Section 1. Part II of the MCM is amended as follows:

(a) R.C.M. 405(a) is amended to read as follows:

"(a) *In general*. Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and ~~to recommend~~ the appropriate disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-martial. The preliminary hearing enables the impartial assessment of the case so that the preliminary hearing report can meaningfully inform a disposition determination."

(b) The Discussion following R.C.M. 405(a) is amended to read as follows:

"~~The function of the preliminary hearing is to ascertain and impartially weigh the facts needed for the limited scope and purpose of the preliminary hearing.~~ The preliminary hearing is not intended to perfect a case against the accused and is not intended to serve as a means of discovery or to provide a right of confrontation required at trial. Determinations and recommendations of the preliminary hearing officer are advisory.

Failure to substantially comply with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. See R.C.M. 905(b)(1) and 906(b)(3) concerning motions for appropriate relief relating to the preliminary hearing.

The accused may waive the preliminary hearing. *See* R.C.M. 405(n)~~(m)~~. In such case, no preliminary hearing need be held. However, the convening authority authorized to direct the preliminary hearing may direct that it be conducted notwithstanding the waiver."

(c) R.C.M. 405(e)(1) is amended to read as follows:

"(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. The Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps, shall certify the judge advocate as having the requisite training and experience to serve as the preliminary hearing officer, in accordance with regulations prescribed by the Secretary concerned.

(B) When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(C)~~(B)~~ Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(D)~~(C)~~ The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(E)~~(D)~~ The preliminary hearing officer shall not depart from an impartial role and

become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity."

(d) The first paragraph of the Discussion to follow R.C.M. 405(e)(1) is amended to read as follows:

"The preliminary hearing officer, if, due to exceptional circumstances, not a judge advocate, should be an officer in the grade of O-4 or higher. Examples of "exceptional circumstances" include: (1) times of war; (2) periods during which measures are needed to prevent the spread of a communicable disease; and (3) instances where military necessity or exigency interferes with the normal administration of justice. The preliminary hearing officer may seek legal advice concerning the preliminary hearing officer's responsibilities from an impartial source, but may not obtain such advice from counsel for any party or counsel for a victim."

(e) R.C.M 405(i)(2)(A) is amended to read as follows:

"(A) *Military Witnesses*.

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant~~, not cumulative~~ and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant~~, cumulative,~~ or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant~~, not cumulative,~~ and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available~~,~~ and, if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final. If the military witness is unavailable as determined by this rule, the preliminary hearing officer may require an affidavit or other sufficiently reliable evidence unless it will unreasonably delay the proceedings or interfere with operational necessity or mission requirements. If the commanding officer determines that the witness is unavailable, the counsel for the Government shall obtain a written explanation from the commanding officer detailing the circumstances and rationale for the determination.

(iv) A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing."

(f) R.C.M. 405(i)(2)(C) is amended to read as follows:

"(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness's testimony is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness's testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant~~, cumulative,~~ or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness's testimony is relevant~~, not cumulative,~~ and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony."

(g) R.C.M. 405(i)(3)(A) is amended to read as follows:

"(3) *Production of other evidence.*

(A) *Evidence under the control of the Government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence under the control of the Government the accused requests the Government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a) and shall make reasonable efforts to obtain the evidence; or (2) the Government objects to production of the evidence on the grounds that the evidence would be irrelevant~~, cumulative,~~ or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a). If the preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence. <u>If such evidence is not reasonably available, the Government will include a written explanation documenting the unavailability of the evidence or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m).</u>

(iii) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies."

(h) R.C.M. 405(i)(3)(B)(ii) is amended to read as follows:

"(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence not under the control of the Government that the accused requests the Government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a) and shall issue a pre-referral investigative subpoena for the evidence; or (2) the Government objects to the production of evidence on the grounds that the evidence would be irrelevant~~, cumulative,~~ or unnecessary to a determination of the issues under R.C.M. 405(a)."

(i) R.C.M. 405(i)(3)(B)(iii) is amended to read as follows:

"(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant~~, not cumulative,~~ and necessary to a determination of the issues under R.C.M. 405(a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under R.C.M. 405(m)."

(j) R.C.M. 405(j)(2)(A) is amended to read as follows:

"(A) *Inadmissibility of certain evidence*. In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that any alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim's sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1) or (2); and

(ii) the evidence is relevant~~, not cumulative,~~ and is necessary to a determination of the issues under R.C.M. 405(a)."

(k) R.C.M. 405(k)(1) is amended to read as follows:

"(1) *Generally.* The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under R.C.M. 405(g). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government's presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is relevant and necessary for a determination of the issues under R.C.M. 405(a), the counsel for the Government shall produce such evidence in accordance with R.C.M. 405(i) unless it is not reasonably available. In such a case, the Government will provide a written explanation documenting unavailability or efforts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m). ~~the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence.~~ Except as provided in R.C.M. 405(m)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determination under R.C.M. 405(a). The

preliminary hearing officer shall not call witnesses *sua sponte*."

(l) R.C.M. 405(k)(2)(B) is amended to read as follows:

"(B) *Other evidence*. If relevant to the issues for determination under R.C.M. 405(a) ~~and not cumulative~~, a preliminary hearing officer may consider other evidence offered by either counsel for the Government or defense counsel~~, in addition to or in lieu of witness testimony~~, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. ~~This other evidence~~ Written statements need not be sworn."

(m) The first sentence of R.C.M 405(k)(4) is amended to read as follows:

"The accused shall be present for the preliminary hearing, except as otherwise noted in R.C.M. 405(k)(4)(B)."

(n) R.C.M. 405(m)(2) is amended to read as follows:

"(2) *Contents*. The preliminary hearing report is an impartial analysis of the case in order to meaningfully inform the referral authority in making a disposition determination and shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under R.C.M. 405(k)(5);

(C) For each specification, the preliminary hearing officer's reasoning and conclusions with respect to the issues for determination under R.C.M. 405(a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel's statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with R.C.M. 405(f)(2), and, for each such offense, the preliminary hearing officer's reasoning and conclusions as to whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under R.C.M. 405(k)(7);

(J) The recommendation and supporting analysis of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In making this disposition recommendation, the preliminary hearing officer ~~may~~ shall consider:

(i) any evidence admitted during the preliminary hearing;

(ii) ~~and~~ matters submitted under R.C.M. 405(l);

(iii) the credibility and weight of the evidence; and

(iv) whether there is probably sufficient admissible evidence to obtain and sustain a conviction at trial.

(K) The written summary and analysis required by R.C.M. 405(l)(3)(A); and

(L) A notation as to whether the parties or the preliminary hearing officer considered any offense to be a covered offense."

(o) The Analysis for R.C.M. 405 to appear in Appendix 15, MCM, is amended by adding paragraphs at the end to read as follows:

"2024 Amendment: R.C.M. 405 has been amended to enhance the procedural requirements of the preliminary hearing, raise the qualifications of preliminary hearing officers, broaden their discretion, and improve the quality of their reports. The purpose of these changes is to better enable an impartial assessment of cases and produce a meaningful report to carry out the intent of Article 32, UCMJ, especially regarding recommendations for disposition. *See* Article 32(a)(2)(D). *See also* Military Justice Review Group, *Report of the Military Justice Review Group, Part I: UCMJ Recommendations* 323 (2015) ("[T]he preliminary hearing and the report of the preliminary hearing officer serve primarily as vehicles for developing and analyzing information for consideration by the staff judge advocate and the convening authority."). R.C.M. 405(a) has been updated to include a sentence at the end which underscores these changes and reads: "The preliminary hearing enables the impartial assessment of the case so that the preliminary hearing report can meaningfully inform a disposition determination."

R.C.M. 405(e) is amended to add the sentence: "The Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps, shall certify the judge advocate as having the requisite training and experience to serve as the preliminary hearing officer, in accordance with regulations prescribed by the Secretary concerned." The purpose of this change is to enable the Military Services to implement a standardized training program for preliminary

hearing officers as well as ensuring proficient judge advocates are selected as preliminary hearing officers. The Discussion accompanying R.C.M. 405(e) is amended to provide clarity and to exemplify conditions for when it would be impracticable to appoint a judge advocate as a preliminary hearing officer.

R.C.M. 405(i)(2) has been updated to enhance the preliminary hearing officer's discretion in considering the plausibility of witnesses and reliability of statements while preserving the efficient administration of justice. The reference to "not cumulative" has been removed from the phrase "relevant, not cumulative, and unnecessary" (and other similar phrases) to clarify the hearing officer's discretion in admitting sufficiently reliable evidence. Evidentiary frameworks assess whether cumulative evidence is being presented "needlessly" rather than merely being cumulative, providing the gatekeeper with appropriate discretion. *See* Mil. R. Evid. 403. Following this logic, the terms "cumulative" and "non-cumulative" have been struck throughout R.C.M. 405.

Furthermore, when a relevant and necessary witness is unavailable, R.C.M 405(i)(2) now authorizes a preliminary hearing officer to require the provision of an affidavit or other sufficiently reliable evidence. This procedure enables the hearing officer to form a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished. *Cf.* Notes of the Advisory Committee on Federal Rules of Criminal Procedure, Fed. R. Crim. P. 5.1, 1972 Amendments (discussing the interaction between hearsay and reliability at preliminary hearings).

R.C.M. 405(i)(3)(A)(i) is amended to add the sentence: "If such evidence is not reasonably available, the Government will include a written explanation documenting unavailability of the evidence or efforts to obtain such evidence, which shall be included in the

preliminary hearing report under R.C.M. 405(m).” The language is added to better regulate the production of relevant and necessary evidence and establish a clear procedure if such evidence is not reasonably available.

For similar reasons to the preceding paragraph, R.C.M. 405(k)(1) is amended to add the words: “the counsel for the Government shall produce such evidence in accordance with R.C.M. 405(i) unless it is not reasonably available. In such a case, the Government will provide a written explanation documenting unavailability or the attempts to obtain such evidence, which shall be included in the preliminary hearing report under R.C.M. 405(m).”

R.C.M. 405(k)(2)(B) is amended for style and clarity; the changes are not intended to alter the substance of the rule. The phrase “in addition or lieu of witness testimony” is deleted as superfluous. The term “this other evidence” is replaced with “written statements” in reference to things that need not be sworn.

R.C.M. 405(k)(4) has been amended by adding the phrase “except as otherwise noted in R.C.M. 405(k)(4)(B)” in its first sentence. This addition serves as a cross-reference to aid the reader and is not intended to alter the substance of the rule.

Consistent with the logic provided in the first paragraph of this 2024 Analysis, R.C.M. 405(m)(2) has been amended to improve the meaningfulness of the report as an aid to the referral authority’s disposition decision. The chapeau of R.C.M. 405(m)(2) is amended to expressly state this purpose. R.C.M. 405(m)(2)(J) contains substantive changes. The preliminary hearing officer must now provide “supporting analysis” to accompany recommendations, which underscores the importance of the analysis for the referral authority’s consideration. Additionally, the term “shall” replaces “may,” making it mandatory for preliminary hearing officers to consider matters specified by R.CM. 405(m)(2)(J). Further, the matters to be considered are now divided into

enumerated clauses labeled (i) through (iv). The matters in clauses (iii) and (iv) are new and require consideration of the "credibility of the weight of the evidence" and "whether there is probably sufficient evidence to obtain and sustain a conviction at trial." Notably, clause (iv) reflects the referral authority's required consideration found at R.C.M. 601(d)(2). These amendments aim to enhance the usefulness of the preliminary hearing process by making such considerations obligatory."

(p) R.C.M. 503(a) is amended to read as follows:

"(1) *In general.* The convening authority shall—

(A) detail qualified persons as members for courts-martial in accordance with the criteria described in Article 25;

(B) provide to the military judge—

(i) in a capital general court-martial, at least 24 detailed members for randomization;

(ii) in a non-capital general court-martial, at least 16 detailed members for randomization;

(iii) in a special court-martial, at least 8 detailed members for randomization; or

(iv) where a convening authority determines it to be impracticable to meet subparagraphs (a)(1)(B)(i)-(iii) due to exceptional circumstances, a sufficient number of detailed members to allow for the randomization process in R.C.M. 911. Examples of exceptional circumstances include where such minimum numbers of members required for detailing are not available due to a military necessity or exigency;

(C) consult with the servicing staff judge advocate prior to making an impracticability determination under subparagraph (a)(1)(B)(iv);

(D) document in writing any determination under subparagraph (a)(1)(B)(iv) that exceptional circumstances exist, pursuant to procedures prescribed by the Secretary concerned;

(EB) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain; and

(FC) provide a list of the detailed members to the military judge to randomize in accordance with R.C.M. 911."

(q) The Discussion following R.C.M. 503(a)(1)(C) is moved to follow R.C.M. 503(a)(1)(E) and is amended to read as follows:

"The following persons are subject to challenge under R.C.M. 912(f) and should not be detailed as members: any person who is, in the same case, an accuser, witness, preliminary hearing officer, or counsel for any party or witness; any person who, in the case of a new trial, other trial, or rehearing, was a member of any court-martial which previously heard the case; any person who is junior to the accused, unless this is unavoidable; or any person who is in arrest or confinement.

~~The convening authority should detail a sufficient number of qualified persons to allow for the randomization process in R.C.M. 911.~~

A military judge may not impanel alternate members unless expressly authorized by the convening authority. *See* Article 29. The procedure to be used by the military judge to impanel members and alternate members is specified in R.C.M. 912A."

(r) The Analysis for R.C.M. 503 to appear in Appendix 15, MCM, is amended by adding new paragraphs at the end to read as follows:

"2024 Amendment: R.C.M. 503(a)(1) is amended to require a convening authority to detail a minimum number of members for randomization by the military judge for each type of court-martial, except a summary court-martial. Requiring a minimum number of detailed members for each type of court-martial will enhance existing randomization procedures carried out by a military judge. However, in certain exceptional circumstances, it may be impracticable for a convening authority to detail the minimum required number of members. In those situations, a convening authority is only required to detail a sufficient number of members to allow for randomization procedures in R.C.M. 911, without regard to the specific minimum number of detailed members ordinarily required.

R.C.M. 503(a)(1)(C) is also new and requires a convening authority to consult with the servicing staff judge advocate prior to determining that the detailing of the minimum required number of members is impracticable due to exceptional circumstances. It also requires a convening authority appropriately document, in writing, a determination that the detailing of the minimum required number of members is impracticable due to exceptional circumstances. The Secretaries concerned will prescribe procedures for the written documentation of the exceptional circumstance finding by the convening authority.

The Discussion accompanying R.C.M. 503(a)(1) is amended to remove language requiring the convening authority to detail a sufficient number of qualified persons. Such language is replaced by the newly added language in R.C.M. 503(a)(1)."

(s) R.C.M. 703(c)(2)(D) is amended to read as follows:

"(D) Trial counsel shall arrange for the presence of any witness listed by the defense unless trial counsel contends that the witness's production is not required under this rule. If trial counsel contends that the witness's production is not required by this rule, the matter may be submitted to the military judge. For good cause shown, the submission by the defense may be made by *ex parte* motion. If the military judge grants a motion for a witness, the trial counsel shall produce the witness or the proceedings may be abated."

(t) The Analysis for R.C.M. 703 to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"2024 Amendment: R.C.M. 703(c)(2) is amended to give the defense the option to make an *ex parte* motion, for good cause shown, requesting a military judge to compel the production of an active-duty member. Providing the analysis needed to show the necessity of producing a witness may involve the premature revelation of defense theories and strategy."

(u) R.C.M. 803 is amended to read as follows:

"A military judge who has been detailed to the court-martial may, under Article 39(a), after service of charges, call the court-martial into session without the presence of members. Such sessions may be held before and after assembly of the court-martial, and when authorized in these rules, after adjournment and before entry of the judgment in the record. All such sessions are a part of the trial and shall be conducted in the presence of the accused, defense counsel, and trial counsel, in accordance with R.C.M. 804 ~~and 805~~, and shall be made a part of the record."

(v) The Analysis for R.C.M. 803 to appear in Appendix 15, MCM, is amended by adding a paragraph at the end to read as follows:

"*2024 Amendment:* R.C.M. 803 is amended to remove an obsolete reference to R.C.M. 805."

(w) R.C.M. 908(c)(3) is amended to read as follows:

"(3) *Action following decision of Court of Criminal Appeals*. After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a case to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days. Such notification shall be made orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General, who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal Appeals permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. ~~Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals. If the case is reviewed by the Court of Appeals for the Armed Forces,~~ R.C.M. 1204 shall apply to petitions made, or cases certified, under R.C.M. 908 to the Court of Appeals for the Armed Forces. ~~and~~ R.C.M. 1205 shall apply to petitions made under R.C.M. 908 to the Supreme Court."

(x) The Analysis for R.C.M. 908 to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"*2024 Amendment:* R.C.M. 908(c)(3) is amended to conform to changes in Section 533 of the National Defense Authorization Act for Fiscal Year 2024, which modified Article 67a, UCMJ, and 28 U.S.C. § 1259, and which provides that the Court of Appeals for the Armed Forces' decision to "refuse to grant" a petition for review or other relief may be reviewed by the Supreme Court under 28 U.S.C. § 1259(3)-(4). In accordance with these changes, the following language was removed from R.C.M. 908(c)(3): "Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals." R.C.M. 908(c)(3) was also amended to refer to R.C.M. 1204 for procedures applicable to petitions made, or cases certified to, the Court of Appeals for the Armed Forces and R.C.M. 1205 for petitions to the Supreme Court."

(y) R.C.M. 1112(f) is amended as follows:

(1) By redesignating subparagraphs (1) through (9) as subparagraphs (2) through (10), and

(2) Adding a new R.C.M. 1112(f)(1) to immediately follow R.C.M. 1112(f) to read as follows:

"(1) A copy of all materials required to be provided to the military judge pursuant to R.C.M. 309(a)(3);".

(z) The Analysis for R.C.M. 1112(f) to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"*2024 Amendment:* R.C.M. 1112(f)(1) is a new provision expressly requiring that all materials provided as part of R.C.M. 309(a)(3) pre-referral proceedings be included in the record

of trial. The previous R.C.M. 309(f)(1) through (f)(9) are redesignated as R.C.M. 309(f)(2) through (f)(10)."

(aa) R.C.M. 1114(a)(1) is amended to read as follows:

"(a) *Transcription of the complete record*. A certified verbatim transcript of the record of trial shall be prepared in all general and special courts-martial in which the judgment includes a finding of guilty.

~~(1) When the judgment entered into the record includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, a dishonorable or bad conduct discharge, or confinement for more than six months; or~~

~~(2) As otherwise required by court rule, court order, or under regulations prescribed by the Secretary concerned.~~"

(bb) The Analysis for R.C.M. 1114 to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"2024 Amendment: Revised R.C.M. 1114(a) now requires a certified verbatim transcript for all general and special courts-martial where the judgment includes a finding of guilty. This change aligns with the expanded appeal-as-of-right to the Courts of Criminal Appeals as enacted by Section 544 of the James M. Inhofe NDAA for FY 2023, Pub. L. No. 117-263, 136 Stat. 2395, 2582 (2022)."

(cc) A new R.C.M. 1118 is added to immediately follow R.C.M. 1117 to read as follows:

"Rule 1118. Retention of records of trial, general and special courts-martial

For each general or special court-martial, without regard to the outcome of the proceeding concerned, the record of trial, or a copy, created in accordance with R.C.M. 1112 shall be retained in perpetuity. The destruction of a record of trial or any copy prior to the

issuance of this rule pursuant to a records disposition schedule shall not be a basis for relief at any court-martial or other proceeding."

(dd) An Analysis for R.C.M. 1118 to appear in Appendix 15, MCM, is added to read as follows:

"*2024 Amendment:* This rule is new and requires a record of trial by a general or special court-martial created under R.C.M. 1112, or a copy, be retained in perpetuity."

(ee) R.C.M. 1205(a) is amended to read as follows:

"(a) *Cases subject to review by the Supreme Court.* Under 28 U.S.C. § 1259 and Article 67a, decisions of the Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under Article 67(a)(1);

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under Article 67(a)(2);

(3) Cases in which the Court of Appeals for the Armed Forces granted or refused to grant a petition for review under Article 67(a)(3); and

(4) Cases other than those described in paragraphs (a)(1), (2), and (3) of this rule in which the Court of Appeals for the Armed Forces granted or refused to grant relief.

~~The Supreme Court may not review by writ of certiorari any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review~~."

(ff) The Analysis for R.C.M. 1205 to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"*2024 Amendment:* R.C.M. 1205(a) is amended to conform to Section 533 of the National Defense Authorization Act for Fiscal Year 2024, which modified Article 67a, UCMJ, and 28 U.S.C. § 1259, including by providing that a Court of Appeals for the Armed Forces decision to "refuse to grant" a petition for review or other relief may be reviewed by the Supreme Court under 28 U.S.C. § 1259(3)-(4). Language stating, "The Supreme Court may not review by writ of certiorari any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review," was removed."

(gg) R.C.M. 1209(a)(1) is amended to read as follows:

"(1) *General and special courts-martial*. A conviction in a general or special court-martial is final when—

(A) Review is completed under R.C.M. 1201(a) (Article 65);

(B) Review is completed by a Court of Criminal Appeals and—

(i) The accused does not file a timely petition for review by the Court of Appeals for the Armed Forces and the case is not otherwise under review by that court; or

~~(ii) A petition for review is denied or otherwise rejected by the Court of Appeals for the Armed Forces; or~~

(ii~~i~~) A petition for review is denied or otherwise rejected by the Court of Appeals for the Armed Forces, or ~~R~~review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces, and—

(I) A petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) A petition for writ of certiorari is denied or otherwise rejected by the Supreme Court; or

(III) Review is otherwise completed in accordance with the judgment of the Supreme Court."

(hh) The Analysis for R.C.M. 1209 to appear in Appendix 15, MCM, is amended by adding a new paragraph at the end to read as follows:

"*2024 Amendment:* R.C.M. 1209(a)(1) is amended to conform to changes in Section 533 of the National Defense Authorization Act for Fiscal Year 2024, which modified Article 67a, UCMJ, and 28 U.S.C. § 1259, and which provides that a Court of Appeals for the Armed Forces decision to "refuse to grant" a petition for review or other relief may be reviewed by the Supreme Court under 28 U.S.C. § 1259(3)-(4). Subsection (a)(1)(B)(ii) is removed and incorporated into subsection (a)(1)(B)(iii). Subsection (a)(1)(B)(iii) is amended to state that, where applicable, a case falling under subsection (a)(1)(B)(iii), including where the Court of Appeals for the Armed Forces denies or otherwise rejects a petition for review or other relief, and where its review is completed in accordance with its judgment, is final only following one of the three outcomes in subsection (a)(1)(B)(iii)(I)-(III)."

Section 2. Part IV of the MCM is amended as follows:

(a) Paragraph 78a.a. is amended to read as follows:

"a. *Text of Statute.*

(a) IN GENERAL.—Any person who—

(1) commits a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangling or suffocating; shall be punished as a court-martial may direct.

(b) DEFINITIONS.— In this section, the terms "dating partner", "immediate family", and "intimate partner" have the meanings given such terms in section 930 of this title (article 130)."

(b) Paragraph 78a.b. is amended to read as follows:

"b. *Elements*.

(1) Commission of a violent offense against a spouse, intimate partner, dating partner, or immediate family member of that person.

(a) That the accused committed a violent offense; and

(b) That the violent offense was committed against a spouse, intimate partner, dating partner, or immediate family member of the accused.

[Note: Add the following as applicable]

(c) That the immediate family member was a child under the age of 16 years.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or*

intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person.

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any person; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, dating partner, or an immediate family member of that person*.

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any property, including an animal; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*.

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(5) *Violation of a protection order with the intent to commit a violent offense against a*

spouse, an intimate partner, a dating partner, or an immediate family member of that person.

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of the accused.

(6) *Assaulting a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangulation or suffocation*.

(a) That the accused assaulted a spouse, an intimate partner, a dating partner, or an immediate family member of the accused;

(b) That the accused did so by strangulation or suffocation; and

(c) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(d) That the person was a child under the age of 16 years."

(c) Paragraph 78a.c. is amended as follows:

(1) By redesignating subparagraphs (5) through (8) as subparagraphs (6) through (7); and

(2) Adding a new subparagraph (5) to read as follows:

"(5) *Dating Partner.* The term "dating partner," in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship;

(C) the frequency of interaction between the persons involved in the relationship; and

(D) the extent of physical intimacy or sexual contact between the persons involved in the relationship.

The relative weight given to each of the named criteria in making the "dating partner" determination may vary depending on the facts and circumstances presented."

(d) Paragraph 78a.d. is amended to read as follows:

"d. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement as follows:

(1) *Commission of a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years of confinement except for those violent offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ with intent to threaten or intimidate a spouse,

an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, dating partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Confinement for 3 years.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person*. Confinement for 5 years.

(6) *Assaulting a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangulation or suffocation*.

(a) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years*. Confinement for 11 years.

(b) Other cases. Confinement for 8 years."

(e) Paragraph 78a.e. is amended to read as follows:

"e. *Sample Specifications*.

(1) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit a violent offense against _____, the (spouse) (intimate partner) (dating partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(2) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against (any person) (a child under the age of 16 years), to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(3) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against any property, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(4) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused, wrongfully violate a protection order by _____.

(5) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, violate a protection order, to wit: _____, with the intent to commit a violent offense, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element), against the (spouse) (intimate partner) (dating partner) (immediate family member) of the accused.

(6) In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20 __, commit an assault upon _____, the (spouse) (intimate partner) (dating partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, by unlawfully (strangling) (suffocating) him/her (with/by _____)."

(f) The Analysis for Paragraph 78a. to appear in Appendix 17, MCM, is amended by adding a new paragraph at the end to read as follows:

"*2024 Amendment:* All subparagraphs of Paragraph 78a. are amended, in accordance with an amendment to 10 U.S.C. § 928b enacted by Section 531 of the National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 531(d), 137 Stat. 136, 259 (2023), to add the term "dating partner" as a category of individuals falling under Article 128b, UCMJ, and to incorporate the definition of "dating partner" from 10 U.S.C. § 930."

(g) Paragraph 80.a. is amended to read as follows:

"a. *Text of statute*.

(a) IN GENERAL.—Any person subject to this chapter—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner, or to his or her dating partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner, or to his or her dating partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner, or to his or her dating partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term "conduct" means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term "course of conduct" means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term 'dating partner', in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship;

(C) the frequency of interaction between the persons involved in the relationship; and

(D) the extent of physical intimacy or sexual contact between the persons involved in the relationship.

(~~3~~4) The term "repeated", with respect to conduct, means two or more occasions of such

conduct.

(~~4~~5) The term "immediate family", in the case of a specific person, means—

(A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or

marriage.

(~~5~~6) The term "intimate partner", in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship."

(h) Paragraph 80.b. is amended to read as follows:

"b. *Elements*.

(1) That the accused wrongfully engaged in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner;

(2) That the accused had knowledge, or should have had knowledge, that the specific person would be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner; and

(3) That the accused's conduct induced reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner."

(i) Paragraph 80.c. is amended by adding a new subparagraph (3) to immediately appear after subparagraph (2) to read as follows:

"(3) *Dating Partner.* The relative weight given to each of the named criteria in making the "dating partner" determination under Article 130(b)(3)(A)-(D) may vary depending on the facts and circumstances presented."

(j) Paragraph 80.e. is amended to read as follows:

"e. *Sample specification*s.

"In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), (on or about _____ 20 __) (from about_____ to about _____ 20 __), engage in a course of conduct directed at _____, that would cause a reasonable person to fear (death) (bodily harm, to wit:_____), to (himself) (herself) (a member of (his)(her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner); that the accused knew or should have known that the course of conduct would place _____ in reasonable fear of (death) (bodily harm, to wit _____) to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner); and that the accused's conduct placed _____ in reasonable fear of (death) (bodily harm, to wit:_____)to (himself) (herself) (a member of (his) (her) immediate family) ((his) (her) intimate partner) ((his) (her) dating partner)."

(k) Paragraph 95.c.(4) is amended to read as follows:

"(4) "Child pornography" means material that contains either an obscene visual depiction of what appears to be a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct."

(l) Paragraph 95.c.(7) is amended to read as follows:

"(7) "Minor" means any person under the age of 18 years. With respect to obscene visual depictions of what appears to a minor, it shall not be required that the minor depicted actually

exist."

(m) Paragraph 95.c.(11) is amended to read as follows:

"(11) Visual depiction includes any developed or undeveloped photograph, picture, film or video; any digital or computer image, picture, film or video made, adapted, modified, or generated by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image."

(n) The Analysis to accompany Paragraph 95 to appear in Appendix 17, MCM, is amended by adding new paragraphs to the end to read as follows:

"*2024 Amendment: c. Explanation* is amended in paragraphs (4), (7), and (11). The amendment to paragraph (4) is made to clarify that "child pornography" means material that contains either (1) "an obscene visual depiction of what appears to be a minor engaging in sexually explicit conduct" or (2) "a visual depiction of an actual minor engaging in sexually explicit conduct." This change is intended to expressly include paragraph (5)'s language requiring an accused be aware "that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct." *See*, *e.g.*, *United States v. Mullings*, No. ACM 38623, 2015 CCA LEXIS 405, *5 (A.F. Ct. Crim. App. Sept. 30, 2015) (unpublished). This amendment is not intended to make a substantive change to the requirements in paragraph (4).

The following language is added to paragraph (7): "With respect to an obscene visual depiction of what appears to be a minor, it shall not be required that the minor depicted actually exist." This amendment makes clear, as already stated in paragraph (1), that Article 134 (Child Pornography) covers obscene "sexually explicit images that may not actually involve minors, but either resemble or are staged to appear so." *Cf. Ashcroft v. Free Speech Coalition*, 535 U.S. 234,

240-41 (2002) (holding that criminalizing possession and distribution of certain images violated the First Amendment where the images were not obscene nor produced through the exploitation of actual children).

Paragraph (11)'s definition of "visual depiction" is modified to include digital or computer images and other designated material "made, adapted, modified, or generated by any means." Such a change makes clear that images of child pornography which have been adapted, modified, or generated, including when accomplished by generative artificial intelligence programs, may fall within the definition of a "visual depiction.""

Sec. 3. Appendix 12 (MCM) is amended as follows:

(a) The rows for the maximum punishment associated with Article 128 Assault are amended to read as follows:

"128 Assault			
Simple assault			
Generally	None	3 mos.	2/3 3 mos.
When committed with a firearm/other dangerous weapon	DD, BCD	2 yrs.	Total
When committed with a loaded firearm	DD, BCD	4 yrs.	Total
Battery			
Assault consummated by a battery	BCD	6 mos.	Total
Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office	DD, BCD	3 yrs.	Total
Assault upon a warrant officer, not in the execution of office	DD, BCD	18 mos.	Total
Assault upon a noncommissioned or petty officer, not in the execution of office	BCD	6 mos.	Total
Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties	DD, BCD	3 yrs.	Total
Assault consummated by a battery upon a child under 16 years~~, spouse, intimate partner, or an immediate family member~~	DD, BCD	2 yrs.	Total
Aggravated assault			
Aggravated assault with a dangerous weapon			

When committed with a loaded firearm	DD, BCD	8 yrs.	Total
When committed upon a child under the age of 16 years~~, spouse, intimate partner, or an immediate family member~~ . . .	DD, BCD	5 yrs.	Total
Other cases	DD, BCD	3 yrs.	Total
Aggravated assault in which substantial bodily harm is inflicted			
When the injury is inflicted with a loaded firearm	DD, BCD	8 yrs.	Total
When the injury is inflicted upon a child under the age of 16 years~~, spouse, intimate partner, or an immediate family member~~	DD, BCD	6 yrs.	Total
Other cases	DD, BCD	3 yrs.	Total
Aggravated assault in which grievous bodily harm is inflicted			
When the injury is inflicted with a loaded firearm	DD, BCD	10 yrs.	Total
When the injury is inflicted upon a child under the age of 16 years~~, spouse, intimate partner, or an immediate family member~~	DD, BCD	8 yrs.	Total
Other cases	DD, BCD	5 yrs.	Total
Assault with intent to commit specified offenses			
Assault with the intent to commit murder, rape, or rape of a child	DD, BCD	20 yrs.	Total
Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, ~~and~~ kidnapping, sexual assault, or sexual assault of a child	DD, BCD	10 yrs.	Total”

(b) The rows for the maximum punishment associated with Article 128b Domestic violence are amended to read as follows:

“128b Domestic Violence			
Commission of a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member.	DD, BCD	Underlying offense plus 3 yrs.	Total
Commission of a violation of the UCMJ against any person with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person	DD, BCD	Underlying offense plus 3 yrs.	Total
Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, a dating partner, or an immediate family member of that person	DD, BCD	Underlying offense plus 3 yrs.	Total
Violation of a protective order with the intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediately family member of that person	DD, BCD	3 yrs.	Total
Violation of a protective order with the intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person	DD, BCD	5 yrs.	Total

Assaulting a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangulation or suffocation			
Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years.	DD, BCD	11 yrs.	Total
Other cases	DD, BCD	8 yrs.	Total”