

JPP Tasks Remaining Update

1. Review and Assess Use of M.R.E. 412 Evidence at Courts-Martial (FY 2013 NDAA)
 - **The JPP addressed M.R.E. 412 and M.R.E. 513 in its February 2015 Initial Report although it did not review case data. The Panel opined that it would continue to follow the victim privacy issue in light of recent legislative changes such as allowing victims to decline to testify at Article 32 hearings and limiting the scope of the hearings; requiring higher burdens to be met before disclosure of mental health records; and removing the “constitutionally required” exception from M.R.E. 412 at Article 32 hearings, and from M.R.E. 513 at both Article 32 hearings and courts-martial.**
2. Assess Trends in Training and Experience of Trial and Defense Counsel (FY 2013 NDAA)
 - JPP Requests for Information Set 6; JPP received testimony at May 13, 2016 Public Meeting regarding “Overview of Judge Advocate Training Programs”; and JPP Subcommittee gathered information on site visits from July to September 2016.
3. Monitor Trends in Special Victim Capabilities (SVIP) (FY 2013 NDAA)
 - JPP Requests for Information Sets 2 and 6; JPP received testimony at April 8, 2016 Public Meeting regarding “MCIO Overview and Perspective of the SVIP Policies, Practices, and Procedures”; and JPP Subcommittee gathered information on site visits from July to September 2016.
4. Monitor Withholding to O-6 for Initial Disposition Policy (FY 2013 NDAA)
 - JPP Requests for Information Set 6 and JPP Subcommittee gathered information on site visits from July to September 2016.

JPP Tasks Remaining but Affected by Intervening Actions

1. Review and Assess Use of M.R.E. 412 Evidence at Article 32 Hearings (FY 2013 NDAA)
 - E.O. 13696 of June 17, 2015 eliminated “constitutionally required exception” from M.R.E. 412 at Article 32 hearings. This was based on JPP recommendation 10.
 - **The JPP addressed M.R.E. 412 in its February 2015 Initial Report though it did not review case data.**
2. Assess Use of Depositions, including whether military judges should serve as deposition officers. (RSP 2014 Report)
 - FY15 NDAA § 532 requires that a party requesting a deposition demonstrate “exceptional circumstances” and that it is “in the interest of justice” to take a deposition. The convening authority may designate commissioned officers as counsel.
 - **Military Justice Act (MJA) of 2016 amends Article 49 to include the NDAA language and incorporates R.C.M. 702(d)(1) as revised by E.O. 13696 of June 17, 2015 to require that deposition officers be judge advocates “whenever practicable.” (MJA, § 711) (FY 17 NDAA § 5231)**
3. Study Plea Bargaining Process (RSP 2014 Report)
 - Military Justice Act of 2016 proposes new Article 53a that would provide basic rules for: (1) the construction and negotiation of plea agreements concerning the charges, the sentence, or both; (2) the military judge’s determination of whether to accept a proposed plea agreement; and (3) the operation of plea agreements containing sentence limitations with respect to the military judge’s sentencing authority. **(MJA, § 717) (FY 17 NDAA § 5237)**
4. Assessment of Mandatory Minimum Sentencing (FY 2014 NDAA)
 - **Military Justice Act of 2016 would amend Article 56 to require “offense based” sentencing; institute sentencing guided by parameters and criteria; and sunset the mandatory punitive discharge when sentencing parameters and criteria take effect. (MJA, § 716) (FY 17 NDAA § 5301)**

5. Review and Assess Use of M.R.E. 513 Evidence During Article 32 Hearings and Courts-Martial (FY 2015 NDAA)

- FY 2015 NDAA § 537 set a much higher standard for in camera review and disclosure of mental health records and removes “constitutionally required” exception.
- DoD Policy Memo of Sept. 2, 2016 directs the Joint Service Committee on Military Justice to recommend uniform guidance on release of mental health records to law enforcement. This follows JPP recommendation 11.
- **The JPP addressed M.R.E. 513 in its February 2015 Initial Report though it did not review case data.**

6. Review and Assess Establishment of Privilege of Victim Communications with DoD SAFE Helpline and HelpRoom Personnel (FY 2015 NDAA)

- E.O. 13696 of June 17, 2015 amended M.R.E. 514(a)-(c) to establish a privilege for confidential communications with DoD Safe Helpline staff.

JPP Subcommittee Issues	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DACIPAD) Requirements
<ol style="list-style-type: none"> 1. Review High Acquittal Rate in Military Sexual Assault Cases <ul style="list-style-type: none"> • Data and case studies on acquittals in sexual assault cases • Probable cause standard • Political pressure on convening authorities, SJAs, and trial counsel to refer cases to court-martial • Consequences of a high acquittal rate 2. Review Defense Resources <ul style="list-style-type: none"> • Defense investigators and experts • Training and experience of defense counsel • Lack of adequate paralegal support 3. Review Investigator Policies on Sexual Contact Cases and Victim Interviews 4. Review New Article 32 Process 5. Review Ethical Issues in Military Sexual Assault Prosecutions <ul style="list-style-type: none"> • Trial counsel, SJA, and convening authority requirements 6. Review Expedited Transfer Issues in Courts-Martial 	<p>FY15 NDAA Section 546:</p> <p><u>Membership</u>: Not more than 20 members, appointed by Secretary of Defense, who have experience with the investigation, prosecution, and defense of sexual assault offenses. Members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.</p> <ol style="list-style-type: none"> 1. Duties: 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. The Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct as a basis for provision of advice to Secretary of Defense. <p><u>Annual Reports</u>: Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the SASC and HASC, a report describing the results of the activities of the Advisory Committee during the preceding year.</p> <p><u>Termination</u>: Advisory Committee shall terminate 5 years after the date of establishment. The Secretary of Defense may continue the Advisory Committee after termination date if the Secretary determines that continuation is advisable and appropriate.</p> <p>*FY 2016 NDAA Section 537: Amended FY15 NDAA Section 546(a)(2) to require that the Defense Advisory Committee be established within 90 days of the enactment of the FY16 NDAA on November 25, 2015. The charter was filed with GSA on February 18, 2016.</p>