

Article 140a (New Provision) – Case Management; Data Collection and Accessibility

10 U.S.C. § 940a

1. Summary of Proposal

This proposal would promote the development and implementation of case management, data collection, and data accessibility programs for the military justice system under standards and criteria prescribed by the Secretary of Defense.

2. Summary of the Current Statute

There is currently no UCMJ provision addressing the standards and criteria for case management, data collection, or data accessibility programs.

3. Historical Background

The military justice system developed as a highly decentralized process, with the primary responsibility for administration resting with local authorities. As a result, the responsibility for preparing records, collecting data, and providing public access to military justice information has been viewed largely as a local function, with funding responsibilities vested in officials at the installation level. Practices have varied widely among the services, and within the services, in terms of developing and implementing a modernized case management and data collection system.

4. Contemporary Practice

The UCMJ currently does not require the services to collect and maintain data for the military justice system outside of the broad categories of data collected for the annual reports required by Article 146. Each service collects, manages, and makes disclosure decisions regarding court-martial case information and documents differently through service-specific systems. The services have different programs for providing information on court-martial cases through public affairs channels. Other information typically is released only upon a request that complies with the often time-consuming requirements of the Freedom of Information Act.¹

5. Relationship to Federal Civilian Practice

Federal civilian practice currently uses an electronic service called PACER (Public Access to Court Electronic Records) for United States federal court documents. PACER is a fee-based system, with specified opportunities for waiver of fees. In the field of case management, the

¹ 5 U.S.C. § 552.

Federal district courts use the Case Management/Electronic Case Files (CM/ECF) system. This system allows courts to accept filings and provide access to filed documents online. In the field of data collection, the National Criminal Incident Center maintains a computerized index of criminal incidents, including information on criminal offenders and on property. Civilian law enforcement agencies nationwide use and update this system. Additionally, the United States Sentencing Commission and the Administrative Office of the United States Courts maintain and publish data relating to federal sentences, criminal caseloads, and categories of cases.² State courts employ similar systems, with the degree of modernization, centralization, and cost of access varying from state to state.

6. Recommendation and Justification

Recommendation 140a: Enact a new Article 140a requiring the development and implementation of case management, data collection, and data accessibility programs for the military justice system under standards and criteria prescribed by the Secretary of Defense.

The separate case management, data access, and data collection practices currently in use by the services makes it difficult to collect and analyze military justice data on a system-wide basis very difficult. As noted by the Response Systems Panel in its 2014 Report to Congress, “. . . the lack of uniform, offense-specific sentencing data from military courts-martial makes meaningful comparison and analysis of sentencing outcomes in military and civilian courts difficult, if not impossible.”³

This proposal would require the development of standards in the Manual for Courts-Martial outlining the minimum data collection requirements for military justice activities and statistics from across the Department of Defense and the Coast Guard.

A baseline of similarly collected and reported data would help facilitate periodic reviews of the military justice system by the Code Committee or its successor.

This proposal would better align military justice data collection with the Uniform Federal Crime Reporting Act of 1988, the victim and witness notifications mandated under the Crime Victims Fund pursuant to 42 U.S.C. §10601, the Victim's Rights and Restitution Act of 1990, and the Brady Handgun Violence Prevention Act of 1993.

Utilizing the experience of federal and state systems, there are significant opportunities to improve the efficiency of case management and the effectiveness of systemic analysis, by leveraging technology and best practices in the civilian sector. Similar considerations apply to the concept of accessibility. The civilian courts have developed systems that balance public access with the need to protect privacy, sensitive financial data, and classified information. There are well-developed models in the civilian sector which can be applied in a balanced manner to provide timely access to dockets, filings, and rulings.

² See United States Sentencing Commission website, at <http://www.ussc.gov/>; Administrative Office of the United States Courts website, at <http://www.uscourts.gov>.

³ REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL 136-137 (June 2014).

To ensure timely and effective action, the proposal requires the Secretary of Defense to develop a set of standards and criteria that would form the framework for modernization.

The Services would have the capability to add service specific requirements to the baseline. The proposal would require the Secretary of Defense to develop standards and procedures within two years after enactment of the legislation, and the services would be required to implement new systems within four years after enactment of the legislation.

7. Relationship to Objectives and Related Provisions

This proposal supports the GC Terms of Reference by incorporating the recommendations of the Response Systems Panel concerning military justice data reporting and collection.

This proposal supports MJRG Operational Guidance by adopting standards and procedures applicable to criminal justice data collection in the civilian sector insofar as practicable in military criminal practice.

The collection and analysis of that data will provide a critical foundation to the development of sentencing parameters and guidelines under Article 56, and would facilitate the periodic evaluation of the military justice called for in this report under Article 146. This proposal would enable military justice managers to better take advantage of the opportunities for efficiency created by the amendments proposed in this report.

8. Legislative Proposal

SEC. 1104. MILITARY JUSTICE CASE MANAGEMENT; DATA COLLECTION AND ACCESSIBILITY.

(a) IN GENERAL.—Subchapter XI of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by adding at the end the following new section (article):

“§940a. Art. 140a. Case management; data collection and accessibility

“The Secretary of Defense shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system, including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

“(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 section 946 of this title (article 146).

“(2) Case processing and management.

“(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

“(4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.”.

(b) EFFECTIVE DATES.—(1) Not later than 2 years after the date of the enactment of this Act, the Secretary of Defense shall carry out section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a).

(2) Not later than 4 years after the date of the enactment of this Act, the standards and criteria under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a), shall take effect.

9. Sectional Analysis

Section 1104(a) would create a new section, Article 140a (Case management; data collection, and accessibility), which would require the Secretary of Defense 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 filings, objections, instructions, and judicial rulings at the trial and appellate level, and to actions at trial and in subsequent proceedings concerning the findings and sentences of courts-martial.

Section 1104(b) provides the timeline for implementation of Section 1104(a). In order to provide appropriate time for implementation, this section would require promulgation of standards by the Secretary of Defense not later than two years after enactment of Section 1104, with an effective date for such standards not later than four years after enactment.