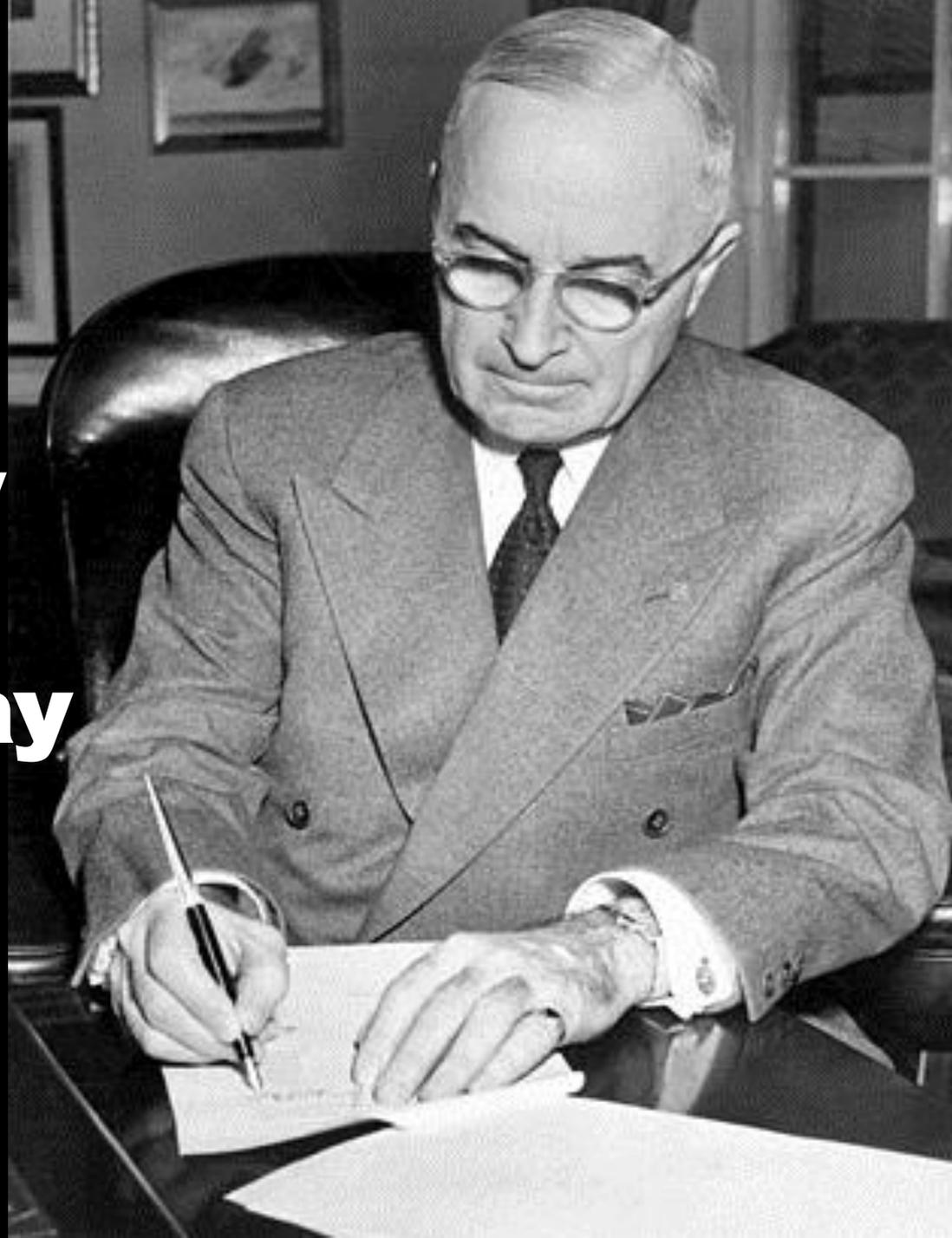


Text, References and Commentary
based on the Report of the
Committee on a Uniform Code of
Military Justice to
The Secretary of Defense

**Passed by Congress:
April 26, 1950**



**Signed by
President
Truman: May
5, 1950
(effective May
31, 1951)**



UCMJ

- **Establishes military justice system's structure**
- **Enacts punitive articles**
- **Delegates authority to the President**



Military Justice Act of 2016

Enacted Dec. 23, 2016

Major modification of the military justice system, including to the structure of military trial courts and punitive articles

Most provisions won't take effect until a date to be determined by the President no later than **January 1, 2019**



Uniform Code of Military Justice

**Dec. 26, 2013 – Dec. 23, 2016
(excluding Military Justice Act of 2016)**

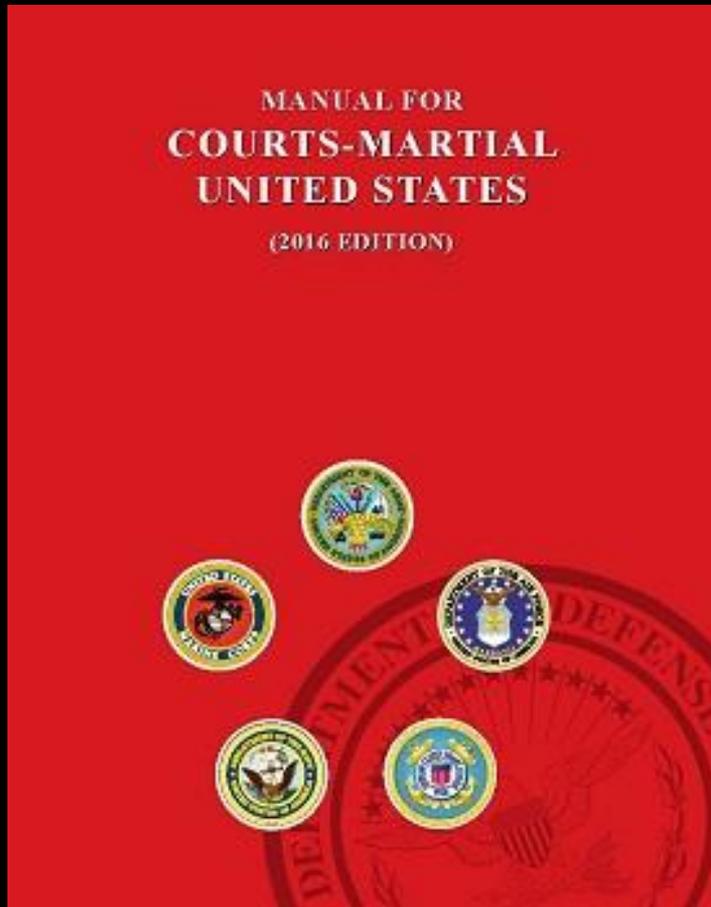
Uniform Code of Military Justice

Dec. 26, 2013 – Dec. 23, 2016
(excluding Military Justice Act of 2016)

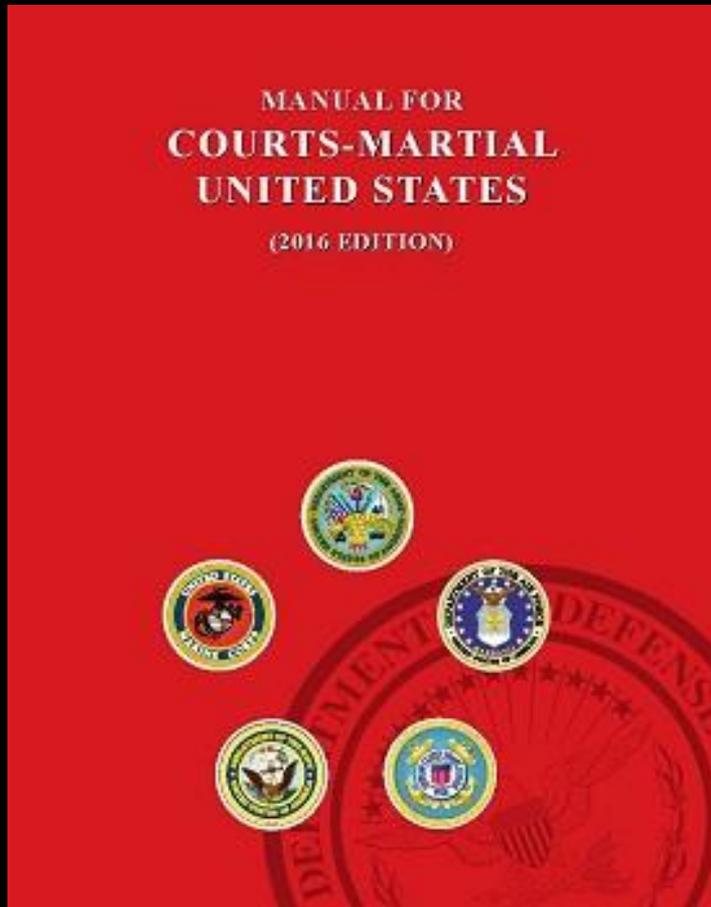
1 new UCMJ article enacted
(amended twice)

17 existing UCMJ articles amended
(6 amended twice)

Dec. 26, 2013 – Dec. 23, 2016



Dec. 26, 2013 – Dec. 23, 2016



**4 Executive Orders
amending Manual
for Courts-Martial**



Military Justice System's structure

Military Justice System's Structure

4 levels of disposition (in addition to dismissal of charges and less formal responses, such as counseling):

- 1. Nonjudicial punishment**
- 2. Summary court-martial**
- 3. Special court-martial**
- 4. General court-martial**

Nonjudicial Punishment

Imposed by commanders.

**Service member can refuse
(except those attached to or
embarked on vessels).**

**Substantial differences in
procedures among the Services.**

Not a criminal conviction.

Nonjudicial Punishment (UCMJ art. 15)

Maximum punishments:

Correctional custody for up to 30 days;

Restriction for up to 60 days;

Forfeiture of up to $\frac{1}{2}$ pay per month for 2 months;

Reduction to lowest pay grade.

Nonjudicial Punishment (UCMJ art. 15)

**For those attached to or
embarked in vessels,
confinement on bread and water
for 3 days**



Summary Courts-Martial (UCMJ art. 20)

Enlisted only.

May be refused.

One-officer “court-martial.”

**Substantial differences in procedures
among the Services.**

Not a criminal conviction.

Summary Courts-Martial (UCMJ art. 20)

Maximum punishments:

Confinement for up to 30 days;

Restriction for up to 2 months;

Forfeiture of up to 2/3 pay for 1 month;

Reduction to lowest pay grade.

(Can't adjudge discharge)

Special Courts-Martial

Resembles federal criminal trial (though jury equivalent will adjudge the sentence if they hear the case on the merits).

Convictions are federal criminal convictions.

Accused can choose trial by military judge or trial by a panel of at least 3 members.

Procedures among the Services are fairly consistent.

Special Courts-Martial

Maximum punishments:

Bad-conduct discharge (but officers can't be discharged);

Confinement for up to 12 months (but officers can't be confined);

Forfeiture of 2/3 pay per month for 12 months;

Reduction to lowest pay grade (enlisted only).

General Courts-Martial

Resembles federal criminal trial (though jury equivalent will adjudge the sentence if they hear the case on the merits).

▪

Convictions are federal criminal convictions.

Accused can choose trial by military judge or trial by a panel of at least 5 members (no trial by military judge alone in capital cases).

Procedures among the Services are fairly consistent.

General Courts-Martial

Maximum punishments:

Dishonorable discharge (or dismissal for officers);

Confinement for up to the maximum for the offense;

Total forfeiture of pay and allowances;

Reduction to lowest pay grade (enlisted only);

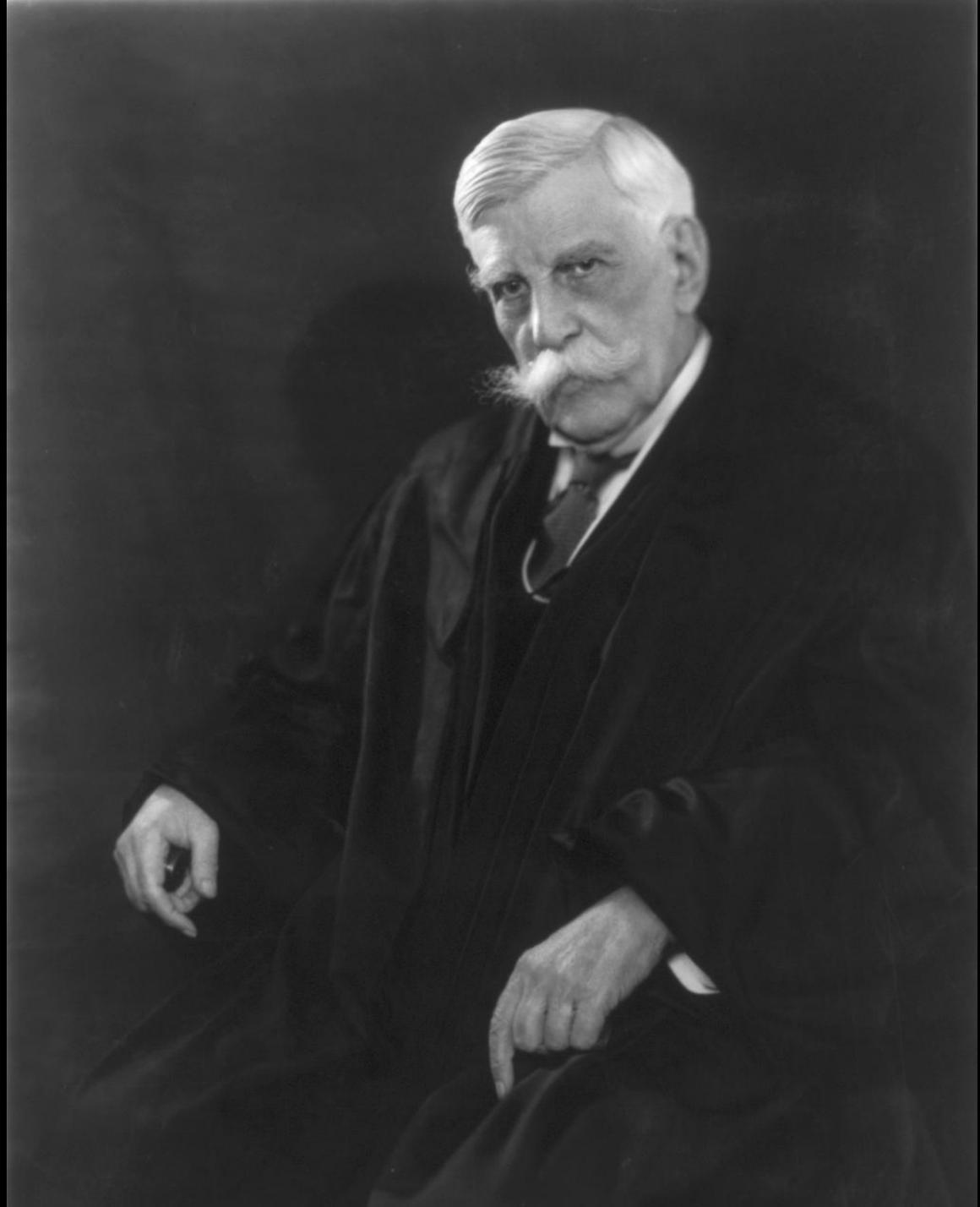
Death if statutorily authorized for the offense.

Special & General Courts- Martial

2/3 majority necessary to convict; less than 2/3 vote for conviction results in acquittal

2/3 majority necessary for sentences other than death (unanimity required) or confinement for more than 10 years (3/4 majority required)

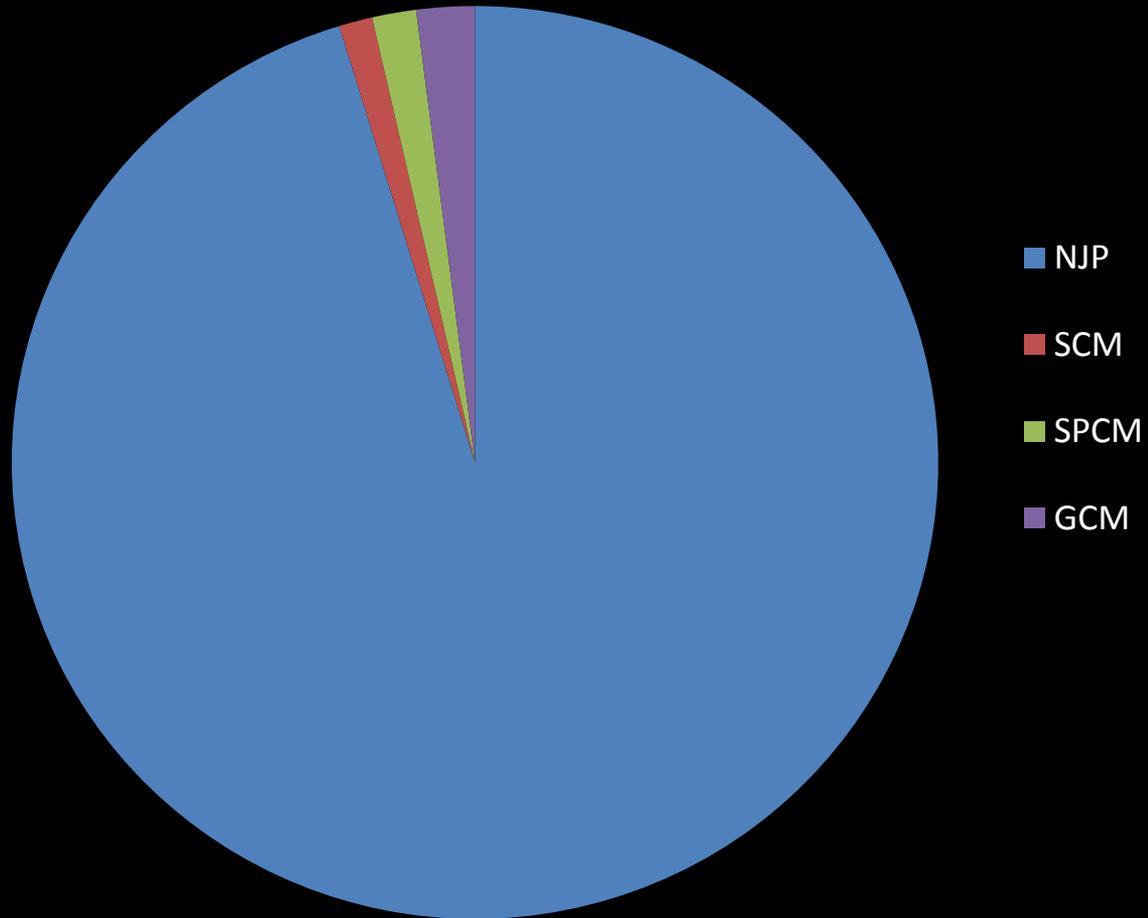
**“The life of the
law has not
been logic; it
has been
experience.”**



Military Justice Statistics FY 2015

General courts-martial:	1,104
Special courts-martial:	836
Summary courts-martial:	634
Nonjudicial punishment:	51,792

Actions under the UCMJ FY 2015



Military Justice Statistics FY 2015

General courts-martial:	1,104
Special courts-martial:	836
Summary courts-martial:	634
Nonjudicial punishment:	51,792

Military Justice Statistics FY 2015

Military personnel size dropped 4.65% from FY 2000 to FY 2015

General courts-martial:	1,104
(down 31% from FY 2000:	1,607)
Special courts-martial:	836
(down 73% from FY 2000:	3,117)
Summary courts-martial:	634
(down 76.5% from FY 2000:	2,699)
Nonjudicial punishment:	51,792
(down 35.9% from FY 2000:	80,816)

Military Justice Statistics FY 2015

Military personnel size dropped 36.7% from FY 1990 to FY 2015

General courts-martial:	1,104
(down 65.5% from FY 1990:	3,202)
Special courts-martial:	836
(down 87.5% from FY 1990:	6,705)
Summary courts-martial:	634
(down 84.5% from FY 1990:	4,104)
Nonjudicial punishment:	51,792
(down 64.8% from FY 1990:	146,527)

General Court-Martial Process

(USMC example, assuming a conviction and sentence including either a punitive discharge or a year or more of confinement)

Discretionary review by United States Supreme Court
(but only if reviewed by CAAF)

Discretionary (usually) review by Court of Appeals for the Armed Forces

Automatic appeal to Navy-Marine Corps Court of Criminal Appeals

Convening authority's action
(by Division Commanding General)

General court-martial
(referred by Division Commanding General)

Article 32 investigation
(ordered by Regiment Commanding Officer)

Charges preferred

Naval Criminal Investigative Service investigates

VLC offered

Sexual assault reported

Punitive articles

Punitive Articles

65 punitive articles (many include more than one offense)

Punitive Articles

Many military specific offenses, such as:

- **absence without leave;**
- **desertion;**
- **violation of a lawful order; and**
- **misbehavior before the enemy.**

Punitive Articles

**Many common law offenses,
such as:**

- **murder;**
- **rape;**
- **burglary; and**
- **robbery.**

Punitive Articles

Article 134: “The General Article”

Includes three theories of liability:

(1) “[A]ll disorders and neglects to the prejudice of good order and discipline in the armed forces.”

(2) “[C]onduct of a nature to bring discredit upon the armed forces.”

(3) “[C]rimes and offenses not capital.”

Punitive Articles

Article 134: “The General Article”

The President has identified 53 non-exclusive offenses under Article 134, including:

- (1) Adultery;**
- (2) False or unauthorized pass offenses;**
- (3) Fraternization;**
- (4) Breaking restriction;**
- (5) Negligent homicide;**
- (6) Kidnapping;**
- (7) Obstructing justice;**
- (8) Pandering and prostitution; and**
- (9) Communicating a threat.**

**Delegation of
authority to the
president**

Delegation of Authority to the President

Article 36:

- Delegates to the President authority to prescribe pretrial, trial, and post-trial procedures, including rules of evidence.**
- The President is directed to “apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts” to the extent practicable and not in conflict with the UCMJ.**

Delegation of Authority to the President

Article 56:

- **Delegates to the President authority to prescribe maximum punishments for court-martial offenses (except for death-eligible offenses).**

MANUAL FOR
COURTS-MARTIAL
UNITED STATES

(2016 EDITION)



Manual for Courts-Martial

Five parts:

I. Preamble

II. Rules for Courts-Martial

III. Military Rules of Evidence

**IV. Punitive Articles (including
maximum punishments)**

V. Nonjudicial Punishment Procedure





RESPONSE SYSTEMS TO ADULT
SEXUAL ASSAULT CRIMES PANEL
(RSP)
&
JUDICIAL PROCEEDINGS PANEL
SINCE FISCAL YEAR 2012
AMENDMENTS
(JPP)



RSP

- ESTABLISHED
 - Mandated by NDAA for FY 2013 – FOCUS ON ADULT SEXUAL ASSAULT
 - Composition
 - 9 members
 - 5 appointed by SECDEF
 - 4 appointed by Chair and Ranking member of HASC and SASC
- PURPOSE:
 - Provide recommendations on how to improve the effectiveness of the investigation, prosecution and adjudication of crimes involving adult sexual assault and related offenses.
- DELIVERABLES – Provide report within one year to SECDEF and HASC/SASC
 - Terminated on June 27, 2014.

RSP in action





SCOPE OF RSP

- Assess strengths / weaknesses of the systems, including the administration of the UCMJ, and the investigation, prosecution, and adjudication of adult sexual assault crimes during the period 2007 through 2011.
- Compare military / civilian systems for the investigation, prosecution, and adjudication of adult sexual assault crimes. Include an assessment of differences in providing support and protection to victims, and the identification of civilian best practices for incorporation into any phase of the military system.
- Assess advisory sentencing guidelines used in civilian courts in adult sexual assault cases and whether it would be advisable to promulgate sentencing guidelines for use in courts-martial.
- Assess training level of military defense and trial counsel, including their experience in defending or prosecuting adult sexual assault crimes and related offenses, as compared to prosecution and defense counsel for similar cases in the Federal and State court systems.



SCOPE OF RSP

- Assess and compare military court-martial conviction rates with those in the Federal and State courts and the reasons for any differences.
- Assess roles / effectiveness of commanders at all levels in preventing & responding to reports of sexual assault.
- Assess strengths / weakness of proposed legislative initiatives on the role of commanders in the administration of military justice and the investigation, prosecution, and adjudication of adult sexual assault crimes.
- Assess adequacy of the systems and proceedings to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes, including whether victims are provided the rights afforded by 18 U.S.C. § 3771, Department of Defense Directive 1030.1, and Department of Defense Instruction 1030.2.
- Such other matters and materials the Response Systems Panel considers appropriate.



RSP SUBCOMMITTEES

- Role of the Commander
 - Study role & effectiveness of commanders at all levels in the investigation, prosecution, adjudication of sexual assault, prevention, and response to sexual assault.
 - Assess strengths/weaknesses on current/proposed legislation to modify role of commander in military justice.
- Comparative Systems
 - Assess and compare military and civilian systems used to investigate, prosecute and adjudicate adult sexual assault crimes.
- Victim Services
 - Assess adequacy of victim services in the military.
 - Differences between military and civilian victim support services.
 - Enforcement of crime victims rights.



RSP

- Issued 138 Recommendations
 - DoD accepted 88 recommendations
 - Partially approved 10 recommendations.
 - One recommendation disapproved.
 - Remaining recommendations were referred for further review by DoD, were already under review by Military Justice Review Group, or the Joint Services Committee on Military Justice, or in pending legislation.
 - Deferred consideration of one recommendation because JPP was the next follow-on panel.



JPP

- ESTABLISHED – FOCUS ON ADULT SEXUAL ASSAULT
 - Mandated by NDAA for FY 2013 –
 - Composition
 - 5 members -- two of whom must have served on RSP
 - Appointed by DEPSECDEF
- PURPOSE:
 - Conduct independent review of judicial proceedings conducted under the UCMJ involving adult sexual assault crimes since the amendments made to the UCMJ by section 541 of NDAA for FY 2012
- DELIVERABLES – Provide annual report(s) to SECDEF and HASC/SASC
 - Terminates September 2017.

JPP in action





SCOPE OF JPP

- Assess implementation of the reforms to rape, sexual assault, and other sexual misconduct under the UCMJ enacted by section 541 of the FY 2012 NDAA.
- Review trends in courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, the consistency / appropriateness of the decisions, punishments, and administrative actions.
- How prior sexual conduct of the alleged victim was considered and impact on the case.



SCOPE OF JPP

- Identify trends in punishments compared with the punishments rendered by Federal and State criminal courts.
- Review / evaluate instances when punishments were reduced / set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if information is available.
- Assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.



SCOPE OF JPP

- Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.
- Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.
- Assess the likely consequences of amending the definition of rape and sexual assault to expressly cover a situation in which a person subject to the UCMJ commits a sexual act upon another person by abusing one's position in the chain of command of the other person to gain access to or coerce the other person.
- Assess the implementation and effect of the Special Victim's Counsel for victims of sex-related offenses.



SCOPE OF JPP

- Assess the implementation / effect of the mandatory minimum sentences which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge.
- Assess the adequacy of compensation / restitution for victims of offenses; develop recommendations.
- The impact of the use of any mental health records of the victim as compared to the use of similar records in civilian criminal legal proceedings.
- Review / the establishment of a privilege against the disclosure of communications relating to DoD Safe Helpline operators and users.



JPP

- Released initial report on Feb 4, 2015
- Released 4 reports in 2016
 - Restitution and Compensation Report
 - Retaliation Report
 - Article 120 Report
 - Statistical data regarding military adjudication of sexual assault offenses
- To date issued 38 recommendations
 - Restitution and Compensation Report
 - Retaliation Report
 - Article 120 Report
 - Statistical data regarding military adjudication of sexual assault offenses



JPP

SUBCOMMITTEE:

- Consists of 9 members – two of whom are on the JPP
- Conducted site visits is installations in the US and Asia
- Currently preparing reports of observations at site visits relevant to JPP taskings for consideration and deliberation by JPP



JPP

- FUTURE MEETINGS ARE PUBLISHED ON THE WEBSITE FOR THE JPP AND THE FEDERAL REGISTER.
 - Next meeting: February 24, 2017
- OPEN TO THE PUBLIC
- ANY QUESTIONS?