

JPP Successes in the FY 2017 NDAA

Number	Brief Description	JPP Recommendation and Related NDAA Provision
Article 120		
1	(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>FY 2017 NDAA § 5430(b)(4): The new provision follows the JPP recommended language exactly.</p>
2	(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>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>
3	(Congress) Remove the element of “causing bodily harm” from the offense of sexual assault	<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).</p> <p>FY 2017 NDAA § 5430 (a)(1), (b)(3): The definition of “bodily harm” and the element of “causing bodily harm” were deleted from Article 120 as recommended by the JPP.</p>
4	(Congress) Amend the definitions of “sexual act” and “sexual contact”	<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.</p> <p>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>

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5	(Congress) Add “without the consent of the other person” as an element of the offense of sexual assault	<p>Although not specifically provided as an enumerated JPP recommendation, the JPP included in its proposed legislative language for Article 120 the addition of “without the consent of the other person” as an element of the offense of sexual assault in Article 120(b)(1).</p> <p>FY 2017 NDAA § 5430(a)(2): The NDAA added “without the consent of the other person” as an element of the offense of sexual assault in Article 120(b)(2).</p>
NOT ADOPTED IN FY 2017 NDAA	(Congress) Adopt a new theory of liability for coercive sex acts based on perpetrator position or authority	<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.</p> <p>Included in Senate version of NDAA (S.2943): <u>This provision is NOT included in conference report for FY 2017 NDAA.</u> 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.</p>
Retaliation		
6	(Congress) Require SECDEF to track retaliation and include data in the annual SAPRO report	<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>FY 2017 NDAA § 543: Requires DoD to include in the annual 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>

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7	<p>(Service Secretaries) Establish a 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>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>
8	<p>(SECDEF) 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>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>
Court-Martial Data Trends		
9	<p>(DOD) Create a document-based case adjudication data system</p>	<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>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>

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10	(DOD) Include FAP data in annual SAPRO report	<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>FY 2017 NDAA § 544: Extends the SAPRO annual reporting requirement through March 2021 and requires the Secretary of Defense to ensure that the annual SAPRO report is delivered to Congress simultaneously with the Family Advocacy Program report for that year regarding child abuse and domestic violence, as required by § 574 of the FY 2017 NDAA (requiring an annual FAP report that includes intimate partner and child sexual abuse).</p>