

Use of Data and Case Reviews in Issues Studied by the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

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[Speaking in their individual capacities and not as representatives of the DAC-IPAD]*

Introduction

1. Establishment of the DAC-IPAD
 - a. Section 546 of the National Defense Authorization Act for Fiscal Year 2015 [FY 2015 NDAA] (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note), as amended, established the DAC-IPAD as a non-discretionary federal advisory committee.
 - b. Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, based on its ongoing review of cases.
 - c. The DAC-IPAD website, <https://dacipad.whs.mil/> provides the following information:
 - i. DAC-IPAD Charter
 - ii. Annual and topic-specific reports and letters published by the Committee
 - iii. Transcripts of public meetings and written public comments provided to the DAC-IPAD
 - iv. Reading Room with information reviewed by the DAC-IPAD
 - v. Date/time/location for upcoming DAC-IPAD public meetings, including instructions for accessing virtual public meetings of the DAC-IPAD
 - d. Previous panels: Response Systems Panel and Judicial Proceedings Panel. Information available on the DAC-IPAD website.
2. Transparency requirements
 - a. Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. App. §§ 1–16
 - b. Government in the Sunshine Act of 1976, 5 U.S.C. § 552b
 - c. DoD Instruction 5105.04, “Department of Defense Federal Advisory Committee Management Program,” August 6, 2007
3. Membership and Objectives
 - a. Composed of no more than 20 members with extensive experience and subject matter expertise in the investigation, prosecution, and defense of allegations of sexual offenses.
 - b. Membership is fairly balanced to provide a variety of background, experience, and thought in support of the DAC-IPAD’s mission
 - c. Subcommittees are composed of members of the DAC-IPAD
 - d. Sections 546(c)(2) and (d) of the FY 2015 NDAA, require the DAC-IPAD to submit by March 30 each year, a report to the Secretary of Defense through the

General Counsel of the Department of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives.

- e. The annual report describes the results of the DAC-IPAD's activities, pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year.

How the DAC-IPAD conducts reviews

1. How the DAC-IPAD identifies issues to review
 - a. Statutory tasks or requests in the Joint Explanatory Statement accompanying the National Defense Authorization Act. Example: Victim impact statement study
 - b. Requests for review from the General Counsel of the Department of Defense. Example: Appellate review study
 - c. Committee members determine topics for study. Example: Panel member selection and demographic study
 - d. Constitutional provisions and legislation applicable to the military justice system.
 - e. Amendments to the Uniform Code of Military Justice, 10 U.S.C. §§ 801–946a, contained in the Military Justice Act of 2016, Pub. L. No. 114–328, §§ 5542, 130 Stat. 2935 (2016).
 - f. The 2019 Rules for Courts-Martial [R.C.M.] established by Executive Order 13, 825, 83 Fed. Reg. 9889 (8 Mar. 2018).
 - g. Comparative law analysis, including Federal Rules of Criminal Procedure; U.S. Attorney General guidance issued under the authority in 28 U.S.C. § 547; Federal Sentencing Guidelines.
2. Studying the issues
 - a. Participants at public meetings and subcommittee meetings:
 - i. Active duty military practitioners and military justice policy experts
 - ii. Civilian criminal justice professionals
 - iii. Victim advocacy organizations and sexual assault survivors
 - iv. Public comments: any member of the public may request to be heard orally and in writing at a public meeting. Servicemembers convicted of military sexual offenses have provided public comments in 2022-23.
 - b. Site visits: military installations; observing training courses and courts-martial.
 - c. Review source documents in investigative and courts-martial records.

Key Issues for DAC-IPAD Review

1. DAC-IPAD's work to date Reports or letters (13 in total) on the following topics:
 - a. Case adjudication data for sexual offense charges
 - b. Expedited transfer policy in sexual offense cases
 - c. Documenting disposition decisions in sexual offense cases for military and civilian federal databases
 - d. Article 140a, UCMJ, standards and criteria for case data collection in sexual offense cases
 - e. Impact of third-party sexual assault reports on restricted reporting
 - f. Collateral misconduct of sexual assault victims

- g. Victim's counsel representation of child victims; victim's counsel rating chain and tour length
 - h. Race and ethnicity data collection for military sexual offense investigations and prosecutions
 - i. Victim impact statements at presentencing proceedings under Rule for Courts-Martial 1001(c), Manual for Courts-Martial
 - j. Appellate review of military sexual offense convictions
 - k. Article 32, UCMJ, preliminary hearings and prosecution standards
2. [REPORT ON INVESTIGATIVE CASE FILE REVIEW FOR MILITARY ADULT PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN 2017](#) (2020)
- a. Areas of focus in the DAC-IPAD's review of adult-victim penetrative sexual offense cases resolved in Fiscal Year 2017 (FY17)
 - i. Investigation through initial disposition
 - ii. Preferred charges resolved by trial, alternate disposition, or dismissed in FY17
 - b. Methodology: Aggregate observations from source documents
 - c. Data analyzed by an independent criminologist and statistician
 - d. Committee members assessed the data and made observations, findings, and recommendations
3. [COURT-MARTIAL ADJUDICATION DATA REPORT](#) (November 2019)
- a. Multi-year compilation of sexual offense case characteristics, dispositions, and outcomes
 - b. Based on review and extraction of courts-martial source documents
4. [REPORT ON VICTIM IMPACT STATEMENTS AT COURTS-MARTIAL PRESENTENCING PROCEEDINGS](#) (March 2023)
- a. Congress requested DAC-IPAD review whether military judges are reading R.C.M. 1001(c) too narrowly and limiting what victims may say in their victim impact statements
 - b. Resulted in five recommendations for amending R.C.M. 1001(c)
5. [APPELLATE REVIEW STUDY](#) (March 2023)
- a. Assess the effect of changes to factual sufficiency review in 10 U.S.C. § 866(d)(1)(B)(i)
 - b. Assess changes in sentence appropriateness review pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541 (2021)
6. [Pending May/June 2023] Military Pretrial Processes and Prosecution Standards
- a. A multi-year study of conviction rates in sexual offense cases and case outcomes when an Article 32 preliminary hearing officer found no probable cause for a distinct sexual offense charge
 - b. On March 30, 2023, the DAC-IPAD approved recommendations to reform to pretrial processes and prosecution standards [report pending]

7. [Pending] Study of court-martial panel selection criteria and demographics
 - a. Review of criteria and procedures for detailing members to courts-martial panels under Article 25, UCMJ, 10 U.S.C. § 825
 - b. Race and gender diversity of panels in military sexual offense trials

Impact of DAC-IPAD recommendations

1. Legislation
2. Policy