

Charter
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

1. Committee's Official Designation: The Committee shall be known as the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel ("the Judicial Proceedings Panel").
2. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 ("the FY 2013 NDAA") (Public Law 112-239) 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 statutory Judicial Proceedings Panel.
3. Objectives and Scope of Activities: The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 ("the FY 2012 NDAA") (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.
4. Description of Duties: Section 576(d)(2) of the FY 2013 NDAA directs the Judicial Proceedings Panel to perform the following duties, with additional duties as added by section 1731(b)(1) of the National Defense Authorization Act for Fiscal Year 2014 ("the FY 2014 NDAA") (Public Law 113-66) and section 545 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291):
 - a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
 - b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
 - c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
 - d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
 - e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.

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- f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.
- g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, 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.
- h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.
- i. 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.
- j. Assess the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the UCMJ), 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.
- k. Assess the implementation and effect of the Special Victim’s Counsel for victims of sex-related offenses established by the Secretary of Defense on August 14, 2013 and codified in Section 1044e of title 10, United States Code, by the enactment of Section 1716 of the FY 2014 NDAA on December 26, 2013. The Judicial Proceedings Panel shall make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.
- l. Assess the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the UCMJ).
- m. Assess the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
 - i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
 - ii. Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ).

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- iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.
- n. Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the UCMJ), by the accused during the preliminary hearing conducted under section 832 of such title (article 32 of the UCMJ), and during court-martial proceeding, as compared to the use of similar records in civilian criminal legal proceedings.
- o. Conduct a review and assessment regarding the establishment of a privilege against under the Military Rules of Evidence against the disclosure of communications between –
 - i. users of and personnel staffing the Department of Defense Safe Helpline; and
 - ii. Users of and personnel staffing of the Department of Defense Safe HelpRoom.
- p. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the Chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information the Judicial Proceedings Panel considers necessary to carry out its duties.

- 5. Agency or Official to Whom the Committee Reports: As directed by section 576(c)(2)(B) of the FY 2013 NDAA and modified by section 546(f) of the FY 2015 NDAA, the Judicial Proceedings Panel shall provide its first report, including any proposals for legislative or administrative changes it considers appropriate, to the Secretary of Defense through the Department of Defense (DoD) General Counsel (GC), and the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after its first meeting. The Judicial Proceedings Panel shall submit subsequent reports annually during fiscal years 2014 through 2017.
- 6. Support: The DoD, through the DoD Office of General Counsel (OGC), the Washington Headquarters Services, and the Office of the Under Secretary of Defense for Personnel and Readiness, shall provide staffing and resources to support the Judicial Proceedings Panel and shall ensure compliance with the 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. Primary responsibility for such staffing and resourcing may not be assigned to the Sexual Assault Prevention and Response Office.

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7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, to include travel, meetings, and contract support, is approximately \$2,000,000. The estimated annual personnel cost to the DoD is 15 full-time equivalents.
8. Designated Federal Officer: The Judicial Proceedings Panel's Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, designated in accordance with established DoD policies and procedures.

The Judicial Proceedings Panel's DFO is required to be in attendance at all meetings of the Judicial Proceedings Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the DFO, a properly approved Alternate DFO, duly designated to the Judicial Proceedings Panel according to DoD policies and procedures, will attend the entire duration of the Judicial Proceedings Panel and any subcommittee meetings.

The DFO, or the Alternate DFO, will approve all of the meetings of the Judicial Proceedings Panel as called by the Chair; shall call all meetings of its subcommittees, in coordination with the Chair; prepare and approve all meeting agendas for the Judicial Proceedings Panel and any subcommittees; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public's interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: Consistent with sections 576(b)(6) and (7) of the FY 2013 NDAA, the Judicial Proceedings Panel shall meet at the call of the Chair. The Judicial Proceedings Panel shall meet at a minimum once per year.
10. Duration: The Judicial Proceedings Panel shall remain in effect until terminated, as provided for and as required by section 576(c)(2)(C) of the FY 2013 NDAA; however, it's charter is subject to renewal every two years.
11. Termination: According to section 576(c)(2)(C) of the FY 2013 NDAA, the Judicial Proceedings Panel shall terminate on September 30, 2017.
12. Membership and Designation: Pursuant to sections 576(b)(1)(B) and (b)(2) of the FY 2013 NDAA, the Judicial Proceedings Panel shall consist of five members appointed by the Secretary of Defense, two of whom must have served on the Response Systems Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

The appointment of Judicial Proceedings Panel members will be authorized by the Secretary of Defense or the Deputy Secretary of Defense and administratively certified by

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the DoD GC, for the life of the Judicial Proceedings Panel, and their appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Judicial Proceedings Panel members will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. No member, unless authorized by the Secretary of Defense, may serve on more than two DoD federal advisory committees at one time. Any vacancy in the Judicial Proceedings Panel shall be filled in the same manner as the original appointment.

Pursuant to section 576(b)(3), the Secretary of Defense shall appoint the Chair from among the members appointed to the Judicial Proceedings Panel according to DoD policies and procedures.

The DoD GC, according to DoD policies and procedures, may select experts and consultants to serve as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel's total membership. These subject matter experts shall not participate in any deliberations before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

All members of the Judicial Proceedings Panel 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 Judicial Proceedings Panel-related travel and per diem, Judicial Proceedings Panel members serve without compensation.

13. Subcommittees: The DoD, when necessary and consistent with the Judicial Proceedings Panel's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD GC, as the DoD Sponsor.

Such subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all their recommendations and advice solely to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officer or employee. If a majority of Judicial Proceedings Panel 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 Judicial Proceedings Panel's operations.

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Pursuant to Secretary of Defense policy, the DoD GC 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 Judicial Proceedings Panel or another DoD advisory committee. If this prior authorization has not occurred, 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 DoD GC.

Subcommittee members, with the authorization of the Secretary of Defense, will be appointed for a term of service not to exceed September 30, 2017, subject to annual renewals. Subcommittee members, if 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 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. § 102-3.130(a) to serve as regular government employee members.

The DoD GC has the delegated authority to appoint the leadership of any appropriately approved subcommittees from among the subcommittee membership previously appointed according to DoD policies and procedures and, in doing so, will determine the term of service for each, which will not exceed the subcommittee member's approved term of service .

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

With the exception of reimbursement of travel and per diem as it pertains to official travel related to the Judicial Proceedings Panel or its subcommittees, Judicial Proceedings Panel subcommittee members shall serve without compensation.

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

Currently, the DoD GC has approved the establishment of one subcommittee to the Judicial Proceedings Panel. The Judicial Proceedings Panel Subcommittee shall consist of eleven members to assess and make recommendations for improvements in the construction, interpretation, and implementation of current adult sexual assault provisions contained in the UCMJ, to include Article 120 of the UCMJ. In accordance with the Judicial Proceedings Panel's membership balance plan, subcommittee members must be experts in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

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14. Recordkeeping: The records of the Judicial Proceedings Panel and its subcommittees shall 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 shall 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: June 24, 2016