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MEMORANDUM FOR CHAIR, JOINT SERVICE COMMITTEE ON MILITARY JUSTICE
SUBJECT: Approval of Supplementary Materials for the Manual for Courts-Martial (2024 edition)

I approve the changes to the supplementary materials of the Manual for Courts-Martial (MCM), United States (2019 edition), as described below. The supplementary materials accompanying the MCM (2019 edition) and changes to those materials described herein shall accompany the MCM (2024 edition).

Appendices 6, 7, 9, 13, and 14 are removed and reserved.

TAB A contains a revised Preface.

TAB B contains amendments to the Discussion sections in Parts II and III of the MCM.

TAB C contains a revised Appendix 2.

TAB D contains a revised Appendix 5.

TAB E contains amendments to Appendices 8, 12, 15, 16, 17, 18, and 19.

A handwritten signature in black ink, appearing to read "Caroline Krass".

Caroline Krass
General Counsel

Attachments:
As stated

**MANUAL
FOR
COURTS-MARTIAL
UNITED STATES
(2024 EDITION)**

PREFACE

The Manual for Courts-Martial (MCM), United States (2024 edition) updates the MCM (2019 edition) and MCM (2023 edition). It is a complete republishing and incorporates the promulgation of and amendments to the Preamble, Rules for Courts-Martial, Military Rules of Evidence, Punitive Articles, Nonjudicial Punishment Procedure, and Appendices 12A-D made by the President in Executive Orders (E.O.) 12473 of April 13, 1984, to present and specifically including E.O. 14062 (January 26, 2022) and E.O. 14103 (July 28, 2023). This edition also contains amendments to the Uniform Code of Military Justice made by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1198 (2019); the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2020); the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541 (2021); and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395 (2022). Finally, this edition incorporates amendments to the Appendices and the supplementary materials accompanying the MCM. These items are available at the Joint Service Committee on Military Justice's website at <https://jsc.defense.gov>.

JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

Annex B

Sec. 1. The Discussion sections accompanying Part II of the Manual for Courts-Martial,

United States (2024 ed.) are amended to read as follows:

(a) A Discussion following R.C.M. 103(12) is added to read as follows:

“Discussion

See Article 24a(c)(2). If the special trial counsel determines that there is a known or related offense, the special trial counsel must affirmatively act in furtherance of special trial counsel’s statutory duties under Article 24a(c) to exercise authority over that offense. When a special trial counsel exercises authority over any reported offense, the special trial counsel shall notify the suspect’s special court-martial convening authority. *See* R.C.M. 303A(e).”

(b) A Discussion following R.C.M. 104(b)(2) is added to read as follows:

“Discussion

See also Article 37(d)(2) (“Except as provided in paragraph (1) [Article 37(d)(1)] or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.”).”

(c) The Discussion following R.C.M. 104(b)(1)(B) now follows R.C.M. 104(c)(1)(B) and is revised to read as follows:

“Discussion

For evaluations of military judges, see generally Article 26(c) and Article 37.

R.C.M. 104(c)(1)(B) applies when the counsel in question has been detailed, assigned, or authorized to represent the client as a defense or special victims’ counsel. Nothing in this rule prohibits supervisors from taking appropriate action for violations of ethical, procedural, or other rules, or for conduct outside the scope of representation.

“Special victims’ counsel,” as used in R.C.M. 104(c)(1)(B), includes victims’ legal counsel within the Navy and Marine Corps and victims’ counsel within the Department of the Air Force.

See paragraph 87 of Part IV concerning prosecuting violations of Article 37 under Article 131f.”

(d) A Discussion following R.C.M. 105(d) is added to read as follows:

“Discussion

See Article 37, UCMJ and 10 U.S.C. 1044f.”

(e) The Discussion following R.C.M. 201(a)(3) is revised to read as follows:

“Discussion

In addition to the power to try persons for offenses under the UCMJ, general courts-martial have power to try certain persons for violations of the law of war and for crimes or offenses against the law of the territory occupied as an incident of war or belligerency whenever the local civil authority is superseded in whole or part by the military authority of the occupying power. *See* R.C.M. 201(f)(1)(B). In cases where a person is tried by general court-martial for offenses against the law of an occupied territory, the court-martial normally sits in the country where the offense is committed and must do so under certain circumstances. *See* Articles 4, 64, and 66, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 3559-60 T.I.A.S. No. 3365.”

(f) The Discussion following R.C.M. 201(b)(3) is revised to read as follows:

“Discussion

See R.C.M. 601; *see also* R.C.M. 307. A commanding officer shall not be considered an accuser under Article 1(9) solely due to the role of the commanding officer in convening a general court-martial or a special court-martial to which charges and specifications were referred by a special trial counsel pursuant to Article 22(b) for general courts-martial or Article 23(b) for special courts-martial, as amended by Section 534 of the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541, 1696 (2021).”

(g) The Discussion following R.C.M. 201(d) is revised to read as follows:

“Discussion

In the case of an act or omission that violates the UCMJ and a criminal law of a State, the United States, or both, the determination which agency shall exercise jurisdiction should normally be made through consultation or prior agreement between appropriate military officials and appropriate civilian authorities (United States Attorney, or equivalent). *See also* Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain at Appendix 3; Memorandum of Understanding Between the Departments of Justice and Transportation (Coast Guard) Relating to the Investigations and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction at Appendix 4.

Under the Constitution, a person generally may not be tried for the same misconduct by both a court-martial and another federal court. *See* R.C.M. 907(b)(2)(C). Although it is constitutionally permissible to try a person by court-martial and by a State court for the same act, as a matter of policy, a person who is pending trial or has been tried by a State court should not ordinarily be tried by court-martial for the same act. International agreements might preclude trial by one state party to the treaty of a person acquitted or finally convicted of a given act by another state party.

Under international law, a friendly foreign nation has jurisdiction to punish offenses committed within its borders by members of a visiting force, unless it expressly or impliedly consents to relinquish its jurisdiction to the visiting sovereign. The procedures and standards for determining which nation will exercise jurisdiction are normally established by treaty. *See, e.g.*, NATO Status of Forces Agreement, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. No. 2846. As a matter

of policy, efforts should be made to maximize the exercise of court-martial jurisdiction over persons subject to the UCMJ to the extent possible under applicable agreements.

See R.C.M. 106 concerning delivery of offenders to civilian authorities.

See also R.C.M. 201(g) concerning the jurisdiction of other military tribunals.”

(h) The Discussion following R.C.M. 201(e)(6) is redesignated to follow R.C.M. 201(e)(7) and is revised to read as follows:

“Discussion

As to the authority to convene courts-martial, see R.C.M. 504. “Manifest injury” does not mean minor inconvenience or expense. Examples of manifest injury include direct and substantial effect on morale, discipline, or military operations, substantial expense or delay, or loss of essential witnesses.

As to the composition of a court-martial for the trial of an accused who is a member of another armed force, see R.C.M. 503(a)(3) Discussion. Cases involving two or more accused who are members of different armed forces generally should not be referred to a court-martial for a common trial.”

(i) The Discussion following R.C.M. 201(f)(B)(i)(b) is revised to read as follows:

“R.C.M. 201(f)(1)(B)(i)(b) is an exercise of the power of military government.”

(j) The sole sentence of the Discussion following R.C.M. 201(f)(C) is revised to read as follows:

“Discussion

See R.C.M. 103(4) for the definition of the term “capital offense.””

(k) The Discussion following R.C.M. 201(f)(D) is revised to read as follows:

“Discussion

“Only a general court-martial has jurisdiction over penetrative sex offenses under subsections (a) and (b) of Article 120, subsections (a) and (b) of Article 120b, and attempts to commit such penetrative sex offenses under Article 80. *See* Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).”

(l) The Discussion following R.C.M. 201(g) is revised to read as follows:

“Discussion

See Articles 103 and 103b for some instances of concurrent jurisdiction.”

(m) The Discussion following R.C.M. 202(a) is amended as follows:

(1) Paragraph (1) is revised to read as follows:

“(1) *Authority under the UCMJ.* Article 2 lists classes of persons who are subject to the UCMJ. These include active duty personnel (Article 2(a)(1)); cadets, aviation cadets, and midshipmen (Article 2(a)(2)); certain retired personnel (Article 2(a)(4) and (5)); members of Reserve components not on active duty under some circumstances (Article 2(a)(3)); members of the Fleet Reserve and Fleet Marine Corps Reserve (Article 2(a)(6)); persons in the custody of the armed forces serving a sentence imposed by court-martial (Article 2(a)(7)); and, under some circumstances, specified categories of civilians (Article 2(a)(10), (11), and (12)); *see* paragraphs (3) and (4) of this discussion. In addition, certain persons whose status as members of the armed forces or as persons otherwise subject to the UCMJ apparently has ended may, nevertheless, be amendable to trial by court-martial. *See* Articles 3, 4, and 73. A person need not be subject to the UCMJ to be subject to trial by court-martial under Articles 103, 103b, and 104a. *See* also Article 48 and R.C.M. 809 concerning who may be subject to the contempt powers of a court-martial.”

(2) The introductory part of Paragraph (2) is revised to read as follows:

“(2) *Active duty personnel.* Court-martial jurisdiction is most commonly exercised over active duty personnel. In general, a person becomes subject to court-martial jurisdiction upon enlistment in or induction into the armed forces, acceptance of a commission, or entry onto active duty pursuant to orders. Generally, three criteria are considered to determine when military jurisdiction over active duty personnel terminates: (1) the delivery of a discharge certificate; (2) a final accounting of pay; and (3) completion of any clearing process required under Military Service regulations. Orders transferring a person to the inactive reserve are the equivalent of a discharge certificate for purposes of jurisdiction over reserve personnel. There are several important qualifications and exceptions to these general guidelines.”

(3) Paragraph (2)(A)(i) is revised to read as follows:

“(A) *Inception of court-martial jurisdiction over active duty personnel.*

(i) *Enlistment.* “The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under [Article 2(a)] and a change of status from civilian to member of the armed forces shall be effective upon taking the oath of enlistment.” Article 2(b). A person who is, at the time of enlistment, insane, intoxicated, or under the age of 17 does not have the capacity to enlist by law. No court-martial jurisdiction over such a person may exist as long as the incapacity continues. If the incapacity ceases to exist, a “constructive enlistment” may result under Article 2(c). *See* discussion of “constructive enlistment” of this rule. Similarly, if the enlistment was involuntary, court-martial jurisdiction will exist only when the coercion is removed and a “constructive enlistment” under Article 2(c) is established.

Persons aged 17 (but not yet aged 18) may not enlist without parental consent. A parent or guardian may, within 90 days of the enlistment’s inception, terminate the enlistment of a 17-year-old who enlisted without parental consent if the person has not yet reached the age of 18. 10 U.S.C. § 1170. *See* also DOD Instruction 1332.14 and Service regulations for specific rules on separation of persons aged 17 based on a parental request. Absent effective action by a parent or guardian to terminate such an enlistment, court-martial jurisdiction exists over the person. An

application by a parent for release does not deprive a court-martial of jurisdiction to try a person for offenses committed before action is completed on such an application.

Even if a person lacked capacity to understand the effect of enlistment or did not enlist voluntarily, a “constructive enlistment” may be established under Article 2(c).

Even if a person never underwent an enlistment or induction proceeding of any kind, court-martial jurisdiction could be established under this provision.”

(4) Paragraph (2)(B)(i) is revised to read as follows:

“(i) *Effect of completion of term of service.* Completion of an enlistment or term of service does not by itself terminate court-martial jurisdiction. An original term of enlistment may be adjusted for a variety of reasons, such as making up time lost for unauthorized absence. Even after such adjustments are considered, court-martial jurisdiction normally continues past the time of scheduled separation until a discharge certificate or its equivalent is delivered and certain other criteria are satisfied or until the Government fails to act within a reasonable time after the person objects to continued retention. As indicated in subsection (c) of this rule, service members may be retained past their scheduled time of separation, over protest, by action with a view to trial while they are still subject to the UCMJ. Thus, if action with a view to trial is initiated before discharge or the effective terminal date of self-executing orders, a person may be retained beyond the date that the period of service would otherwise have expired or the terminal date of such orders.”

(5) Paragraph (2)(B)(ii) is revised to read as follows:

“(ii) *Effect of discharge and reenlistment.* For offenses occurring on or after October 23, 1992, under the 1992 National Defense Authorization Act’s amendment to Article 3(a), a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service. For offenses occurring prior to October 23, 1992, a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service only if the offense was punishable by confinement for five years or more and could not be tried in the courts of the United States or of a State, a Territory, or the District of Columbia. *But see* (iii)(a) of this discussion.”

(6) The introductory part to Paragraph 2(B)(iii) is revised to read as follows:

“(iii) *Exceptions.* There are several exceptions to the general principle that court-martial jurisdiction terminates on discharge or its equivalent.”

(7) Paragraph 2(B)(iii)(a) is revised to read as follows:

“(a) A person who was subject to the UCMJ at the time an offense was committed may be tried by court-martial for that offense despite a later discharge or other termination of that status if:

(1) For offenses occurring on or after October 23, 1992, the person is, at the time of the court-martial, subject to the UCMJ, by reentry into the armed forces or otherwise. *See* Article 3(a), as amended by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315, 2505 (1992);

(2) For offenses occurring before October 23, 1992,

(A) The offense is one for which a court-martial may adjudge confinement for 5 or more years;

(B) The person cannot be tried in the courts of the United States or of a State, Territory, or the District of Columbia; and

(C) The person is, at the time of the court-martial, subject to the UCMJ, by reentry into the armed forces or otherwise. *See* Article 3(a) prior to the 1992 National Defense Authorization Act Amendment.”

(n) The first paragraph of the Discussion following R.C.M. 202(c)(1) is revised to read as follows:

“Court-martial jurisdiction exists to try a person as long as that person occupies a status as a person subject to the UCMJ. Thus, a service member is subject to court-martial jurisdiction until lawfully discharged or, when the service member’s term of service has expired, the Government fails to act within a reasonable time on objection by the service member to continued retention. Articles 103, 103b, and 104a set forth offenses with expanded jurisdictional reach.”

(o) The Discussion following R.C.M. 204(a) is revised to read as follows:

“Discussion

See definitions in R.C.M. 103 (Discussion); paragraph 5.e and f., Part V, concerning limitations on nonjudicial punishments imposed on reservists while on inactive-duty training.”

(p) The Discussion following R.C.M. 204(b)(2) is revised to read as follows:

“Discussion

A “normal period” of inactive-duty training does not include periods that are scheduled solely for the purpose of conducting court-martial proceedings.”

(q) The second paragraph of the Discussion following R.C.M. 204(d) is revised to read as follows:

“See R.C.M. 202(a), Discussion, paragraph (2)(B)(ii) and (iii), regarding the jurisdictional effect of a discharge from military service. A “complete termination” of military status refers to a discharge relieving the service member of any further military service. It does not include a discharge conditioned upon acceptance of further military service.”

(r) The third paragraph of the Discussion following R.C.M. 301(c) is revised to read as follows:

“Upon receipt of a report, the immediate commander of a suspect, or a special trial counsel, as appropriate, should refer to R.C.M. 306 (Initial disposition) or R.C.M. 306A (Initial determination by special trial counsel to exercise authority). *See also* R.C.M. 302 (Apprehension); R.C.M. 303 (Preliminary inquiry into reported offenses); R.C.M. 304, 305 (Pretrial restraint, confinement). Any doubt as to whether a report alleges a covered offense should be resolved in favor of forwarding the reported offense to a special trial counsel.”

(s) The second paragraph of the Discussion following R.C.M. 302(b)(1) is revised to read as follows:

“The phrase “persons designated by proper authority to perform military criminal investigative, guard or police duties” includes special agents of the Defense Criminal Investigative Service, security forces, military police, master at arms personnel, and members of the shore patrol.”

(t) The Discussion following R.C.M. 302(b)(3) is revised to read as follows:

“Discussion

The UCMJ specifically provides that any civil officer with the authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter. Article 8. However, this authority does not permit state and local law enforcement officers to apprehend persons for other violations of the UCMJ.”

(u) The first sentence of the Discussion following R.C.M. 302(c) is removed.

(v) The Discussion following R.C.M. 302(d)(3) is revised to read as follows:

“Discussion

In addition to any other action required by law or regulation or proper military officials, any person making an apprehension under these rules should maintain custody of the person apprehended and inform as promptly as possible the immediate commander of the person apprehended, or any official higher in the chain of command of the person apprehended if it is impracticable to inform the immediate commander.”

(w) The first paragraph of the Discussion following R.C.M. 303 is revised to reads as follows:

“In serious or complex cases, including sexual offenses and sexual harassment, the commander should, and in some cases must, seek law enforcement or appropriate investigative assistance in conducting any inquiry or further investigation.”

(x) The last paragraph of the Discussion following R.C.M. 303 is revised to read as follows:

“A person who is an accuser (*see* Article 1(9)) is disqualified from convening a general or special court-martial in that case. *See* R.C.M. 504(c)(1). Therefore, when the immediate commander is a general or special court-martial convening authority, the preliminary inquiry should be conducted by another officer of the command. That officer may be informed that charges may be preferred if the officer determines that preferral is warranted.”

(y) The first sentence of the first paragraph of the Discussion following R.C.M. 305(d)(3) is revised to read as follows:

“The person who directs confinement should consider the matters discussed under subparagraph (i)(2)(B) of this rule before ordering confinement.”

(z) The Discussion following R.C.M. 305(i)(1) is revised to read as follows:

“Discussion

This report may be made by any means. Ordinarily, the immediate commander of the confinee should be notified. In unusual cases, any commander to whose authority the confinee is subject, such as the commander of the confinement facility, may be notified. In the latter case, the commander so notified must ensure compliance with R.C.M. 305(i)(2).”

(aa) The last sentence of the Discussion following R.C.M. 305(j)(2)(A)(iv) is revised to read as follows:

“The right to be heard under this rule includes the right to be heard through counsel, in those instances in which a victim is represented by counsel.”

(bb) The Discussion following R.C.M. 306(a) is redesignated to follow R.C.M. 306(a)(2) and is revised to read as follows:

“Discussion

Each commander in the chain of command has independent, yet overlapping, discretion to dispose of offenses within the limits of that officer’s authority. Normally, in keeping with the policy in subsection (b) of this rule, the initial disposition decision is made by the official at the lowest echelon with the power to make it. A decision by a commander ordinarily does not bar a different disposition by a superior authority. *See* R.C.M. 401(c), 601(f). Once charges are referred to a court-martial by a convening authority competent to do so, they may be withdrawn from that court-martial only in accordance with R.C.M. 604 and R.C.M. 604A.

See Appendix 3 or 4 with respect to offenses for which coordination with the Department of Justice is required.”

(cc) The Discussion following R.C.M. 306(c) is revised to read as follows:

“Discussion

Prompt disposition of charges is essential. *See* R.C.M. 707 (speedy trial requirements).

If charges have not already been preferred, the commander may, if appropriate, prefer them and dispose of them under this rule. But see R.C.M. 601(c) regarding disqualification of an accuser.

If charges have been preferred, the commander should ensure that the accused has been notified in accordance with R.C.M. 308, and that charges are in proper form. *See* R.C.M. 307. Each commander who forwards or disposes of charges may make minor changes therein. *See* R.C.M. 603(a) and (b). If major changes are necessary, the affected charge should be preferred anew. *See* R.C.M. 603(d).

When charges are brought against two or more accused with a view to a joint or common trial, see R.C.M. 307(c)(5), 601(e)(3). If it appears that the accused may lack mental capacity to stand trial or may not have been mentally responsible at the times of the offenses, see R.C.M. 706, 909, 916(k).”

(dd) The Discussion following R.C.M. 306(c)(4) is revised by adding a new paragraph to immediately follow the second paragraph to read as follows:

“Pursuant to Article 24a and R.C.M. 306A, a convening authority may not dispose of a covered offense at a general or special court-martial.”

(ee) A Discussion following R.C.M. 306A is added to read as follows:

“Discussion

See Appendix 3 or 4 with respect to offenses for which coordination with the Department of Justice is required.”

(ff) The first paragraph of the Discussion following R.C.M. 307(a) is revised to read as follows:

“No person may be ordered to prefer charges to which that person is unable to make truthfully the required oath. *See* Article 30(a) and R.C.M. 307(b). A person who has been the accuser or nominal accuser (*see* Article 1(9)) may not also serve as the convening authority of a general or special court-martial to which the charges are later referred. *See* Articles 22(b), 23(b), and 24a(c)(2)(A); R.C.M. 601; *but see* R.C.M. 1302(b) (summary court-martial convening authority is not disqualified by being the accuser). A person authorized to dispose of offenses (*see* R.C.M. 306-306A, 401-404, and 407) should not be ordered to prefer charges when this would disqualify that person from exercising that person’s authority or would improperly restrict that person’s discretion to act on the case. *See* R.C.M. 104 and 504(c).”

(gg) The Discussion following R.C.M. 307(c) is revised to read as follows:

“See DD Form 458 for a template charge sheet.”

(hh) The last paragraph of the Discussion following R.C.M. 307(c)(5) is revised to read as follows:

“See R.C.M. 906(b)(5) pertaining to severance of duplicitous specifications.”

(ii) The Discussion following R.C.M. 308(a) is revised to read as follows:

“Discussion

When notice is given, a certificate to that effect on the charge sheet should be completed. *See* DD Form 458.

However, in cases where charges are immediately referred after preferral, service of referred charges under R.C.M. 602 fulfills the notice requirement of this rule. In those cases, the notice certificate on the charge sheet need not be completed and should be lined out.

Following notification of preferred charges, the Government shall comply with the requirements of R.C.M. 403(c).”

(jj) The Discussion following R.C.M. 308(d)(5) is revised to read as follows:

“Discussion

This rule is not intended to limit or discourage counsel for the Government from providing additional materials to the defense. The purpose of this rule is to provide the accused with the documents used to make the determination to prefer charges.”

(kk) A Discussion following R.C.M. 309(a)(1) is added to read as follows:

“Discussion

In determining whether to issue a ruling or order before referral, a military judge may consider chain of command recommendations as to disposition of a charged offense or offenses, representations of counsel or a federal law enforcement officer, the frequency or severity of a charged offense or offenses, and any other matter deemed relevant by the military judge.”

(ll) The first sentence of the Discussion following R.C.M. 309(b)(2) is revised to read as follows:

“The defense may request that the trial counsel or other counsel for the Government make an application under R.C.M. 309(b)(1) or (b)(2) of this rule.”

(mm) The Discussion following R.C.M. 401(a) is revised to read as follows:

“Discussion

R.C.M. 401 applies only to offenses over which a special trial counsel does not exercise authority. When a special trial counsel has exercised authority, a commander may not dispose of charges in accordance with this rule unless the special trial counsel defers. *See* R.C.M. 401A.

When a commander receives charges containing a covered offense that has not been reviewed by a special trial counsel, the commander shall forward the charges to a special trial counsel for an initial determination under R.C.M. 303A.

See R.C.M. 504 as to who may convene courts-martial and paragraph 2 of Part V as to who may administer nonjudicial punishment. If the power to convene courts-martial and to administer nonjudicial punishment has been withheld, a commander may not dispose of charges under this rule.

Ordinarily charges should be forwarded to the accused’s immediate commander for initial consideration as to disposition. Each commander has independent discretion to determine how charges will be disposed of, except to the extent that the commander’s authority has been withheld by superior competent authority. *See also* R.C.M. 104.

See R.C.M. 603 if major or minor changes to the charges are necessary after preferral. If a commander is an accuser (*see* Article 1(9); R.C.M. 307(a)) that commander is ineligible to refer such charges to a general or special court-martial. *See* R.C.M. 601(c). *But see* R.C.M. 1302(b) (accuser may refer charges to a summary court-martial).”

(nn) The first paragraph in the Discussion following R.C.M. 401(b) is revised to read as follows:

“In determining what level of disposition is appropriate, see R.C.M. 306(b) and (c) and Appendix 2.1 (Disposition Guidance). When charges are brought against two or more accused with a view to a joint or common trial, see R.C.M. 307(c)(5) and 601(e)(3). If it appears that the accused may lack mental capacity to stand trial or may not have been mentally responsible at the time of the offense, see R.C.M. 706, 909, and 916(k).”

(oo) The Discussion following R.C.M. 401(c) is revised to read as follows:

“Discussion

A commander may dispose of charges individually or collectively.

See Appendix 3 or 4 when the charges may involve matters in which the Department of Justice has an interest.

See the Discussion to R.C.M. 306(b) and Appendix 2.1 (Disposition Guidance).”

(pp) The Discussion following R.C.M. 401(c)(1) is amended as follows:

(1) The second paragraph is revised to read as follows:

“A charge should be dismissed when it fails to state an offense, when it is unsupported by available evidence, or when there are other sound reasons why trial by court-martial is not appropriate. Before dismissing charges because trial would be detrimental to the prosecution of a war or harmful to national security, see R.C.M. 401(d); and 407(b).”

(2) The fourth paragraph is revised to read as follows:

“Charges may be amended in accordance with R.C.M. 603. It is appropriate to dismiss a charge and prefer another charge anew when, for example, the original charge failed to state an offense, was so defective that a major amendment was required (*see* R.C.M. 603(d)), or did not adequately reflect the nature or seriousness of the offense.”

(3) The last paragraph is amended by adding the word “See” before the words “R.C.M. 907(b)(2)(C).”

(qq) A Discussion following R.C.M. 401A(a) is added to read as follows:

“Discussion

The “superior competent authority” referenced in R.C.M. 401A(a) may include the Secretary concerned, the Lead Special Trial Counsel, or other supervisory special trial counsel.”

(rr) A Discussion following R.C.M. 401A(b) is added to read as follows:

“Discussion

In determining what level of disposition is appropriate, see R.C.M. 306(b) and (c) and Appendix 2.1 (Disposition Guidance).”

(ss) A Discussion following R.C.M. 401A(c)(3)(B) is added to read as follows:

“Discussion

Following deferral by special trial counsel, a commander or convening authority may dispose of a charge pursuant to R.C.M. 401, including by dismissing charges preferred by special trial counsel. *See* R.C.M. 401(c). However, after referral of charges by a special trial counsel, a special trial counsel must withdraw a charge before it can be deferred to a commander or convening authority. *See* R.C.M. 604(a).”

(tt) The Discussion following R.C.M. 404(5) is revised to read as follows:

“Discussion

A preliminary hearing should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If a preliminary hearing of the subject matter already has been conducted, *see* R.C.M. 405(b) and 405(f)(2).”

(uu) The Discussions following the paragraphs and subparagraphs of R.C.M. 404A (now removed) are removed.

(vv) A Discussion is added following R.C.M. 405(d)(1)(D) to read as follows:

“Discussion

This rule is not intended to limit or discourage counsel for the Government from providing additional materials to the defense.”

(ww) A Discussion is added following R.C.M. 405(d)(4) to read as follows:

“Discussion

The purpose of this rule is to provide the accused with the documents used to make the determination to direct a preliminary hearing and to allow the accused to prepare for the preliminary hearing. This rule is not intended to be a tool for discovery and does not impose the same discovery obligations found in R.C.M. 405 prior to amendments required by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), as amended by Section 531 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3371 (2014), or R.C.M. 701. Additional rules for disclosure of witnesses and other evidence in the preliminary hearing are provided in R.C.M. 405(j).”

(xx) The Discussion following R.C.M. 405(d)(1)(D) is redesignated to follow R.C.M. 405(e)(1)(D) and the second paragraph of that Discussion is revised to read as follows:

“Because this is a preliminary hearing and not a trial, the requirement for the preliminary hearing officer to remain impartial does not preclude the preliminary hearing officer from identifying matters or sources of information that may warrant further inquiry. *See* R.C.M. 405(k)(1). The responsibility for requesting and producing such information, however, rests with the parties.”

(yy) The Discussion following R.C.M. 405(e)(2) is redesignated to follow R.C.M. 405(f)(3) and the first sentence is revised to read as follows:

“Except as set forth in R.C.M. 405(j), the Military Rules of Evidence do not apply at a preliminary hearing.”

(zz) The Discussion following R.C.M. 405(g)(3) is redesignated to follow R.C.M. 405(h)(3).

(aaa) The Discussion following R.C.M. 405(h)(2)(A)(iii) is redesignated to follow R.C.M. 405(i)(2)(A)(iv).

(bbb) The Discussion following R.C.M. 405(h)(2)(B)(iii) is redesignated to follow R.C.M. 405(i)(2)(B)(iii).

(ccc) The Discussion following R.C.M. 405(h)(3)(B)(iii) is redesignated to follow R.C.M. 405(i)(3)(B)(iii) and the second paragraph is removed.

(ddd) The Discussion following R.C.M. 405(h)(3)(B)(iv) is removed.

(eee) The Discussion following R.C.M. 405(i)(2)(C) is redesignated to follow R.C.M. 405(j)(2)(C).

(fff) The Discussion following R.C.M. 405(i)(2)(D) is redesignated to follow R.C.M. 405(j)(2)(D).

(ggg) The Discussion following R.C.M. 405(j)(1) is redesignated to follow R.C.M. 405(k)(1).

(hhh) The Discussion following R.C.M. 405(j)(2)(A) is redesignated to follow R.C.M. 405(k)(2)(A).

(iii) The Discussion following R.C.M. 405(j)(3) is redesignated to follow R.C.M. 405(k)(3).

(jjj) The Discussion following R.C.M. 405(j)(5) is redesignated to follow R.C.M. 405(k)(5).

(kkk) The Discussion following R.C.M. 405(j)(8) is redesignated to follow R.C.M. 405(k)(8).

(lll) The Discussion following R.C.M. 405(k)(2) is redesignated to follow R.C.M. 405(l)(2).

(mmm) The Discussion following R.C.M. 405(l)(1) is redesignated to follow R.C.M. 405(m)(1) and is revised to read as follows:

“Discussion

As soon as practicable after receipt of supplementary information under R.C.M. 405(l), the charges and the report of preliminary hearing should be forwarded to the court-martial convening authority. *See Article 10.*”

(nnn) The Discussion following R.C.M. 405(l)(2)(K) is redesignated to follow R.C.M. 405(m)(2)(L) and is revised to read as follows:

“Discussion

The preliminary hearing officer may include any additional matters useful to the convening authority or special trial counsel in determining disposition. For guidance concerning disposition of offenses, see Appendix 2.1 (Disposition Guidance). The preliminary hearing officer may recommend that the charges and specifications be amended or that additional charges be preferred. See R.C.M. 306 and 401 concerning other possible dispositions.”

(ooo) The Discussion following R.C.M. 405(m) is redesignated to follow R.C.M. 405(n) and the second paragraph in the Discussion is removed.

(ppp) The Discussion following R.C.M. 406(a) is redesignated to follow R.C.M. 406(a)(D) and is revised to read as follows:

“Discussion

A written pretrial advice need not be prepared in cases referred to special or summary courts-martial. A convening authority is required to consult with a judge advocate before referring charges to a special court-martial (*see* R.C.M. 406(a)(2)) and may seek the advice of a lawyer before referring charges to a summary court-martial. When charges have been withdrawn from a general court-martial (*see* R.C.M. 604) or when a mistrial has been declared in a general court-martial (*see* R.C.M. 915), supplementary advice is necessary before the charges may be referred to another general court-martial.

The staff judge advocate may make changes in the charges and specifications in accordance with R.C.M. 603.

For guidance concerning the disposition of charges and specifications, see Appendix 2.1 (Disposition guidance).

The staff judge advocate is personally responsible for the pretrial advice and must make an independent and informed appraisal of the charges and evidence in order to render the advice. While the staff judge advocate may use a preliminary hearing officer’s report in preparing pretrial advice, and another person may prepare the advice, the staff judge advocate is, unless disqualified, responsible for it and must sign it personally. Grounds for disqualification in a case include previous action in the case as preliminary hearing officer, military judge, trial counsel, defense counsel, or member.

The advice need not set forth the underlying analysis or rationale for its conclusions. Ordinarily, the charge sheet, forwarding letter, endorsements, and report of preliminary hearing are forwarded with the pretrial advice. In addition, the pretrial advice should include, when appropriate: a brief summary of the evidence; discussion of significant aggravating, extenuating, or mitigating factors; any recommendations for disposition of the case by commanders or others who have forwarded the charges; and any recommendations of the Article 32 preliminary hearing officer. However, there is no legal requirement to include such information, and failure to do so is not error.

Information which is incorrect or so incomplete as to be misleading may result in a determination that the advice is defective, necessitating appropriate relief. *See* R.C.M. 905(b)(1), 906(b)(3).

Defects in the pretrial advice are not jurisdictional and are raised by pretrial motion. *See* R.C.M. 905(b)(1) and its Discussion.”

(qqq) The Discussion following R.C.M. 406A (now removed) is removed.

(rrr) The Discussion which follows R.C.M. 407(a)(3) is revised to read as follows:

“Discussion

See R.C.M. 401(c)(2)(A) for guidance concerning forwarding charges to a superior.”

(sss) The Discussion following R.C.M. 502(d)(4) is revised to read as follows:

“Discussion

(A) *General duties before trial.* Immediately upon receipt of referred charges, the trial counsel should cause a copy of the charges to be served upon the accused. *See* R.C.M. 602.

The trial counsel should: examine the charge sheet and allied papers for completeness and correctness; correct (and initial) minor errors or obvious mistakes in the charges but may not without authority make any substantial changes (*see* R.C.M. 603); and ensure that the information about the accused on the charge sheet and any evidence of previous convictions are accurate.

(B) *Relationship with convening authority.* The trial counsel should report to the convening authority any substantial irregularity in the convening orders or allied papers and report an actual or anticipated reduction of the number of members required under R.C.M. 501(a) to the convening authority. Except for offenses over which a special trial counsel has exercised authority and has not deferred, the trial counsel should report any substantial irregularity in the charges and bring to the attention of the convening authority any case in which the trial counsel finds trial inadvisable for lack of evidence or other reasons. For cases over which a special trial counsel has exercised authority and has not deferred, the special trial counsel is responsible for addressing irregularities in the charges.

(C) *Relationship with the accused and defense counsel.* The trial counsel must communicate with a represented accused only through the accused’s defense counsel. *But see* R.C.M. 602.

(D) *Victim rights.* The trial counsel should ensure that the Government’s responsibilities under Article 6b are fulfilled.

(E) *Preparation for trial.* The trial counsel should: ensure that a suitable room, a reporter (if authorized), and necessary equipment and supplies are provided for the court-martial; obtain copies of the charges and specifications and convening orders for each member and all personnel of the court-martial; give timely notice to the members, other parties, other personnel of the court-martial, and witnesses for the prosecution and (if known) defense of the date, time, place, and uniform of the meetings of the court-martial; ensure that any person having custody of the accused is also informed; comply with applicable disclosure and discovery rules (*see* R.C.M. 308, 405, and 701); prepare to make a prompt, full, and orderly presentation of the evidence at trial; consider the elements of proof of each offense charged, the burden of proof of guilt and the burdens of proof on motions which may be anticipated, and the Military Rules of Evidence; secure for use at trial such legal texts as may be available and necessary to sustain the prosecution’s contentions; arrange for the presence of witnesses and evidence in accordance with R.C.M. 703; prepare to make an opening statement of the prosecution’s case (*see* R.C.M. 913); prepare to conduct the examination

and cross-examination of witnesses; and prepare to make final argument on the findings and, if necessary, on sentencing (*see* R.C.M. 919, 1001(h)).

(F) *Trial*. The trial counsel should bring to the attention of the military judge any substantial irregularity in the proceedings. The trial counsel should not allude to or disclose to the members any evidence not yet admitted or reasonably expected to be admitted in evidence or intimate, transmit, or purport to transmit to the military judge or members the views of the convening authority or others as to the guilt or innocence of the accused, an appropriate sentence, or any other matter within the discretion of the court-martial.

(G) *Post-trial duties*. The trial counsel should promptly provide written notice of the Statement of Trial Results to the convening authority or a designee, the accused's immediate commander, and (if applicable) the officer in charge of the confinement facility (*see* R.C.M. 1101(e)), and supervise the preparation and distribution of copies of the record as required by these rules and regulations of the Secretary concerned (*see* R.C.M. 1112).

(H) *Assistant trial counsel*. An assistant trial counsel may act in that capacity only under the supervision of the detailed trial counsel. Responsibility for trial of a case may not devolve to an assistant not qualified to serve as trial counsel. Unless the contrary appears, all acts of an assistant trial counsel are presumed to have been done by the direction of the trial counsel. An assistant trial counsel may not act in the absence of the trial counsel at trial in a general court-martial unless the assistant has the qualifications required of a trial counsel. *See* R.C.M. 805(c)."

(ttt) The Discussion following R.C.M. 503(a)(1)(C)(ii) is redesignated to follow R.C.M. 503(a)(1)(C) and is revised to read as follows:

“Discussion

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.”

(uuu) The last paragraph in the Discussion following R.C.M. 503(a)(2) is deleted.

(vvv) The Discussion following R.C.M. 503(a)(3) is revised to read as follows:

“Discussion

Concurrence of the proper commander may be oral and need not be shown by the record of trial.

Members should ordinarily be of the same armed force as the accused. When a court-martial composed of members of different armed forces is selected, at least a majority of the members should be of the same armed force as the accused unless impracticable. For purposes of this nonbinding policy, members of the Department of the Air Force are treated as being in the same armed force.”

(www) The Discussion following R.C.M. 504(c)(1) is revised to read as follows:

“Discussion

See also Article 1(9); R.C.M. 307(a), 601(c). *But see* R.C.M. 1302(b) (accuser may convene a summary court-martial).”

(xxx) The Discussion following R.C.M. 506(a)(2) is revised to read as follows:

“Discussion

The requirements of Article 27 are satisfied where an accused retains civilian counsel who is determined by the Judge Advocate General to be learned in the law applicable to capital cases in accordance with R.C.M. 502(d)(2)(C). Counsel learned in the law applicable to capital cases may be assigned prior to referral and should be considered for such assignment in a case in which a capital referral appears likely.

See R.C.M. 601(e) and 1004(b)(1) regarding special instructions for referral of capital cases.”

(yyy) The Discussion following R.C.M. 601(a) is revised to read as follows:

“Discussion

If a court-martial would be warranted but would be detrimental to the prosecution of a war or inimical to national security, see R.C.M. 401(d) and 407(b).”

(zzz) The Discussion following R.C.M. 601(d)(1) is redesignated to follow R.C.M. 601(d)(1)(B) and is revised to read as follows:

“Discussion

For a discussion of selection among alternative dispositions, see R.C.M. 306. The referral authority is not obliged to refer all charges that the evidence might support. The referral authority should consider the options and considerations under R.C.M. 306 and Appendix 2.1 (Disposition guidance) in exercising the discretion to refer charges and specifications to court-martial.”

(aaaa) The Discussion following R.C.M. 601(d)(2)(B) is removed.

(bbbb) A Discussion following R.C.M. 601(e)(1)(B) is added to read as follows:

“Discussion

Under the UCMJ as amended through the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263 136 Stat. 2395 (2022), a special trial counsel may not refer a charge to a special court-martial consisting of a military judge alone. *See* Article 16(c)(2)(A), 10 U.S.C. § 816(c)(2)(A) (2019) (“if the case is so referred by the *convening authority*”) (emphasis added).”

(cccc) The Discussion following R.C.M. 601(e)(1)(C) is revised to read as follows:

“Discussion

Referral is ordinarily evidenced by an indorsement on the charge sheet. Although the indorsement should be completed on all copies of the charge sheet, only the original must be signed. The signature may be that of a person acting by the order or direction of the referral authority. In such a case, the signature element or block should reflect the signer’s authority.

If, for any reason, charges are referred to a court-martial different from that to which they were originally referred, the new referral is ordinarily made by a new indorsement attached to the original charge sheet. The previous indorsement should be lined out and initialed by the person signing the new referral. The original indorsement should not be obliterated. *See also* R.C.M. 604.

The failure to include a special instruction that a case is to be tried as a capital case at the time of the referral does not bar the referral authority from later adding the required special instruction, provided that the referral authority has otherwise complied with the applicable notice requirements. If the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy. *See* R.C.M. 1004(b)(1).

For limitations regarding offenses that may be referred to a special court-martial consisting of a military judge alone, see R.C.M. 201(f)(2)(E).

If the only officer present in a command refers the charges to a summary court-martial and serves as the summary court-martial under R.C.M. 1302, the indorsement should be completed with the additional comments, “only officer present in the command.”

Any special instructions must be stated in the referral indorsement.

When the charges have been referred to a court-martial, the indorsed charge sheet and allied papers should be promptly transmitted to the trial counsel.”

(dddd) The Discussion following R.C.M. 601(e)(2) is removed.

(eeee) The Discussion following R.C.M. 601(g) is redesignated to follow R.C.M. 601(g)(2) and a second paragraph to immediately follow the first paragraph is added to read as follows:

“The transfer process is subject to the limitations contained in these rules, including the requirement that only a special trial counsel may withdraw, dismiss, or refer charges over which a special trial counsel has exercised authority and has not deferred.”

(ffff) The last sentence in the Discussion following R.C.M. 603(e) is revised to read as follows:

“Except for charges over which a special trial counsel has exercised authority and has not deferred, a trial counsel acting under this provision ordinarily should consult with the convening authority before making any changes that, even though minor, change the nature or seriousness of the offense.”

(gggg) The Discussion following R.C.M. 604(a) is redesignated to follow R.C.M. 604(a)(2) and the last paragraph in the Discussion is revised to read as follows:

“Except for charges over which a special trial counsel has exercised authority and has not deferred, charges that have been properly referred to a court-martial may be withdrawn only by

the direction of the convening authority or a superior competent authority in the exercise of that officer's independent judgment. The trial counsel may withdraw charges or specifications by lining out the affected charges or specifications, renumbering remaining charges or specifications as necessary, and initialing the changes. Charges and specifications withdrawn before commencement of trial will not be brought to the attention of the members. When charges or specifications are withdrawn after they have come to the attention of the members, the military judge must instruct them that the withdrawn charges or specifications may not be considered for any reason."

(hhhh) The third and fourth paragraphs of R.C.M. 604(b) are revised to read as follows:

"Improper reasons for withdrawal include an intent to interfere with the free exercise by the accused of constitutional rights or rights provided under the UCMJ, or with the impartiality of a court-martial. A withdrawal is improper if it was not directed personally and independently by the convening authority, a special trial counsel, or a superior competent authority.

Whether the reason for a withdrawal is proper, for purposes of the propriety of a later referral, depends in part on the stage in the proceedings at which the withdrawal takes place. Before arraignment, there are many reasons for a withdrawal that will not preclude another referral. These include receipt of additional charges; absence of the accused; reconsideration by the convening authority, a special trial counsel, or a superior competent authority of the seriousness of the offenses; questions concerning the mental capacity of the accused; and routine duty rotation of the personnel constituting the court-martial. Charges withdrawn after arraignment may be referred to another court-martial under some circumstances. For example, it is permissible to refer charges that were withdrawn pursuant to a plea agreement if the accused fails to fulfill the terms of the agreement. *See* R.C.M. 705. Charges withdrawn after some evidence on the general issue of guilt is introduced may be re-referred only under the narrow circumstances described in the rule."

(iiii) The Discussion following R.C.M. 701(b)(1)(B) is revised to read as follows:

"Discussion

See R.C.M. 701(f) for information that would not be subject to disclosure."

(jjjj) The second paragraph of the Discussion following R.C.M. 702(e)(9) is revised to read as follows:

"The authority who ordered the deposition should forward copies of the transcript of the deposition to the parties."

(kkkk) A Discussion following R.C.M. 703(d)(3)(C) is added to read as follows:

"Discussion

See R.C.M. 701(g)(3) Discussion.

Notice will include the name and contact information for the expert consultant or expert witness."

(llll) The Discussion after R.C.M. 703(g)(3)(B) is revised to read as follows:

“Discussion

A subpoena normally is prepared, signed, and issued in duplicate on official forms. See DD Form 453 for a template subpoena with certificate of service.”

(mmmm) A Discussion following R.C.M. 703(g)(3)(E)(iii) is added to read as follows:

“Discussion

When detailed to a general or special court-martial, a special trial counsel may issue a subpoena pursuant to R.C.M. 703(g)(3)(E)(iii). *See* R.C.M. 103(26).”

(nnnn) A Discussion following R.C.M. 703 (g)(3)(I) is added to read as follows:

“Discussion

See RCM 703(g)(3)(C)(ii) regarding the ability of a victim named in a specification to move for relief or otherwise object under R.C.M. 703(g)(3)(I).”

(oooo) The Discussion following the introductory portion of R.C.M. 704(c) is redesignated to follow R.C.M. 704(c)(2) and the first and second paragraphs are revised to read as follows:

“Only special trial counsel designated by the Secretary concerned, general court-martial convening authorities, and their designees are authorized to grant immunity. However, in some circumstances, when a person testifies or makes statements pursuant to a promise of immunity, or a similar promise, by a person with apparent authority to make it, such testimony or statements and evidence derived from them may be inadmissible in a later trial. Under some circumstances, a promise of immunity by someone other than a general court-martial convening authority, special trial counsel designated by the Secretary concerned, or their designee may bar prosecution altogether. Persons not authorized to grant immunity should exercise care when dealing with accused or suspects to avoid inadvertently causing statements to be inadmissible or prosecution to be barred.

When the victim of an alleged offense requests an expedited response to a request for immunity for misconduct that is collateral to the underlying offense, the convening authority, special trial counsel designated by the Secretary concerned, or their designee should respond to the request as soon as practicable.”

(pppp) The Discussion following R.C.M. 704(c)(1) is redesignated to follow R.C.M. 704(c)(3).

(qqqq) The Discussion following R.C.M. 704(c)(3) is redesignated to follow R.C.M. 704(c)(5)(B) and the second paragraph is revised to read as follows:

“Department of Defense Instruction 5525.07 (March 5, 2020) provides: “A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, will be forwarded to the General Counsel of the Department of Defense for the

purpose of consultation with the [Department of Justice (DOJ)]. The General Counsel of the Department of Defense will obtain the views of other appropriate elements of DoD that should be considered during consultation with DOJ.””

(rrrr) The Discussion following R.C.M. 704(d) is redesignated to follow R.C.M. 704(d)(2) and the first paragraph is revised to read as follows:

“A person who refuses to testify despite a valid grant of immunity may be prosecuted for such refusal. Persons subject to the UCMJ may be charged under Article 131d. A grant of immunity removes the right to refuse to testify or make a statement on self-incrimination grounds. It does not, however, remove other privileges against disclosure of information.”

(ssss) The Discussion following R.C.M. 705(a) is revised to read as follows:

“Discussion

The authority of convening authorities or special trial counsel to refer cases to trial and approve plea agreements extends only to trials by court-martial. To ensure that such actions do not preclude appropriate action by federal civilian authorities in cases likely to be prosecuted in the United States District Courts, convening authorities or special trial counsel, when applicable, shall ensure that appropriate consultation under the “Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction” or its Coast Guard equivalent has taken place prior to trial by court-martial or approval of a plea agreement in cases where such consultation is required. *See* Appendix 3 and Appendix 4. Convening authorities and special trial counsel should also review and consider Appendix 2.1 (Disposition Guidance) for guidance concerning the disposition of charges and specifications through plea agreements.”

(tttt) The Discussion following R.C.M. 705(b)(2)(C) is revised to read as follows:

“Discussion

A convening authority or special trial counsel may withdraw certain specifications and/or charges from a court-martial and dismiss them if the accused fulfills the accused’s promises in the agreement. Except when jeopardy has attached (*see* R.C.M. 907(b)(2)(C)), such withdrawal and dismissal does not bar later reinstatement of the charges by special trial counsel or the same or different convening authority. A judicial determination that the accused breached the plea agreement is not required prior to reinstatement of withdrawn or dismissed specifications and/or charges. If the defense moves to dismiss the reinstated specifications and/or charges on the grounds that the government remains bound by the terms of the plea agreement, the government will be required to prove by a preponderance of the evidence that the accused has breached the terms of the plea agreement. If the agreement is intended to grant immunity to an accused, see R.C.M. 704.”

(uuuu) The third sentence in the Discussion following R.C.M. 705(e)(2) is revised to read as follows:

“For example, if the convening authority or special trial counsel agrees to withdraw certain specifications, or if the accused agrees to waive the right to an Article 32 preliminary hearing or the right to elect sentencing by members, this should be stated.”

(vvvv) The Discussion following R.C.M. 706(c)(3)(C) is revised to read as follows:

“Discussion

Based on the report, further action in the case may be suspended; the charges may be dismissed by the convening authority or special trial counsel; administrative action may be taken to discharge the accused from the service; or, subject to Mil. R. Evid. 302, the charges may be tried by court-martial.”

(www) The second sentence in the first paragraph and the last paragraph in the Discussion following R.C.M. 707(c)(1) is removed.

(xxxx) The Discussion following R.C.M. 707(e) is removed.

(yyyy) The first sentence in the Discussion following R.C.M. 801(d) is revised to read as follows:

“A report of the matter may be made to the referral authority after trial.”

(zzzz) The Discussion following R.C.M. 804(a)(4)(C) is revised to read as follows:

“Discussion

See paragraph 030706 of the Joint Travel Regulations Uniformed Service Members and DoD Civilian Employees, dated 1 September 2023.”

(aaaa) The first paragraph in the Discussion following R.C.M. 806(a) is revised to read as follow:

“Because of the requirement for public trials, courts-martial must be conducted in facilities that can accommodate a reasonable number of spectators. Military exigencies may occasionally make attendance at courts-martial difficult or impracticable, as, for example, when a court-martial is conducted on a ship at sea or in a unit in a combat zone. These exigencies do not violate this rule. However, such exigencies should not be manipulated to prevent attendance at a court-martial. The requirements of this rule may be met even though only service members are able to attend a court-martial. Although not required, service members should be encouraged to attend courts-martial.”

(bbbb) The Discussion following R.C.M. 804(e)(1) is redesignated to follow R.C.M. 804(a)(1)(A) and is revised to read as follows:

“Discussion

An accused has the right, as well as the obligation, to present a good military appearance at trial. An accused who refuses to present a proper military appearance before a court-martial may be compelled to do so.”

(ccccc) The Discussion following R.C.M. 804(c)(2) is redesignated to follow R.C.M. 804(a)(2)(B) and is revised to read as follows:

“Discussion

Express waiver. The accused may expressly waive the right to be present at trial proceedings. There is no right to be absent, however, and the accused may be required to be present over objection. Thus, an accused cannot frustrate efforts to identify the accused at trial by waiving the right to be present. The right to be present is so fundamental, and the Government’s interest in the attendance of the accused so substantial, that the accused should be permitted to waive the right to be present only for good cause, and only after the military judge explains to the accused the right, and the consequences of forgoing it, and secures the accused’s personal consent to proceeding without the accused.

Voluntary absence. In any case, the accused may forfeit the right to be present by being voluntarily absent after arraignment.

“Voluntary absence” means voluntary absence from trial. For an absence from court-martial proceedings to be voluntary, the accused must have known of the scheduled proceedings and intentionally missed them. For example, although an accused service member might voluntarily be absent without authority, this would not justify proceeding with a court-martial in the accused’s absence unless the accused was aware that the court-martial would be held during the period of the absence.

An accused who is in military custody or otherwise subject to military control at the time of trial or other proceeding may not properly be absent from the trial or proceeding without securing the permission of the military judge on the record.

The prosecution has the burden to establish by a preponderance of the evidence that the accused’s absence from trial is voluntary. Voluntariness may not be presumed, but it may be inferred, depending on the circumstances. For example, it may be inferred, in the absence of evidence to the contrary, that an accused who was present when the trial recessed and who knew when the proceedings were scheduled to resume, but who nonetheless is not present when court reconvenes at the designated time, is absent voluntarily.

Where there is some evidence that an accused who is absent for a hearing or trial may lack mental capacity to stand trial, capacity to voluntarily waive the right to be present for trial must be shown. *See* R.C.M. 909.

Subsection (1) authorizes but does not require trial to proceed in the absence of the accused upon the accused’s voluntary absence. When an accused is absent from trial after arraignment, a continuance or a recess may be appropriate, depending on all the circumstances.

Removal for disruption. Trial may proceed without the presence of an accused who has disrupted the proceedings, but only after at least one warning by the military judge that such behavior may result in removal from the courtroom. In order to justify removal from the proceedings, the accused’s behavior should be of such a nature as to materially interfere with the conduct of the proceedings.

The military judge should consider alternatives to removal of a disruptive accused. Such alternatives include physical restraint (such as binding, shackling, and gagging) of the accused, or physically segregating the accused in the courtroom. Such alternatives need not be tried before removing a disruptive accused under subsection (2). Removal may be preferable to such an

alternative as binding and gagging, which can be an affront to the dignity and decorum of the proceedings.

Disruptive behavior of the accused may also constitute contempt. *See* R.C.M. 809. When the accused is removed from the courtroom for disruptive behavior, the military judge should—

(A) Afford the accused and defense counsel ample opportunity to consult throughout the proceedings. To this end, the accused should be held or otherwise required to remain in the vicinity of the trial, and frequent recesses permitted to allow counsel to confer with the accused.

(B) Take such additional steps as may be reasonably practicable to enable the accused to be informed about the proceedings. Although not required, technological aids, such as closed-circuit television or audio transmissions, may be used for this purpose.

(C) Afford the accused a continuing opportunity to return to the courtroom upon assurance of good behavior. To this end, the accused should be brought to the courtroom at appropriate intervals and offered the opportunity to remain upon good behavior.

(D) Ensure that the reasons for removal appear in the record.”

(ddddd) The Discussion following R.C.M. 805(b) is redesignated to follow R.C.M. 804(c)(1) and the second paragraph is removed.

(eeee) The Discussion following R.C.M. 805(d)(1) is redesignated to follow R.C.M. 804(c)(2).

(ffff) The Discussion following R.C.M. 805(c) is redesignated to follow R.C.M. 804(d).

(ggggg) A Discussion following R.C.M. 804(e) is added to read as follows:

“Discussion

The ability of a victim to attend a court-martial proceeding via remote means is not intended to circumvent an accused’s constitutional rights.”

(hhhhh) The fourth sentence of the Discussion following R.C.M. 812 is revised to read as follows:

“A common trial is ordered in the discretion of the referral authority by endorsement on the charge sheet.”

(iiii) The second paragraph of the Discussion following R.C.M. 905(g) is revised to read as follows:

“The determination must have been made by a court-martial, reviewing authority, or appellate court, or by another judicial body, such as a United States court. A pretrial determination by a convening authority or a special trial counsel is not a final determination under this rule, although some decisions may bind the Government under other rules.”

(jjjj) The Discussion following R.C.M. 906(b)(10)(B) is revised to read as follows:

“Discussion

Joinder of minor and major offenses, or of unrelated offenses, is not alone a sufficient ground to sever offenses. For example, when an essential witness as to one offense is unavailable, it might be appropriate to sever that offense to prevent violation of the accused's right to a speedy trial."

(kkkkk) Discussion following R.C.M. 906(b)(12)(B) is revised to read as follows:

"Discussion

See RCM 1002(b) (providing for how the "military judge shall determine the sentence of a general or special court-martial . . . in all noncapital cases.")."

(lllll) The fourth paragraph in the Discussion following R.C.M. 907(b)(2)(B) is revised to read as follows:

"If sworn charges have been received by an officer exercising summary court-martial jurisdiction over the command within the period of the statute, minor amendments (*see R.C.M. 603(a)*) may be made to the specification after the statute of limitations has run. However, if new charges are drafted or a major amendment made (*see R.C.M. 603(d)*) after the statute of limitations has run, prosecution is barred. The date of receipt of sworn charges is excluded when computing the appropriate statutory period. The date of the offense is included in the computation of the elapsed time. Article 43(g) allows the Government time to reinstate charges dismissed as defective or insufficient for any cause. The Government would have up to six months to reinstate the charges if the original period of limitations has expired or will expire within six months of the dismissal."

(mmmmm) Discussion following R.C.M. 908(c)(3) is revised to read as follows:

"Discussion

A special trial counsel may request that the applicable Judge Advocate General certify a case to the Court of Appeals for the Armed Forces. The United States may appeal a sentence in accordance with Article 56(d) and the procedures set forth in R.C.M. 1117."

(nnnnn) The Discussion following the sentence immediately after R.C.M. 910(a)(1)(D) is redesignated to follow R.C.M. 910(a)(1)(D) and is revised to read as follows:

"Discussion

See paragraph 3, Part IV and Appendix 12A concerning lesser included offenses. When the plea is to a lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification accurately reflecting the plea and request that the revised specification be included in the record as an appellate exhibit.

A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. *See also R.C.M. 910(g)*.

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. *See R.C.M. 1001(b)(4)*."

(ooooo) The Discussion following R.C.M. 910(f)(5) is removed.

(ppppp) The Discussion following R.C.M. 910(g) is removed.

(qqqqq) The Discussion following R.C.M. 910(j) is revised to read as follows.

“Discussion

Other errors with respect to the plea inquiry or acceptance of a plea under this rule are subject to waiver if not brought to the attention of the military judge.”

(rrrrr) The Discussion following R.C.M. 911 is redesignated to follow R.C.M. 911(d) and is revised to read as follows:

“Discussion

The members are seated with the president, who is the senior member, in the center, and the other members alternately to the president’s right and left according to rank. If the rank of a member is changed, or if the membership of the court-martial changes, the members should be reseated accordingly.

When an accused’s request to be tried by military judge alone is approved, the court-martial is ordinarily assembled immediately following approval of the request.

In a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the court-martial is assembled prior to beginning of the trial on the merits.

Assembly of the court-martial is significant because it marks the point after which: substitution of the members and military judge may no longer take place without good cause (*see* Article 29, R.C.M. 505, 902, 912); the accused may no longer, as a matter of right, request trial by military judge alone or withdraw such a request previously approved (*see* Article 16; R.C.M. 903(d)); and the accused may no longer request members even with the permission of the military judge, or withdraw from a request for members (*see* Article 25(c)(2); R.C.M. 903(d)).”

(sssss) The Discussion following R.C.M. 912(g)(1) is redesignated to follow R.C.M. 912(g)(2) and is revised to read as follows:

“Discussion

This rule allows for each party to exercise an additional preemptory challenge against a detailed member whose presence is directed in accordance with R.C.M. 912A, after examination and challenges for cause. *See* Article 41(c). If a military judge orders the presence of additional detailed members for examination in accordance with R.C.M. 911, those additional detailed members must be subject to a preemptory challenge prior to impanelment. If the convening authority details additional members, those additional detailed members must be subject to a preemptory challenge prior to impanelment.

Generally, no reason is necessary for a preemptory challenge. *But see Batson v. Kentucky* 476 U.S. 79 (1986); *United States v. Tulloch*, 47 M.J. 283 (C.A.A.F. 1997); *United States v. Curtis*, 33 M.J. 101 (C.M.A. 1991), *cert. denied*, 502 U.S. 1097 (1992); *United States v. Moore*, 28 M.J. 366 (C.M.A. 1989); *United States v. Santiago-Davilla*, 26 M.J. 380 (C.M.A. 1988).”

(ttttt) The Discussion following R.C.M. 915(c)(1) is revised to read as follows:

“Discussion

Upon declaration of a mistrial, the affected charges are returned to the convening authority or special trial counsel, as applicable, who may refer them anew or otherwise dispose of them. *See* R.C.M. 401-407.”

(uuuuu) The second sentence of the second paragraph of the Discussion following R.C.M. 916(a) is revised to read as follows:

“As to evidence of the accused’s good character, see Mil. R. Evid. 404.”

(vvvvv) The last paragraph of the Discussion following R.C.M. 916(b)(3) is revised to read as follows:

“See R.C.M. 920(e) concerning instructions on defenses.”

(wwwww) The first paragraph of the Discussion following R.C.M. 916(e)(1)(B) is revised to read as follows:

“The words “involving deadly force” describe the factual circumstances of the case, not specific assault offenses. If the accused is charged with simple assault, battery, or any form of aggravated assault, or if simple assault, battery, or any form of aggravated assault is at issue as a lesser included offense, the accused may rely on this subparagraph if the test specified in subparagraphs (A) and (B) is satisfied.”

(xxxxx) The last paragraph of the Discussion following R.C.M. 918(b) is revised to read as follows:

“Members may not make special findings. Special findings do not include, for example, the members’ deliberation and voting on aggravating factors in a capital case under RCM 1004(c), or on the defense of lack of mental responsibility under R.C.M. 921(c)(4).”

(yyyyy) The Discussion following R.C.M. 921(c)(2) is revised to read as follows:

“Discussion

In computing the number of votes required to convict, any fraction of a vote is rounded up to the next whole number. For example, in a general court-martial with eight members, the concurrence of at least six members is required to convict. In the unusual case where a member has been excused after impanelment, resulting in a panel of seven members, the concurrence of at least six members is required to convict. Likewise, if there are only six members, the concurrence of at least five members is required to convict. In a case that was referred as capital with 12 members, the concurrence of at least nine members is required to convict. However, a sentence of death is not authorized without either the members’ unanimous finding of guilty to a death eligible offense, or the military judge’s acceptance of the accused’s plea of guilty to such an offense, and the members’ unanimous finding of at least one aggravating factor, unanimous finding that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, and unanimous determination that the sentence for the offense shall be death. *See*

R.C.M. 1004(a), (g). The military judge should instruct the members on the specific number of votes required to convict.”

(zzzzz) The Discussion following R.C.M. 922(a) is removed.

(aaaaa) A Discussion is added following R.C.M. 925(d) to read as follows:

“Discussion

This rule is applicable only to sentencing proceedings in which death may not be adjudged. See R.C.M. 1004 for capital sentencing procedures.”

(bbbbbb) A Discussion following R.C.M. 1001(c)(2)(D)(i) is added to read as follows:

“Discussion

See Booth v. Maryland, 482 U.S. 496, 501-502, 507 n.10 (1987) (“the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence that does not relate to the circumstances of the crime”). *See also Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (per curiam) (holding that a state court of appeals “remains bound by *Booth*’s prohibition on characterizations and opinions from a victim’s family members about the crime, the defendant, and the appropriate sentence unless this Court reconsiders that ban.”).

(ccccc) The Discussion following R.C.M. 1002(a)(1) is revised to read as follows:

“Discussion

Under the UCMJ as amended through the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263 136 Stat. 2395 (2022), R.C.M. 1002(a)(1) prohibits a plea agreement for a term of imprisonment less than life, with the eligibility for parole, for convictions under Article 118(1) and 118(4). *See* Article 56 and R.C.M. 1003.”

(ddddd) The Discussion following R.C.M. 1002(b)(2) is removed.

(eeeeee) A Discussion following R.C.M. 1002(b) is added to read as follows:

“Discussion

The military judge should determine the appropriate amount of confinement or fine, if any, for each specification separately. The appropriate amount of confinement or fine that may be adjudged, if any, is at the discretion of the military judge subject to these rules.

Whether a term of confinement should run concurrently with another term of confinement should be determined only after determining the appropriate amount of confinement for each charge and specification. A military judge may exercise broad discretion in determining whether terms of confinement will run concurrently or consecutively consistent with R.C.M. 1002(c).

See R.C.M. 705(c)(2)(F) and 910(f)(5) regarding sentence limitations in plea agreements.”

(ffffff) The Discussions that followed the removed R.C.M. 1002(d)(2)(A) and R.C.M. 1002(d)(2)(B)(iv) are removed.

(gggggg) The Discussions that followed the paragraphs and subparagraphs of R.C.M. 1004 are removed.

(hhhhh) A Discussion following R.C.M. 1004(c)(1) is added to read as follows:

“Discussion

See paragraph 27, Part IV, for an explanation of “before or in the presence of the enemy.””

(iiiiii) A Discussion following R.C.M. 1004(c)(8) is added to read as follows:

“Discussion

Conduct amounts to “reckless indifference” when it evinces a wanton disregard of consequences under circumstances involving grave danger to the life of another, although no harm is necessarily intended. The accused must have had actual knowledge of the grave danger to others or knowledge of circumstances that would cause a reasonable person to realize the highly dangerous character of such conduct. In determining whether participation in the offense was major, the accused’s presence at the scene and the extent to which the accused aided, abetted, assisted, encouraged, or advised the other participants should be considered. *See United States v. Berg*, 31 M.J. 38 (C.M.A. 1990); *United States v. McMonagle* 38 M.J. 53 (C.M.A. 1993).”

(jjjjj) A Discussion following R.C.M. 1004(c)(11)(B) is added to read as follows:

“Discussion

Examples of substantial damage to the national security of the United States include: impeding the performance of a combat mission or operation; impeding the performance of an important mission in a hostile fire or imminent danger pay area (*see* 37 U.S.C. § 310(a)); and disclosing military plans, capabilities, or intelligence such as to jeopardize any combat mission or operation of the armed services of the United States or its allies or to materially aid an enemy of the United States.
See also R.C.M. 1004(b)(5).”

(kkkkk) A Discussion following R.C.M. 1004(d) is added to read as follows:

“Discussion

See R.C.M. 1001(d).”

(lllll) A Discussion following R.C.M. 1004(f)(1) is added to read as follows:

“Discussion

Requests for and objections to instructions should be resolved at an Article 39(a) session. *See* R.C.M. 801(e)(1)(C), 803.

The military judge is not required to give the specific instruction requested by counsel if the matter is adequately covered in the instructions.

The military judge should not identify the source of any instruction when addressing the members.

All written requests for instructions should be marked as appellate exhibits, whether or not they are given.”

(mmmmmm) A Discussion following R.C.M. 1004(f)(2) is added to read as follows:

“Discussion

A copy of any written instructions delivered to the members should be marked as an appellate exhibit.”

(nnnnnn) A Discussion following R.C.M. 1004(f)(3)(E) is added to read as follows:

“Discussion

For example, tailored instructions should reflect the considerations set forth in Article 56(c), including the reputation or record of the accused in the service for good conduct, efficiency, fidelity, courage, bravery, or other traits of good character, and any pretrial restraint imposed on the accused.”

(oooooo) A Discussion following R.C.M. 1004(g)(4)(D) is added to read as follows:

“Discussion

A determination by the members may be reconsidered only in accordance with R.C.M. 1004(i).”

(pppppp) A Discussion following R.C.M. 1004(h) is added to read as follows:

“Discussion

Ordinarily a worksheet should be provided to the members as an aid to putting the determination in proper form. If a worksheet has been provided, the military judge should examine it before announcing the determination. If the military judge intends to instruct the members after such examination, counsel should be permitted to examine the worksheet and to be heard on any instructions the military judge may give.

The president should not disclose any specific number of votes for or against any sentence.

If the sentence is ambiguous or apparently illegal, see R.C.M. 1004(i).

If the members voted unanimously for a sentence of death, the sentence worksheet shall indicate which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. *See* R.C.M. 1004(b)(8).”

(qqqqqq) A Discussion following R.C.M. 1004(i)(3)(D)(ii)(II) is added to read as follows:

“Discussion

After a determination has been adopted by secret ballot in closed session, no other vote may be taken on the sentence unless a vote to reconsider succeeds.”

(rrrrrr) A Discussion following R.C.M. 1004(j)(2)(C) is added to read as follows:

“Discussion

A sentence of death may not be ordered executed until approved by the President. *See* R.C.M. 1207. A sentence of death which has been finally ordered executed will be carried out in the manner prescribed by the Secretary concerned. *See* R.C.M. 1102(b)(5).”

(sssss) The Discussions following the paragraphs and subparagraphs of R.C.M. 1005 are removed.

(ttttt) A Discussion following R.C.M. 1005(e) is added to read as follows:

“Discussion

See R.C.M. 1111(c) for correcting errors after entry of judgment.”

(uuuuu) The Discussions following the paragraphs and subparagraphs of R.C.M. 1006 (now “reserved”) are removed.

(vvvvv) The Discussion following R.C.M. 1007(b)(2)(C) is revised to read as follows:

“Discussion

If the sentence announced by the military judge includes death, the military judge must also announce which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. *See* R.C.M. 1004(h).”

(wwwww) The Discussions following the paragraphs and subparagraphs of R.C.M. 1009 (now “reserved”) are removed.

(xxxxx) The Discussion following R.C.M. 1011 is revised to read as follows:

“Discussion

A court-martial and its personnel have certain powers and responsibilities following the trial. *See, e.g.,* R.C.M. 502(d)(4) Discussion (G), 502(d)(5) Discussion (E), 808, 1007, Chapter XI.”

(yyyyy) The second and third paragraphs of the Discussion following R.C.M. 1101(a)(2)(C) are revised to read as follows:

“The date that the sentence is adjudged is the date the sentence was announced. *See* Articles 53 and 57. The adjudged sentence may be modified by the convening authority or the military judge. *See generally* R.C.M.s 1104, 1109, and 1110.

See R.C.M. 1002(b) for military judge alone sentencing and R.C.M. 1004 for sentencing in capital cases by military judge and members.”

(zzzzz) A Discussion following R.C.M. 1101(e)(4) is added to read as follows:

“Discussion

Correcting the Statement of Trial Results after the convening authority makes a decision under R.C.M. 1109 or R.C.M. 1110 should not ordinarily trigger the need for the convening authority to reconsider clemency unless the original Statement of Trial Results prejudiced the accused’s ability to obtain relief under R.C.M. 1109 or R.C.M. 1110.”

(aaaaaaa) The first paragraph of the Discussion following R.C.M. 1102(b)(2)(D) is revised to read as follows:

“When an accused is convicted of two or more charges or specifications and sentencing is conducted in accordance with R.C.M. 1002(b) or 1004, the military judge must specifically state whether multiple terms of confinement for such offenses are to run concurrently or consecutively. *See* R.C.M. 1101.”

(bbbbbbb) The Discussion following R.C.M. 1103(f)(3) is redesignated to follow R.C.M. 1003(h)(3).

(ccccccc) A Discussion following R.C.M. 1104(e)(3) is added to read as follows:

“Discussion

The notification process under R.C.M. 1104(e) is addressed through such regulations as the Secretary concerned may prescribe.”

(ddddddd) The second paragraph of the Discussion following R.C.M. 1111(b)(2)(C)(ii) is revised to read as follows:

“See R.C.M. 1002(b) for military judge alone sentencing and R.C.M. 1004 for sentencing in capital cases by military judge and members.”

(eeeeeee) The Discussion following R.C.M. 1115(a) is revised to read as follows:

“Discussion

All general court-martial cases in which the judgment entered into the record includes a sentence of death and all other general and special courts-martial in which an accused does not affirmatively waive or withdraw an appeal in accordance with this rule and the judgment entered into the record includes a sentence of dismissal of a commissioned officer, cadet, or midshipman; dishonorable discharge or bad-conduct discharge; or confinement for two years or more receive automatic appellate review by a Court of Criminal Appeals. *See* Article 66(b)(3). All general and special courts-martial not subject to automatic appellate review are eligible for direct appellate review by a Court of Criminal Appeals upon the appeal of the accused if the judgment entered into the record includes a finding of guilt. *See* Article 66(b)(1). General and special courts-martial in which appellate review is waived or withdrawn or an appeal is not filed under Article 66(b)(1) are reviewed by an attorney under R.C.M. 1201. After the attorney’s review under R.C.M. 1201, such cases may also be submitted to the Judge Advocate General by application of the accused for post-final review. *See* R.C.M. 1201(h).”

(ffffff) The Discussion following R.C.M. 1115(d)(4) is removed.

(gggggg) The first sentence of the Discussion following R.C.M. 1201(h) is revised to read as follows:

“If the Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General may order any corrective action, including forwarding the case to the Court of Criminal Appeals for appropriate appellate review.”

(hhhhhh) The second paragraph of the Discussion following R.C.M. 1203(c) is revised to read as follows:

“If a Court of Criminal Appeals sets aside any finding of guilty or the sentence, it may, except as to findings set aside for lack of sufficient evidence in the record to support the findings, authorize an appropriate type of rehearing or reassess the sentence as appropriate. See R.C.M. 810 concerning rehearings. If the Court of Criminal Appeals sets aside all the findings and the sentence and does not authorize a rehearing, it must order the charges dismissed. See Article 59(a) and Article 66.”

(iiiiii) The Discussion following R.C.M. 1210(f)(3) is revised to read as follows:

“Examples of fraud on a court-martial which may warrant granting a new trial are: confessed or proved perjury in testimony or forgery of documentary evidence that clearly had a substantial contributing effect on a finding of guilty and without which there probably would not have been a finding of guilty of the offense; willful concealment by the prosecution from the defense of evidence favorable to the defense that, if presented to the court-martial, would probably have resulted in a finding of not guilty; and willful concealment of a material ground for challenge of the military judge or any member or of the disqualification of counsel or the convening authority, when the basis for challenge or disqualification was not known to the defense at the time of trial.”

(jjjjjj) The Discussion following R.C.M. 1303 is removed.

(kkkkkk) The first sentence of the Discussion following R.C.M. 1304(b) is revised to read as follows:

“The Guide for Summary Courts-Martial is found at Appendix 8.”

(llllll) The first sentence of the Discussion following R.C.M. 1305(a) is revised to read as follows:

“DD Form 2329 provides a sample Record of Trial by Summary Court-Martial.”

Sec. 2. The Discussions to Part III are amended as follows:

A Discussion to follow M.R.E. 311(c)(3)(C) is added to read as follows:

“Discussion

See U.S. v. Perkins, 78 M.J. 381 (C.A.A.F. 2019).”

APPENDIX 2

UNIFORM CODE OF MILITARY JUSTICE

Note: Text contains those laws within chapter 47 of title 10, United States Code, that are in effect as of December 27, 2023. It does not include any amendments made after the enactment of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395 (2022). While this publication does not represent the official version of any Federal law, substantial efforts have been made to ensure the accuracy of its contents. The official and most up-to-date version of chapter 47 can be found in the United States Code as published by the Office of the Law Revision Counsel and available online at <https://uscode.house.gov>.

CHAPTER 47. UNIFORM CODE OF MILITARY JUSTICE

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SUBCHAPTER I—GENERAL PROVISIONS

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§801. Art. 1. Definitions

In this chapter (the Uniform Code of Military justice):

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a)).

(11) The term "military magistrate" means a commissioned officer certified for duty as a military magistrate in accordance with section 826a of this title (article 26a).

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army, the Navy, or the Air Force;

(B) an officer of the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term "record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

(17) The term "covered offense" means—

(A) an offense under section 917a (article 117a), section 918 (article 118), section 919 (article 119), section 119a (article 119a), section 920 (article 120), section 920a (article 120a), section 920b (article 120b), section 920c (article 120c), section 925 (article 125), section 928b (article 128b), section 930 (article 130), section 932

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(article 132), or the standalone offense of child pornography punishable under section 934 (article 134) of this title;

(B) a conspiracy to commit an offense specified in subparagraph (A) as punishable under section 881 of this title (article 81);

(C) a solicitation to commit an offense specified in subparagraph (A) as punishable under section 882 of this title (article 82); or

(D) an attempt to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 880 of this title (article 80).

(18) The term “special trial counsel” means a judge advocate detailed as a special trial counsel in accordance with section 824a of this title (article 24a) and includes a judge advocate appointed as a lead special trial counsel pursuant to section 1044f(a)(2) of this title.

Office of Law Revision Counsel, United States Code, *18 USC 801: Article 1. Definitions* (Sep. 13, 2023, 5:17 PM), [https://uscode.house.gov/view.xhtml?req=\(title:10%20section:801%20edition:prelim\) provides](https://uscode.house.gov/view.xhtml?req=(title:10%20section:801%20edition:prelim) provides):

“*Pub. L. 117-263, div. title V, § 541(b), Dec. 23, 2022, 136 Stat. 2580, provided that, effective Jan. 1, 2025, and applicable with respect to offenses that occur after that date, paragraph (17)(A) of this second is amended:*

(1) by striking “or”; and

(2) by striking “of this title” and inserting “, or the standalone offense of sexual harassment punishable under section 934 (article 134) of this title in each instance in which a formal complaint is made and such formal complaint is substantiated in accordance with regulations prescribed by the Secretary concerned.”

§802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person’s active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) a preliminary hearing under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

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(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876(d)(2) of this title (article 76b(d)(2)).

§803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

§804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the

accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

§805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

§806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c)(1) No person who, with respect to a case, serves in a capacity specified in paragraph (2) may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.

(2) The capacities referred to in paragraph (1) are, with respect to the case involved, any of the following:

(A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge.

(B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as

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a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

§806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military appellate judge, military judge, or military magistrate to perform the duties of the position involved. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

§806b. Art. 6b. Rights of the victim of an offense under this chapter

(a) RIGHTS OF A VICTIM OF AN OFFENSE UNDER THIS CHAPTER.—A victim of an offense under this chapter has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
 - (B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.
 - (C) A court-martial relating to the offense.
 - (D) A post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.
 - (E) A public proceeding of the service clemency and parole board relating to the offense.
 - (F) The release or escape of the accused, unless such notice may endanger the safety of any person.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard at any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
 - (B) A sentencing hearing relating to the offense.
 - (C) A public proceeding of the service clemency and parole board relating to the offense.
- (5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).
- (6) The right to receive restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be informed in a timely manner of any plea agreement, separation-in-lieu-of-trial agreement, or non-prosecution agreement relating to the offense, unless providing such information

would jeopardize a law enforcement proceeding or would violate the privacy concerns of an individual other than the accused.

(9) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

(b) VICTIM OF AN OFFENSE UNDER THIS CHAPTER DEFINED.—In this section, the term “victim of an offense under this chapter” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter.

(c) APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section. However, in no event may the individual so designated be the accused.

(d) RULE OF CONSTRUCTION.—Nothing in this section (article) shall be construed—

- (1) to authorize a cause of action for damages;
- (2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages; or
- (3) to impair the exercise of discretion under sections 830 and 834 of this title (articles 30 and 34).

(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.—

(1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3)(A) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, subject to section 830a of this title (article 30a).

(B) To the extent practicable, a petition for a writ of mandamus described in this subsection shall have priority over all proceedings before the Court of Criminal Appeals.

(C) Review of any decision of the Court of Criminal Appeals on a petition for a writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

- (A) This section (article).
- (B) Section 832 (article 32) of this title.
- (C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

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(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(f) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED OFFENSE.—

(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense under this chapter who counsel for the Government intends to call as a witness at a proceeding under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victim's Counsel or other counsel for the victim, if applicable.

(2) If requested by an alleged victim who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the Government, a counsel for the victim, or, if applicable, a victim advocate.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.
807.	7. Apprehension.
808.	8. Apprehension of deserters.
809.	9. Imposition of restraint.
810.	10. Restraint of persons charged.
811.	11. Reports and receiving of prisoners.
812.	12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others.
813.	13. Punishment prohibited before trial.
814.	14. Delivery of offenders to civil authorities.

§807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

§808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

§809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

§810. Art. 10. Restraint of persons charged

(a) IN GENERAL.—

(1) Subject to paragraph (2), any person subject to this chapter who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require.

(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

(b) NOTIFICATION TO ACCUSED AND RELATED PROCEDURES.—

(1) When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken—

(A) to inform the person of the specific offense of which the person is accused; and

(B) to try the person or to dismiss the charges and release the person.

(2) To facilitate compliance with paragraph (1), the President shall prescribe regulations setting forth procedures relating to referral for trial, including procedures for prompt forwarding of the charges and specifications and, if applicable, the preliminary hearing report submitted under section 832 of this title (article 32).

§811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

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§812. Art. 12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others

No member of the armed forces may be placed in confinement in immediate association with—

- (1) enemy prisoners; or
- (2) other individuals—
 - (A) who are detained under the law of war and are foreign nationals; and
 - (B) who are not members of the armed forces.

§813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

§814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

Sec.	Art.
815.	15. Commanding officer's non-judicial punishment.

§815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer

exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

- (1) upon officers of his command—
 - (A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;
 - (B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—
 - (i) arrest in quarters for not more than 30 consecutive days;
 - (ii) forfeiture of not more than one-half of one month's pay per month for two months;
 - (iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;
 - (iv) detention of not more than one-half of one month's pay per month for three months;
 - (2) upon other personnel of his command—
 - (A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;
 - (B) correctional custody for not more than seven consecutive days;
 - (C) forfeiture of not more than seven days' pay;
 - (D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
 - (E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;
 - (F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;
 - (G) detention of not more than 14 days' pay;
 - (H) if imposed by an officer of the grade of major or lieutenant commander, or above—
 - (i) the punishment authorized under clause (A);
 - (ii) correctional custody for not more than 30 consecutive days;
 - (iii) forfeiture of not more than one-half of one month's pay per month for two months;
 - (iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;
 - (v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;
 - (vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;
 - (vii) detention of not more than one-half of one month's pay per month for three months. Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each.

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Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, “correctional custody” is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

- (1) arrest in quarters to restriction;
- (2) confinement to correctional custody;
- (3) correctional custody or confinement to extra duties or restriction, or both; or

(4) extra duties to restriction; the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

- (1) arrest in quarters for more than seven days;
- (2) correctional custody for more than seven days;
- (3) forfeiture of more than seven days' pay;
- (4) reduction of one or more pay grades from the fourth or a higher pay grade;
- (5) extra duties for more than 14 days;
- (6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay; the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or

omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV. COURT-MARTIAL JURISDICTION

Sec.	Art.
816.	16. Courts-martial classified.
817.	17. Jurisdiction of courts-martial in general.
818.	18. Jurisdiction of general courts-martial.
819.	19. Jurisdiction of special courts-martial.
820.	20. Jurisdiction of summary courts-martial.
821.	21. Jurisdiction of courts-martial not exclusive.

§816. Art. 16. Courts-martial classified

(a) IN GENERAL.—The three kinds of courts-martial in each of the armed forces are the following:

- (1) General courts-martial, as described in subsection (b).
- (2) Special courts-martial, as described in subsection (c).
- (3) Summary courts-martial, as described in subsection (d).

(b) GENERAL COURTS-MARTIAL.—General courts-martial are of the following three types:

(1) A general court-martial consisting of a military judge and eight members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) In a capital case, a general court-martial consisting of a military judge and the number of members determined under section 825a of this title (article 25a), subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(3) A general court-martial consisting of a military judge alone, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(c) SPECIAL COURTS-MARTIAL.—Special courts-martial are of the following two types:

(1) A special court-martial, consisting of a military judge and four members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) A special court-martial consisting of a military judge alone—

(A) if the case is so referred by the convening authority, subject to section 819 of this title (article 19) and such limitations as the President may prescribe by regulation; or

(B) if the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

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(d) SUMMARY COURT-MARTIAL.—A summary court-martial consists of one commissioned officer.

§817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

§818. Art. 18. Jurisdiction of general courts-martial

(a) Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

(b) A general court-martial of the kind specified in section 816(b)(3) of this title (article 16(b)(3)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(c) Consistent with sections 819 and 820 of this title (articles 19 and 20), only general courts-martial have jurisdiction over the following offenses:

(1) A violation of subsection (a) or (b) of section 920 of this title (article 120).

(2) A violation of subsection (a) or (b) of section 920b of this title (article 120b).

(3) An attempt to commit an offense specified in paragraph (1) or (2) that is punishable under section 880 of this title (article 80).

§819. Art. 19. Jurisdiction of special courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

(b) ADDITIONAL LIMITATION.—Neither a bad-conduct discharge, nor confinement for more than six months, nor forfeiture of pay for more than six months may be adjudged if charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)).

(c) MILITARY MAGISTRATE.—If charges and specifications are referred to a special court-martial consisting of a military judge alone

under section 816(c)(2)(A) of this title (article 16(c)(2)(A)), the military judge, with the consent of the parties, may designate a military magistrate to preside over the special court-martial.

§820. Art. 20. Jurisdiction of summary courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(b) NON-CRIMINAL FORUM.—A summary court-martial is a non-criminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

§821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
824a.	24a.	Special trial counsel.
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of court-martial members in capital cases.
826.	26.	Military judge of a general or special courts-
826a.	26a.	Military magistrates
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Assembly and impaneling of members; detail of members and military judges.

§822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—
(1) the President of the United States;

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- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (6) the commander of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps, or the commanding officer of a corresponding unit of the Space Force;
- (8) any other commanding officer designated by the Secretary concerned; or
- (9) any other commanding officer in any of the armed forces when empowered by the President.

(b)(1) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a general court-martial to which charges and specifications were referred by a special trial counsel in accordance with this chapter.

§823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force or Space Force military installation, auxiliary air field, or other place where members of the Army, the Air Force, or the Space Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force or a corresponding unit of the Space Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b)(1) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(2) A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special court-martial to which charges and specifications were referred by a special trial counsel in accordance with this chapter.

§824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

- (1) any person who may convene a general or special court-martial;
- (2) the commanding officer of a detached company, or other detachment of the Army;
- (3) the commanding officer of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force; or
- (4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

§824a. Art. 24a. Special trial counsel

(a) **DETAIL OF SPECIAL TRIAL COUNSEL.**—Each Secretary concerned shall promulgate regulations for the detail of commissioned officers to serve as special trial counsel.

(b) **QUALIFICATIONS.**—A special trial counsel shall be a commissioned officer who—

(1)(A) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(B) is certified to be qualified, by reason of education, training, experience, and temperament, for duty as special trial counsel by—

(i) the Judge Advocate General of the armed force of which the officer is a member; or

(ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and

(2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

(c) **DUTIES AND AUTHORITIES.**—

(1) **IN GENERAL.**—Special trial counsel shall carry out the duties described in this chapter and any other duties prescribed by the Secretary concerned, by regulation.

(2) **DETERMINATION OF COVERED OFFENSE; RELATED CHARGES.**—

(A) **AUTHORITY.**—A special trial counsel shall have exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense in accordance with this chapter. Any determination to prefer or refer charges shall not act to disqualify the special trial counsel as an accuser.

(B) **KNOWN AND RELATED OFFENSES.**—If a special trial counsel determines that a reported offense is a covered offense, the special trial counsel may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.

(3) **DISMISSAL; REFERRAL; PLEA BARGAINS.**—Subject to paragraph (5), with respect to changes and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

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(A) on behalf of the Government, withdraw or dismiss the charges and specifications or make a motion to withdraw or dismiss the charges and specifications;

(B) refer the charges and specifications for trial by a special or general court-martial;

(C) enter into a plea agreement; and

(D) determine if an authorized rehearing is impracticable.

(4) **BINDING DETERMINATION.**—The determination of a special trial counsel to refer charges and specifications to a court-martial for trial shall be binding on any applicable convening authority for the referral of such charges and specifications.

(5) **DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.**—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.

§825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence

the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

Office of Law Revision Counsel, United States Code, *10 U.S.C. 825: Art. 25. Who may serve on courts-martial* (Sep. 13, 2023, 5:24 PM) (<https://uscode.house.gov> (go to “Jump to” and insert “10” in “Title” and “825” in “Section”)) provides:

“Pub. L. 117-263, div. A, title V, § 543(a), (b), Dec. 23, 2022, 136 Stat. 2582, provided that, effective on the date that is two years after Dec. 23, 2022, and applicable with respect to courts-martial convened on or after that date, section (e) of this section is amended by adding at the end the following new paragraph:

(4) When convening a court-martial, the convening authority shall detail as members thereof members of the armed forces under such regulations as the President may prescribe for the randomized selection of qualified personnel, to the maximum extent practicable.”

§825a. Art. 25a. Number of court-martial members in capital cases

(a) **IN GENERAL.**—In a case in which the accused may be sentenced to death, the number of members shall be 12.

(b) **CASE NO LONGER CAPITAL.**—Subject to section 829 of this title (article 29)—

(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.

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§826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be designated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge's performance of duty as a military judge.

(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

(B) may perform duties of a judicial or nonjudicial nature other than those relating to the officer's primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge may be detailed under subsection (a) to a court-martial or a proceeding under section 830a of this title (article 30a) that is convened in a different armed force, when so permitted by the Judge Advocate General of the armed force of which the military judge is a member.

(g) In accordance with regulations prescribed by the President, each Judge Advocate General shall designate a chief trial judge from among the members of the applicable trial judiciary.

§826a. Art. 26a. Military magistrates

(a) **QUALIFICATIONS.**—A military magistrate shall be a commissioned officer of the armed forces who—

(1) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(2) is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which the officer is a member.

(b) **DUTIES.**—In accordance with regulations prescribed by the Secretary concerned, in addition to duties when designated under section 819 of this title or section 830a of this title (articles 19 or 30a), a military magistrate may be assigned to perform other duties of a nonjudicial nature.

§827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties by the Judge Advocate General, under such rules as the President may prescribe.

(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(e) For each general and special court-martial for which charges and specifications were referred by a special trial counsel—

(1) a special trial counsel shall be detailed as trial counsel; and

(2) a special trial counsel may detail other trial counsel as necessary who are judge advocates.

§828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or

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court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

§829. Art. 29. Assembly and impaneling of members; detail of new members and military judges

(a) ASSEMBLY.—The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused—

- (1) as a result of a challenge;
- (2) under subsection (b)(1)(B); or
- (3) by order of the military judge or the convening authority for disability or other good cause.

(b) IMPANELING.—

(1) Under rules prescribed by the President, the military judge of a general or special court-martial with members shall—

(A) after determination of challenges, impanel the court-martial; and

(B) excuse the members who, having been assembled, are not impaneled.

(2) In a general court-martial, the military judge shall impanel—

- (A) 12 members in a capital case; and
- (B) eight members in a noncapital case.

(3) In a special court-martial, the military judge shall impanel four members.

(c) ALTERNATE MEMBERS.—In addition to members under subsection (b), the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

(d) DETAIL OF NEW MEMBERS.—

(1) If, after members are impaneled, the membership of the court-martial is reduced to—

(A) fewer than 12 members with respect to a general court-martial in a capital case;

(B) fewer than six members with respect to a general court-martial in a noncapital case; or

(C) fewer than four members with respect to a special court-martial; the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2).

(2) The membership referred to in paragraph (1) is as follows:

(A) 12 members with respect to a general court-martial in a capital case.

(B) At least six but not more than eight members with respect to a general court-martial in a noncapital case.

(C) Four members with respect to a special court-martial.

(e) DETAIL OF NEW MILITARY JUDGE.—If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

(f) EVIDENCE.—

(1) In the case of new members under subsection (d), the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

(2) In the case of a new military judge under subsection (e), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec. Art.

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|-------|------|--|
| 830. | 30. | Charges and specifications. |
| 830a. | 30a. | Proceedings conducted before referral. |
| 831. | 31. | Compulsory self-incrimination prohibited. |
| 832. | 32. | Preliminary hearing required before referral to general court-martial. |
| 833. | 33. | Disposition guidance. |
| 834. | 34. | Advice to convening authority before referral for trial. |
| 835. | 35. | Service of charges; commencement of trial. |

§830. Art. 30. Charges and specifications

(a) IN GENERAL.—Charges and specifications—

(1) may be preferred only by a person subject to this chapter; and

(2) shall be preferred by presentment in writing, signed under oath before a commissioned officer of the armed forces who is authorized to administer oaths.

(b) REQUIRED CONTENT.—The writing under subsection (a) shall state that—

(1) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(2) the matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) DUTY OF PROPER AUTHORITY.—When charges and specifications are preferred under subsection (a), the proper authority shall, as soon as practicable—

(1) inform the person accused of the charges and specifications; and

(2) determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

§830a. Art. 30a. Proceedings conducted before referral

(a) IN GENERAL.—

(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges and specifications to court-martial for trial, including the following:

(A) Pre-referral investigative subpoenas.

(B) Pre-referral warrants or orders for electronic communications.

(C) Pre-referral matters referred by an appellate court.

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(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

(E) Pre-referral matters relating to the following:

(i) Pre-trial confinement of an accused.

(ii) The mental capacity or mental responsibility of an accused.

(iii) A request for an individual military counsel.

(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

(A) set forth the matters that a military judge may rule upon in such proceedings;

(B) include procedures for the review of such rulings;

(C) include appropriate limitations to ensure that proceedings under this section extend only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(b) **DETAIL OF MILITARY JUDGE.**—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

(c) **DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.**—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.

§831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

§832. Art. 32. Preliminary hearing required before referral to general court-martial

(a) **IN GENERAL.**—

(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer detailed in accordance with subparagraph (C).

(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to—

(i) except as provided in clause (ii), the convening authority and the convening authority determines that a hearing is not required; and

(ii) with respect to charges and specifications over which the special trial counsel is exercising authority in accordance with section 824a of this title (article 24a), the special trial counsel and the special trial counsel determines that a hearing is not required.

(C)(i) Except as provided in clause (ii), the convening authority shall detail a hearing officer.

(ii) If a special trial counsel is exercising authority over the charges and specifications subject to a preliminary hearing under this section (article), the special trial counsel shall request a hearing officer and a hearing officer shall be provided by the convening authority, in accordance with regulations prescribed by the President.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter.

(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

(D) A recommendation as to the disposition that should be made of the case.

(b) **HEARING OFFICER.**—

(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

(c) **REPORT TO CONVENING AUTHORITY OR SPECIAL TRIAL COUNSEL.**—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority or, in the case of a preliminary hearing in which the hearing officer is provided at the request of a special trial counsel to the special trial counsel, a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the hearing and

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any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

(2) Recommendations for any necessary modifications to the form of the charges or specifications.

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under such rules as the President may prescribe, is relevant to disposition under sections 830 and 834 of this title (articles 30 and 34).

(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (f).

(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The accused shall be advised of the charges against the accused and of the accused's right to be represented by counsel at the preliminary hearing under this section. The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence that is relevant to the issues for determination under subsection (a)(2).

(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing. A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).

(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to determinations under subsection (a)(2).

(e) RECORDING OF PRELIMINARY HEARING.—A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording under such rules as the President may prescribe.

(f) EFFECT OF EVIDENCE OF UNCHARGED OFFENSE.—If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the preliminary hearing;

(2) is informed of the nature of each uncharged offense considered; and

(3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

(g) EFFECT OF VIOLATION.—The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error. A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.

(h) VICTIM DEFINED.—In this section, the term "victim" means a person who—

(1) 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 being considered; and

(2) is named in one of the specifications.

§833. Art. 33. Disposition guidance

The President shall direct the Secretary of Defense to issue, in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy,

non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

§834. Art. 34. Advice to convening authority before referral for trial

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Subject to subsection (c), before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Subject to subsection (c), before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) COVERED OFFENSES.—A referral to a general or special court-martial for trial of charges and specifications over which a special trial counsel exercises authority may only be made—

(1) by a special trial counsel, subject to a special trial counsel's written determination accompanying the referral that—

(A) each specification under a charge alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense; or

(2) in the case of charges and specifications that do not allege a covered offense and as to which a special trial counsel declines to

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prefer or, in the case of charges and specifications preferred by a person other than a special trial counsel, refer charges, by the convening authority in accordance with this section.

(d) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

(1) to correct errors in form; and

(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(e) REFERRAL DEFINED.—In this section, the term “referral” means the order of a convening authority or, with respect to charges and specifications over which a special trial counsel exercises authority in accordance with section 824a of this title (article 24a), a special trial counsel, that charges and specifications against an accused be tried by a specified court-martial.

§835. Art. 35. Service of charges; commencement of trial

(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) COMMENCEMENT OF TRIAL.—

(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a)) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec. Art.

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§836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

§837. Art. 37. Command influence

(a)(1) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused; or

(C) statements and instructions given in open court by the military judge or counsel.

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(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)-

(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any person in a court-martial proceeding.

(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.

§838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at a preliminary hearing under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define “reasonably available” for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860, 860a, or 860b of this title (article 60, 60a, or 60b); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

§839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

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(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) holding the arraignment and receiving the pleas of the accused;

(4) conducting a sentencing proceeding and sentencing the accused under section 853(b)(1) of this title (article 53(b)(1)); and

(5) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

(b) Proceedings under subsection (a) shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as video conferencing technology).

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

§840. Art. 40. Continuances

The military judge or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article

29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

§842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

§843. Art. 43. Statute of limitations

(a) NO LIMITATIONS FOR CERTAIN OFFENSES.—A person charged with absence without leave or missing movement in time of war, with murder, rape or sexual assault, or rape or sexual assault of a child, maiming of a child, kidnapping of a child, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b) FIVE-YEAR LIMITATION FOR TRIAL BY COURT-MARTIAL.—

(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within ten years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term “child abuse offense” means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920, 920a, 920b, 920c, or 930 of this title (article 120, 120a, 120b, 120c, or 130), unless the offense is covered by subsection (a).

(ii) Aggravated assault, assault consummated by a battery, or assault with intent to commit specified offenses in violation of section 928 of this title (article 128).

(C) In subparagraph (A), the term “child abuse offense” includes an act that involves abuse of a person who has not attained

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the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) TOLLING FOR ABSENCE WITHOUT LEAVE OR FLIGHT FROM JUSTICE.—Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) TOLLING FOR ABSENCE FROM US OR MILITARY JURISDICTION.—Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) EXTENSION FOR OFFENSES IN TIME OF WAR DETRIMENTAL TO PROSECUTION OF WAR.—For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) EXTENSION FOR OTHER OFFENSES IN TIME OF WAR.—When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g) DEFECTIVE OR INSUFFICIENT CHARGES.—

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(h) FRAUDULENT ENLISTMENT OR APPOINTMENT.—A person charged with fraudulent enlistment or fraudulent appointment under section 904a(1) of this title (article 104a(1)) may be tried by court-martial if the sworn charges and specifications are received by an

officer exercising summary court-martial jurisdiction with respect to that person, as follows:

(1) In the case of an enlisted member, during the period of the enlistment or five years, whichever provides a longer period.

(2) In the case of an officer, during the period of the appointment or five years, whichever provides a longer period.

(i) DNA EVIDENCE.—If DNA testing implicates an identified person in the commission of an offense punishable by confinement for more than one year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

§844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c)(1) A court-martial with a military judge alone is a trial in the sense of this section (article) if, without fault of the accused—

(A) after introduction of evidence; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or the special trial counsel or on motion of the prosecution for failure of available evidence or witnesses.

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53); the case is dismissed or terminated by the convening authority or the special trial counsel or on motion of the prosecution for failure of available evidence or witnesses.

§845. Art. 45. Pleas of the accused

(a) IRREGULAR AND SIMILAR PLEAS.—If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) PLEAS OF GUILTY.—A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty is mandatory. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

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(c) HARMLESS ERROR.—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

§846. Art. 46. Opportunity to obtain witnesses and other evidence in trial by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a), may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

(2) order the person to comply with the subpoena or other process.

§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—

(1) Any person described in paragraph (2) who—

(A) willfully neglects or refuses to appear; or

(B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce; is guilty of an offense against the United States.

(2) The persons referred to in paragraph (1) are the following:

(A) Any person not subject to this chapter who—

(i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

(ii) is provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage.

(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of section 846 of this title (article 46).

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

§848. Art. 48. Contempt

(a) AUTHORITY TO PUNISH.—

(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

(B) disturbs the proceeding by any riot or disorder; or

(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

(2) A judicial officer referred to in paragraph (1) is any of the following:

(A) Any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under section 866 of this title (article 66).

(B) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter.

(C) Any military magistrate designated to preside under section 819 of this title (article 19).

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(D) The president of a court of inquiry.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

(c) REVIEW.—A punishment under this section—

(1) if imposed by a military judge or military magistrate, may be reviewed by the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals under section 866(h) of this title (article 66(h));

(2) if imposed by a judge of the Court of Appeals for the Armed Forces or a judge of a Court of Criminal Appeals, shall constitute a judgment of the court, subject to review under the applicable provisions of section 867 or 867a of this title (article 67 or 67a); and

(3) if imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the President.

(d) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

§849. Art. 49. Depositions

(a) IN GENERAL.—

(1) Subject to paragraph (2), a convening authority or a military judge may order depositions at the request of any party.

(2) A deposition may be ordered under paragraph (1) only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

(3) A party who requests a deposition under this section shall give to every other party reasonable written notice of the time and place for the deposition.

(4) A deposition under this section shall be taken before, and authenticated by, an impartial officer, as follows:

(A) Whenever practicable, by an impartial judge advocate certified under section 827(b) of this title (article 27(b)).

(B) In exceptional circumstances, by an impartial military or civil officer authorized to administer oaths by (i) the laws of the United States or (ii) the laws of the place where the deposition is taken.

(b) REPRESENTATION BY COUNSEL.—Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under section 827 of this title (article 27). In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in section 838(b) of this title (article 38(b)).

(c) ADMISSIBILITY AND USE AS EVIDENCE.—A deposition order under subsection (a) does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as provided by subsection (d), a party may use all or part of a deposition as provided by the rules of evidence.

(d) CAPITAL CASES.—Testimony by deposition may be presented in capital cases only by the defense.

§850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry

(a) USE AS EVIDENCE BY ANY PARTY.—In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) USE AS EVIDENCE BY DEFENSE.—Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) USE IN COURTS OF INQUIRY AND MILITARY BOARDS.—Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) AUDIOTAPE OR VIDEOTAPE.—Sworn testimony that—

(1) is recorded by audiotape, videotape, or similar method; and

(2) is contained in the duly authenticated record of proceedings of a court of inquiry;

is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c).

§850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

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(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

§851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§852. Art. 52. Votes required for conviction, sentencing, and other matters

(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) LEVEL OF CONCURRENCE REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a

reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

§853. Art. 53. Findings and sentencing

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—Except as provided in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court martial, the military judge shall sentence the accused. The sentence determined by the military judge constitutes the sentence of the court-martial.

(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) SENTENCING FOR CAPITAL OFFENSES.—

(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death—

(A) the members shall determine—

(i) whether the sentence for that offense shall be death or life in prison without eligibility for parole; or

(ii) whether the matter shall be returned to the military judge for determination of a lesser punishment; and

(B) the military judge shall sentence the accused for that offense in accordance with the determination of the members under subparagraph (A).

(2) LESSER AUTHORIZED PUNISHMENT.—In accordance with regulations prescribed by the President, the military judge may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

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§853a. Art. 53a. Plea agreements

(a) IN GENERAL.—

(1) Subject to paragraph (3), at any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(3) With respect to charges and specifications over which a special trial counsel exercises authority pursuant to section 824a of this title (article 24a), a plea agreement under this section may only be entered into between a special trial counsel and the accused. Such agreement shall be subject to the same limitations and conditions applicable to other plea agreements under this section (article).

(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject to subsection (c), the military judge of a general or special court-martial shall accept a plea agreement submitted by the parties, except that—

(1) in the case of an offense with a sentencing parameter set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

(2) in the case of an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.

(c) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(d) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(e) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties (including the convening authority and the special trial counsel in the case of a plea agreement entered into under subsection (a)(3)) and the court-martial.

§854. Art. 54. Record of trial

(a) GENERAL AND SPECIAL COURTS-MARTIAL.—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.

(b) SUMMARY COURT-MARTIAL.—Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner required by such regulations as the President may prescribe.

(c) CONTENTS OF RECORD.—

(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(d) COPY TO ACCUSED.—A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(e) COPY TO VICTIM.—In the case of a general or special court-martial, upon request, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are certified. The victim shall be notified of the opportunity to receive the records of the proceedings.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.
855.	55. Cruel and unusual punishments prohibited.
856.	56. Sentencing.
857.	57. Effective date of sentences.
858.	58. Execution of confinement.
858a.	58a Sentences: reduction in enlisted grade.
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§855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

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§856. Art. 56. Sentencing

(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (c) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) IMPOSITION OF SENTENCE.—

(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service;

(D) the sentences available under this chapter; and

(E) the applicable sentencing parameters or sentencing criteria set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022.

(2) APPLICATION OF SENTENCING PARAMETERS IN GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) REQUIREMENT TO SENTENCE WITHIN PARAMETERS.—Except as provided in subparagraph (B), in a general or special court-martial in which the accused is convicted of an offense for which the President has established a sentencing parameter pursuant to section

539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge shall sentence the accused for that offense within the applicable parameter.

(B) EXCEPTION.—The military judge may impose a sentence outside a sentencing parameter upon finding specific facts that warrant such a sentence. If the military judge imposes a sentence outside a sentencing parameter under this subparagraph, the military judge shall include in the record a written statement of the factual basis for the sentence.

(3) USE OF SENTENCING CRITERIA IN GENERAL AND SPECIAL COURTS-MARTIAL.—In a general or special court-martial in which the accused is convicted of an offense for which the President has established sentencing criteria pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

(4) OFFENSE-BASED SENTENCING IN GENERAL AND SPECIAL COURTS-MARTIAL.—In announcing the sentence under section 853 of this title (article 53) in a general or special court-martial, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(5) INAPPLICABILITY TO DEATH PENALTY.—Sentencing parameters and sentencing criteria shall not apply to a determination of whether an offense should be punished by death.

(6) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—

(A) IN GENERAL.—If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) TERM OF CONFINEMENT.—An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure or review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a court of competent jurisdiction; or

(iii) the accused receives a pardon or another form of Executive clemency.

(d) APPEAL OF SENTENCE BY THE UNITED STATES.—

(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law;

(B) in the case of a sentence for an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the sentence is a result of an incorrect application of the parameter; or

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(C) the sentence is plainly unreasonable.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

§857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—

(1) IN GENERAL.—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment

may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.—In any case in which a court-martial sentences a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(3) COVERED PERSONS.—Paragraph (2) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) STATE DEFINED.—In this subsection, the term “State” includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

(5) DEFERRAL WHILE REVIEW PENDING.—In any case in which a court-martial sentences a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(c) APPELLATE REVIEW.—

(1) COMPLETION OF APPELLATE REVIEW.—Appellate review is complete under this section when—

(A) a review under section 865 of this title (article 65) is completed; or

(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and—

(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(iii) 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) such a petition is rejected by the Supreme Court; or

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

(2) COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

§858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed

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forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words “hard labor” from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

§858a. Art. 58a. Sentences: reduction in enlisted grade

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c), that includes—

- (1) a dishonorable or bad-conduct discharge;
- (2) confinement; or
- (3) hard labor without confinement;

reduces that member to pay grade E-1, if such reduction is authorized by regulation prescribed by the President. The reduction in pay grade shall take effect on the date on which the judgment is so entered.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or reduced, or, as finally affirmed, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

§858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857 of this title (article 57) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

- (A) confinement for more than six months or death; or
- (B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860a or 860b of this title (article 60a or 60b) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

SUBCHAPTER IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

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§859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

§860. Art. 60. Post-trial processing in general and special courts-martial

(a) STATEMENT OF TRIAL RESULTS.—

(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled “Statement of Trial Results”, which shall set forth—

- (A) each plea and finding;

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(B) the sentence, if any; and

(C) such other information as the President may prescribe by regulation.

(2) Copies of the Statement of Trial Results shall be provided promptly to the convening authority, the accused, and any victim of the offense.

(b) POST-TRIAL MOTIONS.—In accordance with regulations prescribed by the President, the military judge in a general or special court-martial shall address all post-trial motions and other post-trial matters that—

(1) may affect a plea, a finding, the sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority; and

(2) are subject to resolution by the military judge before entry of judgment.

§860a. Art. 60a. Limited authority to act on sentence in specified post-trial circumstances

(a) IN GENERAL.—

(1) The convening authority of a general or special court-martial described in paragraph (2)—

(A) may act on the sentence of the court-martial only as provided in subsection (b), (c), or (d); and

(B) may not act on the findings of the court-martial.

(2) The courts-martial referred to in paragraph (1) are the following:

(A) A general or special court-martial in which the maximum sentence of confinement established under subsection (a) of section 856 of this title (article 56) for any offense of which the accused is found guilty is more than two years.

(B) A general or special court-martial in which the total of the sentences of confinement imposed, running consecutively, is more than six months.

(C) A general or special court-martial in which the sentence imposed includes a dismissal, dishonorable discharge, or bad-conduct discharge.

(D) A general or special court-martial in which the accused is found guilty of a violation of subsection (a) or (b) of section 920 of this title (article 120), section 920b of this title (article 120b), or such other offense as the Secretary of Defense may specify by regulation.

(3) Except as provided in subsection (d), the convening authority may act under this section only before entry of judgment.

(4) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) REDUCTION, COMMUTATION, AND SUSPENSION OF SENTENCES GENERALLY.—

(1) Except as provided in subsection (c) or (d), the convening authority may not reduce, commute, or suspend any of the following sentences:

(A) A sentence of confinement, if the total period of confinement imposed for all offenses involved, running consecutively, is greater than six months.

(B) A sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(C) A sentence of death.

(2) The convening authority may reduce, commute, or suspend any sentence not specified in paragraph (1).

(c) SUSPENSION OF CERTAIN SENTENCES UPON RECOMMENDATION OF MILITARY JUDGE.—

(1) Upon recommendation of the military judge, as included in the Statement of Trial Results, together with an explanation of the facts supporting the recommendation, the convening authority may suspend—

(A) a sentence of confinement, in whole or in part; or

(B) a sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(2) The convening authority may not, under paragraph (1)—

(A) suspend a mandatory minimum sentence; or

(B) suspend a sentence to an extent in excess of the suspension recommended by the military judge.

(d) REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE BY ACCUSED.—

(1) Upon a recommendation by the trial counsel, if the accused, after sentencing and before entry of judgment, provides substantial assistance in the investigation or prosecution of another person, the convening authority may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(2) Upon a recommendation by a trial counsel, designated in accordance with rules prescribed by the President, if the accused, after entry of judgment, provides substantial assistance in the investigation or prosecution of another person, a convening authority, designated under such regulations, may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(3) In evaluating whether the accused has provided substantial assistance under this subsection, the convening authority may consider the presentence assistance of the accused.

(e) SUBMISSIONS BY ACCUSED AND VICTIM.—

(1) In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of an offense. Such rules shall include—

(A) procedures for notice of the opportunity to make such submissions;

(B) the deadlines for such submissions; and

(C) procedures for providing the accused and any victim of an offense with a copy of the recording of any open sessions of the court-martial and copies of, or access to, any admitted, unsealed exhibits.

(2) The convening authority shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

(f) DECISION OF CONVENING AUTHORITY.—

(1) The decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If, under this section, the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall include a written explanation of the reasons for such action.

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(3) If, under subsection (d)(2), the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall be forwarded to the chief trial judge for appropriate modification of the entry of judgment, which shall be transmitted to the Judge Advocate General for appropriate action.

§860b. Art. 60b. Post-trial actions in summary courts-martial and certain general and special courts-martial

(a) IN GENERAL.—

(1) In a court-martial not specified in section 860a(a)(2) of this title (article 60a(a)(2)), the convening authority may—

(A) dismiss any charge or specification by setting aside the finding of guilty;

(B) change a finding of guilty to a charge or specification to a finding of guilty to a lesser included offense;

(C) disapprove the findings and the sentence and dismiss the charges and specifications;

(D) disapprove the findings and the sentence and order a rehearing as to the findings and the sentence;

(E) disapprove, commute, or suspend the sentence, in whole or in part; or

(F) disapprove the sentence and order a rehearing as to the sentence.

(2) In a summary court-martial, the convening authority shall approve the sentence or take other action on the sentence under paragraph (1).

(3) Except as provided in paragraph (4), the convening authority may act under this section only before entry of judgment.

(4) The convening authority may act under this section after entry of judgment in a general or special court-martial in the same manner as the convening authority may act under section 860a(d)(2) of this title (article 60a(d)(2)). Such action shall be forwarded to the chief trial judge, who shall ensure appropriate modification to the entry of judgment and shall transmit the entry of judgment to the Judge Advocate General for appropriate action.

(5) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) LIMITATIONS ON REHEARINGS.—The convening authority may not order a rehearing under this section—

(1) as to the findings, if there is insufficient evidence in the record to support the findings;

(2) to reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; or

(3) to reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter.

(c) SUBMISSIONS BY ACCUSED AND VICTIM.—In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of the offense. Such rules shall include the matter required by section 860a(e) of this title (article 60a(e)).

(d) DECISION OF CONVENING AUTHORITY.—

(1) In a general or special court-martial, the decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If the convening authority acts on the findings or the sentence under subsection (a)(1), the decision of the convening authority shall include a written explanation of the reasons for such action.

§860c. Art 60c. Entry of judgment

(a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—

(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority; or

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

(A) provided to the accused and to any victim of the offense; and

(B) made available to the public.

(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.

§861. Art. 61. Waiver of right to appeal; withdrawal of appeal

(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to such review under section 866 of this title (article 66). Such a waiver shall be—

(1) signed by the accused and by defense counsel; and

(2) attached to the record of trial.

(b) WITHDRAWAL OF APPEAL.—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) DEATH PENALTY CASE EXCEPTION.—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) WAIVER OR WITHDRAWAL AS BAR.—Except as provided by section 869(c)(2) of this title (article 69(c)(2)), a waiver or withdrawal under this section bars review under section 866 of this title (article 66).

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§862. Art. 62. Appeal by the United States

(a)(1) In a trial by general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

(2)(A) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(B) An appeal of an order or ruling may not be taken when prohibited by section 844 of this title (article 44).

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(e) The provisions of this article shall be liberally construed to effect its purposes.

§863. Art. 63. Rehearings

(a) Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon

a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

(b) If the sentence adjudged by the first court-martial was in accordance with a plea agreement under section 853a of this title (article 53a) and the accused at the rehearing does not comply with the agreement, or if a plea of guilty was entered for an offense at the first court-martial and a plea of not guilty was entered at the rehearing, the sentence as to those charges or specifications may include any punishment not in excess of that which could have been adjudged at the first court-martial, subject to limitations as the President may prescribe by regulation.

(c) If, after appeal by the Government under section 856(d) of this title (article 56(d)), the sentence adjudged is set aside and a rehearing on sentence is ordered by the Court of Criminal Appeals or Court of Appeals for the Armed Forces, the court-martial may impose any sentence that is in accordance with the order or ruling setting aside the adjudged sentence, subject to such limitations as the President may prescribe by regulation.

§864. Art. 64. Judge advocate review of finding of guilty in summary court-martial

(a) IN GENERAL.—Under regulations prescribed by the Secretary concerned, each summary court-martial in which there is a finding of guilty shall be reviewed by a judge advocate. A judge advocate may not review a case under this subsection if the judge advocate has acted in the same case as an accuser, preliminary hearing officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) RECORD.—The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action; or

(2) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

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(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869 of this title (article 69).

§865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(b) CASES FOR DIRECT APPEAL.—

(1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward the record of trial to the Court of Criminal Appeals for review under section 866(b)(3) of this title (article 66(b)(3)).

(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall—

(i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Court of Criminal Appeals; and

(ii) upon written request of the accused, forward a copy of the record of trial to civilian counsel provided by the accused.

(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused—

(i) waives the right to appeal under section 861 of this title (article 61); or

(ii) declines in writing the detailing of appellate defense counsel under subparagraph (A)(i).

(c) NOTICE OF RIGHT TO APPEAL.—

(1) IN GENERAL.—The Judge Advocate General shall provide notice to the accused of the right to file an appeal under section 866(b)(1) of this title (article 66(b)(1)) by means of depositing in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the official service record of the accused.

(2) INAPPLICABILITY UPON WAIVER OF APPEAL.—Paragraph (1) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

(d) REVIEW BY JUDGE ADVOCATE GENERAL.—

(1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate

General or another attorney designated under regulations prescribed by the Secretary concerned.

(2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—

(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:

(i) A conclusion as to whether the court had jurisdiction over the accused and the offense.

(ii) A conclusion as to whether the charge and specification stated an offense.

(iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.

(iv) A response to each allegation of error made in writing by the accused.

(3) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—

(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—

(i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or

(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B), or (C) of section 866(b)(1) of this title (article 66(b)(1)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).

(e) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(3) REMEDY WITHOUT REHEARING.—

(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(B) DISMISSAL WHEN REHEARING IMPRACTICABLE.—

(i) IN GENERAL.—Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impracticable, the convening authority shall dismiss the charges.

(ii) CASES REFERRED BY SPECIAL TRIAL COUNSEL.—If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

§866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—

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(1) IN GENERAL.— Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (h). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel. In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualifications specified in paragraph (1), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.

(b) REVIEW.—

(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction over—

(A) a timely appeal from the judgment of a court-martial, entered into the record under section 860c(a) of this title (article 60c(a)), that includes a finding of guilty; and

(B) a summary court-martial case in which the accused filed an application for review with the Court under section 869(d)(1) of this title (article 69(d)(1)) and for which the application has been granted by the Court.

(2) REVIEW OF CERTAIN SENTENCES. —A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

(3) AUTOMATIC REVIEW. —A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860(c) of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

(c) TIMELINESS.—An appeal under subsection (b)(1) is timely if—

(1) in the case of an appeal under subparagraph (A) of such subsection, it is filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or

(B) the date set by the Court of Criminal Appeals by rule or order; and

(2) in the case of an appeal under subparagraph (B) of such subsection, an application for review with the Court is filed not later than the earlier of the dates established under section 869(d)(2)(B) of this title (article 69(d)(2)(B)).

(d) DUTIES.—

(1) CASES APPEALED BY ACCUSED.—

(A) IN GENERAL.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B).

(B) FACTUAL SUFFICIENCY REVIEW.—

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

(2) ERROR OR EXCESSIVE DELAY.—In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

(e) CONSIDERATION OF SENTENCE.—

(1) IN GENERAL.—In considering a sentence on appeal, other than as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

(A) whether the sentence violates the law;

(B) whether the sentence is inappropriately severe—

(i) if the sentence is for an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022; or

(ii) in the case of an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, if the sentence is above the upper range of such sentencing parameter;

(C) in the case of a sentence for an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, whether the sentence is a result of an incorrect application of the parameter;

(D) whether the sentence is plainly unreasonable; and

(E) in review of a sentence to death or to life in prison without eligibility for parole determined by the members in a capital case under section 853(c) of this title (article 53(c)), whether the sentence is otherwise appropriate, under rules prescribed by the President.

(2) RECORD ON APPEAL.—In an appeal under this subsection or section 856(d) of this title (article 56(d)), other than review under subsection (b)(2) of this section, the record on appeal shall consist of—

(A) any portion of the record in the case that is designated as pertinent by any party;

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(B) the information submitted during the sentencing proceeding; and

(C) any information required by rule or order of the Court of Criminal Appeals.

(f) LIMITS OF AUTHORITY.—

(1) SET ASIDE OF FINDINGS —

(A) IN GENERAL.—If the Court of Criminal Appeals sets aside the findings, the Court—

(i) may affirm any lesser included offense; and

(ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing.

(B) DISMISSAL WHEN NO REHEARING ORDERED.—If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.

(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—

(i) IN GENERAL.—Subject to clause (ii), if the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

(ii) CASES REFERRED BY SPECIAL TRIAL COUNSEL.—If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

(2) SET ASIDE OF SENTENCE.—If the Court of Criminal Appeals sets aside the sentence, the Court may—

(A) modify the sentence to a lesser sentence; or

(B) order a rehearing.

(3) ADDITIONAL PROCEEDINGS.—If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the president may prescribe. If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the court of Appeals for the Armed Forces.

(g) ACTION IN ACCORDANCE WITH DECISIONS OF COURTS.—The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals.

(h) RULES OF PROCEDURE.—The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(i) PROHIBITION ON EVALUATION OF OTHER MEMBERS OF COURTS.—No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(j) INELIGIBILITY OF MEMBERS OF COURTS TO REVIEW RECORDS OF CASES INVOLVING CERTAIN PRIOR MEMBER SERVICE.—No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

§867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General, after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals;

(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

(C) the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modified by the Court of Criminal Appeals as incorrect in fact under section 866(d)(1)(B) of this title (article 66(d)(1)(B)).

(2) In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him.

(3) In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review.

(4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based

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on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges. Notwithstanding the preceding sentence, if a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

§867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

§868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

§869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused or receipt of the record pursuant to section 864(c)(3) of this title (article 64(c)(3)) and subject to subsections (b), (c), and (d), the Judge Advocate General may—

(1) with respect to a summary court-martial, modify or set aside, in whole or in part, the findings and sentence; or

(2) with respect to a general or special court-martial, order such court-martial to be reviewed under section 866 of this title (article 66).

(b) TIMING.—

(1) To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than—

(A) for a summary court-martial, one year after the date of completion of review under section 864 of this title (article 64); or

(B) for a general or special court-martial, one year after the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 865(c)), unless the accused submitted a waiver or withdrawal of appellate review under section 861 of this title (article 61) before being provided notice of appellate rights, in which case the application must be submitted to the Judge Advocate General not later than one year after the entry of judgment under section 860c of this title (article 60c).

(2) The Judge Advocate General may, for good cause shown, extend the period for submission of an application, except that—

(A) in the case of an application for review of a summary court martial, the Judge Advocate may not consider an application submitted more than three years after the completion date referred to in paragraph (1)(A); and

(B) in case of an application for review of a general or special court-martial, the Judge Advocate may not consider an application submitted more than three years after the end of the applicable period under paragraph (1)(B).

(c) SCOPE.—

(1)(A) In a case reviewed under section 864 of this title (article 64), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(D)(i) Subject to clause (ii), if the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impracticable, the convening authority shall dismiss the charges.

(ii) If a case was referred to trial by a special trial counsel, a special trial counsel shall determine if a rehearing is impracticable and shall dismiss the charges if the special trial counsel so determines.

(2) In a case reviewed under section 865(b) of this title (article 65(b)), review under this section is limited to the issue of whether the waiver or withdrawal of an appeal was invalid under the law. If the Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General shall send the case to the Court of Criminal Appeals.

(d) COURT OF CRIMINAL APPEALS.—

(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)(1) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.

(2) The Court of Criminal Appeals may grant an application under paragraph (1) only if—

(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and

(B) the application is filed not later than the earlier of—

(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

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(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(c)(1) of this title (article 70(c)(1)).

(e) ACTION ONLY ON MATTERS OF LAW.—Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.

§870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(f) To the greatest extent practicable, in any capital case, at least one defense counsel under subsection (c) shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

§872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the

probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

§873. Art. 73. Petition for a new trial

At any time within three years after the date of the entry of judgment under section 860c of this title (article 60c), the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

§874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

§875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the

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reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

§876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

§876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date of the entry of judgment under section 860c of this title (article 60c) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

§876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—

(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall

promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—

(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—

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(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

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931d.	131d.	Wrongful refusal to testify.

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931e.	131e.	Prevention of authorized seizure of property.
931f.	131f.	Noncompliance with procedural rules.
931g.	131g.	Wrongful interference with adverse administrative proceeding.
932.	132.	Retaliation.
933.	133.	Conduct unbecoming an officer.
934.	134.	General article.

§877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

§878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

§879. Art. 79. Conviction of offense charged, lesser included offenses, and attempts

(a) IN GENERAL.—An accused may be found guilty of any of the following:

(1) The offense charged.

(2) A lesser included offense.

(3) An attempt to commit the offense charged.

(4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

(b) LESSER INCLUDED OFFENSE DEFINED.—In this section (article), the term “lesser included offense” means—

(1) an offense that is necessarily included in the offense charged; and

(2) any lesser included offense so designated by regulation prescribed by the President.

(c) REGULATORY AUTHORITY.—Any designation of a lesser included offense in a regulation referred to in subsection (b) shall be reasonably included in the greater offense.

§880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

§881. Art. 81. Conspiracy

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

§882. Art. 82. Soliciting commission of offenses

(a) SOLICITING COMMISSION OF OFFENSES GENERALLY.—Any person subject to this chapter who solicits or advises another to commit an offense under this chapter (other than an offense specified in subsection (b)) shall be punished as a court-martial may direct.

(b) SOLICITING DESERTION, MUTINY, SEDITION, OR MISBEHAVIOR BEFORE THE ENEMY.—Any person subject to this chapter who solicits or advises another to violate section 885 of this title (article 85), section 894 of this title (article 94), or section 899 of this title (article 99)—

(1) if the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and

(2) if the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.

§883. Art. 83. Malingering

Any person subject to this chapter who, with the intent to avoid work, duty, or service—

(1) feigns illness, physical disablement, mental lapse, or mental derangement; or

(2) intentionally inflicts self-injury; shall be punished as a court-martial may direct.

§884. Art. 84. Breach of medical quarantine

Any person subject to this chapter—

(1) who is ordered into medical quarantine by a person authorized to issue such order; and

(2) who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority;

shall be punished as a court-martial may direct.

§885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

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(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

§886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.

§887. Art. 87. Missing movement; jumping from vessel

(a) MISSING MOVEMENT.—Any person subject to this chapter who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

(b) JUMPING FROM VESSEL INTO THE WATER.—Any person subject to this chapter who wrongfully and intentionally jumps into the water from a vessel in use by the armed forces shall be punished as a court-martial may direct.

§887a. Art. 87a. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

§887b. Art. 87b. Offenses against correctional custody and restriction

(a) ESCAPE FROM CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under physical restraint; and

(3) who escapes from the physical restraint before being released from the physical restraint by proper authority; shall be punished as a court-martial may direct.

(b) BREACH OF CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under restraint other than physical restraint; and

(3) who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority; shall be punished as a court-martial may direct.

(c) BREACH OF RESTRICTION.—Any person subject to this chapter—

(1) who is ordered to be restricted to certain limits by a person authorized to do so; and

(2) who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority; shall be punished as a court-martial may direct.

§888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

§889. Art. 89. Disrespect toward superior commissioned officer; assault of superior commissioned officer

(a) DISRESPECT.—Any person subject to this chapter who behaves with disrespect toward that person's superior commissioned officer shall be punished as a court-martial may direct.

(b) ASSAULT.—Any person subject to this chapter who strikes that person's superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer's office shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

§890. Art. 90. Willfully disobeying superior commissioned officer

Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

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§891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

- (1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;
 - (2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or
 - (3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;
- shall be punished as a court-martial may direct.

§892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
 - (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
 - (3) is derelict in the performance of his duties;
- shall be punished as a court-martial may direct.

§893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

§893a. Art. 93a. Prohibited activities with military recruit or trainee by person in position of special trust

(a) ABUSE OF TRAINING LEADERSHIP POSITION.—Any person subject to this chapter—

- (1) who is an officer, a noncommissioned officer, or a petty officer;
 - (2) who is in a training leadership position with respect to a specially protected junior member of the armed forces; and
 - (3) who engages in prohibited sexual activity with such specially protected junior member of the armed forces;
- shall be punished as a court-martial may direct.

(b) ABUSE OF POSITION AS MILITARY RECRUITER.—Any person subject to this chapter—

(1) who is a military recruiter and engages in prohibited sexual activity with an applicant for military service; or

(2) who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the armed forces who is enlisted under a delayed entry program;

shall be punished as a court-martial may direct.

(c) CONSENT.—Consent is not a defense for any conduct at issue in a prosecution under this section (article).

(d) DEFINITIONS.—In this section (article):

(1) SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.—The term “specially protected junior member of the armed forces” means—

(A) a member of the armed forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

(B) a member of the armed forces who is a cadet, a midshipman, an officer candidate, or a student in any other officer qualification program; and

(C) a member of the armed forces in any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(2) TRAINING LEADERSHIP POSITION.—The term “training leadership position” means, with respect to a specially protected junior member of the armed forces, any of the following:

(A) Any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit, a training program for entry into the armed forces, or any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(B) Faculty and staff of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.

(3) APPLICANT FOR MILITARY SERVICE.—The term “applicant for military service” means a person who, under regulations prescribed by the Secretary concerned, is an applicant for original enlistment or appointment in the armed forces.

(4) MILITARY RECRUITER.—The term “military recruiter” means, a person who, under regulations prescribed by the Secretary concerned, has the primary duty to recruit persons for military service.

(5) PROHIBITED SEXUAL ACTIVITY.—The term “prohibited sexual activity” means, as specified in regulations prescribed by the Secretary concerned, inappropriate physical intimacy under circumstances described in such regulations.

§894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

§895. Art. 95. Offenses by sentinel or lookout

(a) DRUNK OR SLEEPING ON POST, OR LEAVING POST BEFORE BEING RELIEVED.—Any sentinel or lookout who is drunk on post,

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who sleeps on post, or who leaves post before being regularly relieved, shall be punished—

- (1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and
 - (2) if the offense is committed other than in time of war, by such punishment, other than death, as a court-martial may direct.
- (b) LOITERING OR WRONGFULLY SITTING ON POST.—Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.

§895a. Art. 95a. Disrespect toward sentinel or lookout

- (a) DISRESPECTFUL LANGUAGE TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.
- (b) DISRESPECTFUL BEHAVIOR TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

§896. Art. 96. Release of prisoner without authority; drinking with prisoner

- (a) RELEASE OF PRISONER WITHOUT AUTHORITY.—Any person subject to this chapter—
- (1) who, without authority to do so, releases a prisoner; or
 - (2) who, through neglect or design, allows a prisoner to escape; shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.
- (b) DRINKING WITH PRISONER.—Any person subject to this chapter who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.

§897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

§898. Art. 98. Misconduct as prisoner

- Any person subject to this chapter who, while in the hands of the enemy in time of war—
- (1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or
 - (2) while in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

§899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

- (1) runs away;
- (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
- (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) casts away his arms or ammunition;
- (5) is guilty of cowardly conduct;
- (6) quits his place of duty to plunder or pillage;
- (7) causes false alarms in any command, unit, or place under control of the armed forces;
- (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
- (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.

§900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

§901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

§902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

§903. Art. 103. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death or such other punishment as a court-martial or a

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military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

§903a. Art. 103a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

§903b. Art. 103b. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

§904. Art. 104. Public records offenses

Any person subject to this chapter who, willfully and unlawfully—

(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record; shall be punished as a court-martial may direct.

§904a. Art. 104a. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

§904b. Art. 104b. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

§905. Art. 105. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

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

§905a. Art. 105a. False or unauthorized pass offenses

(a) WRONGFUL MAKING, ALTERING, ETC.—Any person subject to this chapter who, wrongfully and falsely, makes, alters,

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counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(b) **WRONGFUL SALE, ETC.**—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(c) **WRONGFUL USE OR POSSESSION.**—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

§906. Art. 106. Impersonation of officer, noncommissioned or petty officer, or agent or official

(a) **IN GENERAL.**—Any person subject to this chapter who, wrongfully and willfully, impersonates—

- (1) an officer, a noncommissioned officer, or a petty officer;
- (2) an agent of superior authority of one of the armed forces; or
- (3) an official of a government; shall be punished as a court-martial may direct.

(b) **IMPERSONATION WITH INTENT TO DEFRAUD.**—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.

(c) **IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.**—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

§906a. Art. 106a. Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button

Any person subject to this chapter—

- (1) who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and
- (2) who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing; shall be punished as a court-martial may direct.

§907. Art. 107. False official statements; false swearing

(a) **FALSE OFFICIAL STATEMENTS.**—Any person subject to this chapter who, with intent to deceive—

- (1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or
- (2) makes any other false official statement knowing it to be false; shall be punished as a court-martial may direct.

(b) **FALSE SWEARING.**—Any person subject to this chapter—

- (1) who takes an oath that—

(A) is administered in a matter in which such oath is required or authorized by law; and

(B) is administered by a person with authority to do so; and

(2) who, upon such oath, makes or subscribes to a statement; if the statement is false and at the time of taking the oath, the person does not believe the statement to be true, shall be punished as a court-martial may direct.

§907a. Art. 107a. Parole violation

Any person subject to this chapter—

(1) who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and

(2) who violates the conditions of parole; shall be punished as a court-martial may direct.

§908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

- (1) sells or otherwise disposes of;
- (2) willfully or through neglect damages, destroys, or loses; or
- (3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of; any military property of the United States, shall be punished as a court-martial may direct.

§908a. Art. 108a. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

- (1) fails to carry out the duties prescribed in subsection (a);
- (2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- (3) engages in looting or pillaging; shall be punished as a court-martial may direct.

§909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

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§909a. Art. 109a. Mail matter: wrongful taking, opening, etc.

(a) TAKING.—Any person subject to this chapter who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

(b) OPENING, SECRETING, DESTROYING, STEALING.—Any person subject to this chapter who wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

§910. Art. 110. Improper hazarding of vessel or aircraft

(a) WILLFUL AND WRONGFUL HAZARDING.—Any person subject to this chapter who, willfully and wrongfully, hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished by death or such other punishment as a court-martial may direct.

(b) NEGLIGENT HAZARDING.—Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished as a court-martial may direct.

§911. Art. 111. Leaving scene of vehicle accident

(a) DRIVER.—Any person subject to this chapter—

(1) who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

(2) who wrongfully leaves the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(b) SENIOR PASSENGER.—Any person subject to this chapter—

(1) who is a passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

(2) who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

(3) who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities; shall be punished as a court-martial may direct.

§912. Art. 112. Drunkenness and other incapacitation offenses

(a) DRUNK ON DUTY.—Any person subject to this chapter who is drunk on duty shall be punished as a court-martial may direct.

(b) INCAPACITATION FOR DUTY FROM DRUNKENNESS OR DRUG USE.—Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.

(c) DRUNK PRISONER.—Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

§912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

§913. Art. 113. Drunken or reckless operation of a vehicle, aircraft, or vessel

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is

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0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis. The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.

(4) In this subsection:

(A) The term "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term "State" includes each of those jurisdictions.

§914. Art. 114. Endangerment offenses

(a) RECKLESS ENDANGERMENT.—Any person subject to this chapter who engages in conduct that—

(1) is wrongful and reckless or is wanton; and

(2) is likely to produce death or grievous bodily harm to another person; shall be punished as a court-martial may direct.

(b) DUELING.—Any person subject to this chapter—

(1) who fights or promotes, or is concerned in or connives at fighting a duel; or

(2) who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority; shall be punished as a court-martial may direct.

(c) FIREARM DISCHARGE, ENDANGERING HUMAN LIFE.—Any person subject to this chapter who, willfully and wrongly, discharges a firearm, under circumstances such as to endanger human life shall be punished as a court-martial may direct.

(d) CARRYING CONCEALED WEAPON.—Any person subject to this chapter who unlawfully carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.

§915. Art. 115. Communicating threats

(a) COMMUNICATING THREATS GENERALLY.—Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

(b) COMMUNICATING THREAT TO USE EXPLOSIVE, ETC.—Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.

(c) COMMUNICATING FALSE THREAT CONCERNING USE OF EXPLOSIVE, ETC.—Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term "false threat" means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.

§916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

§917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

§917. Art. 117a. Wrongful broadcast or distribution of intimate visual images

(a) PROHIBITION. Any person subject to this chapter—

(1) who knowingly and wrongfully broadcasts or distributes an intimate visual image of another person or a visual image of sexually explicit conduct involving a person who—

(A) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(B) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself, or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(C) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(2) who knows or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted in the intimate visual image or visual image of sexually explicit conduct retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(3) who knows or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct is likely—

(A) to cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(B) to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(4) whose conduct, under the circumstances, had a reasonably direct and palpable connection to a military mission or military environment, is guilty of wrongful distribution of intimate visual images or visual images of sexually explicit conduct and shall be punished as a court-martial may direct.

(b) DEFINITIONS. In this section:

(1) BROADCAST. The term 'broadcast' means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(2) DISTRIBUTE. The term 'distribute' means to deliver to the actual or constructive possession of another person, including transmission by mail or electronic means.

(3) INTIMATE VISUAL IMAGE. The term 'intimate visual image' means a visual image that depicts a private area of a person.

(4) PRIVATE AREA. The term 'private area' means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

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(5) **REASONABLE EXPECTATION OF PRIVACY.** The term ‘reasonable expectation of privacy’ means circumstances in which a reasonable person would believe that a private area of the person, or sexually explicit conduct involving the person, would not be visible to the public.

(6) **SEXUALLY EXPLICIT CONDUCT.** The term ‘sexually explicit conduct’ means actual or simulated genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, bestiality, masturbation, or sadistic or masochistic abuse.

(7) **VISUAL IMAGE.** The term ‘visual image’ means the following:

(A) Any developed or undeveloped photograph, picture, film, or video.

(B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.

(C) Any digital or electronic data capable of conversion into a visual image.

§918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

§919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

- (1) by culpable negligence; or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

§919a. Art. 119a. Death or injury of an unborn child

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this

section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child’s mother.

(2) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 926, 928, and 928a of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 126, 128, and 128a).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term “unborn child” means a child in utero, and the term “child in utero” or “child, who is in utero” means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

§919b. Art. 119b. Child endangerment

Any person subject to this chapter—

(1) who has a duty for the care of a child under the age of 16 years; and

(2) who, through design or culpable negligence, endangers the child’s mental or physical health, safety, or welfare; shall be punished as a court-martial may direct.

§920. Art. 120. Rape and sexual assault generally

(a) **RAPE.**—Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person;

(2) using force causing or likely to cause death or grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug,

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intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

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

(b) SEXUAL ASSAULT.—Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) making a fraudulent representation that the sexual act serves a professional purpose; or

(C) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person—

(A) without the consent of the other person; or

(B) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person; is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) AGGRAVATED SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) ABUSIVE SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) DEFENSES.—An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) DEFINITIONS.—In this section:

(1) SEXUAL ACT.—The term “sexual act” means—

(A) the penetration, however, slight, of the penis into the vulva or anus or mouth;

(B) contact between the mouth and the penis, vulva, scrotum, or anus; or

(C) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) Sexual contact.—The term “sexual contact” means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual

desire of any person. Touching may be accomplished by any part of the body or an object.

(3) GRIEVOUS BODILY HARM.—The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(4) FORCE.—The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(5) UNLAWFUL FORCE.—The term “unlawful force” means an act of force done without legal justification or excuse.

(6) THREATENING OR PLACING THAT OTHER PERSON IN FEAR.—The term “threatening or placing that other person in fear” means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(7) CONSENT.—

(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).

(C) All the surrounding circumstances are to be considered in determining whether a person gave consent.

(8) Incapable of consenting.—The term “incapable of consenting” means the person is—

(A) incapable of appraising the nature of the conduct at issue; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.

§920a. Art. 120a. Mails: deposit of obscene matter

Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.

§920b. Art. 120b. Rape and sexual assault of a child

(a) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

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(2) commits a sexual act upon a child who has attained the age of 12 years by—

- (A) using force against any person;
- (B) threatening or placing that child in fear;
- (C) rendering that child unconscious; or

(D) administering to that child a drug, intoxicant, or other similar substance; is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) **SEXUAL ASSAULT OF A CHILD.**—Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) **SEXUAL ABUSE OF A CHILD.**—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) **AGE OF CHILD.**—

(1) **UNDER 12 YEARS.**—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) **UNDER 16 YEARS.**—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) **PROOF OF THREAT.**—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) **MARRIAGE.**—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) **CONSENT.**—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) **DEFINITIONS.**—In this section:

(1) **SEXUAL ACT AND SEXUAL CONTACT.**—The terms “sexual act” and “sexual contact” have the meanings given those terms in section 920(g) of this title (article 120(g)), except that the term “sexual act” also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(2) **FORCE.**—The term “force” means—

- (A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) **THREATENING OR PLACING THAT CHILD IN FEAR.**—The term “threatening or placing that child in fear” means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) **CHILD.**—The term “child” means any person who has not attained the age of 16 years.

(5) **LEWD ACT.**—The term “lewd act” means—

(A) any sexual contact with a child;

(B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

§920c. Art. 120c. Other sexual misconduct

(a) **INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING.**—Any person subject to this chapter who, without legal justification or lawful authorization—

(1) knowingly and wrongfully views the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy;

(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or

(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

(b) **FORCIBLE PANDERING.**—Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(c) **INDECENT EXPOSURE.**—Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(d) **DEFINITIONS.**—In this section:

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(1) ACT OF PROSTITUTION.—The term “act of prostitution” means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.

(2) PRIVATE AREA.—The term “private area” means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(3) REASONABLE EXPECTATION OF PRIVACY.—The term “under circumstances in which that other person has a reasonable expectation of privacy” means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

(4) BROADCAST.—The term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(5) DISTRIBUTE.—The term “distribute” means delivering to the actual or constructive possession of another, including transmission by electronic means.

(6) INDECENT MANNER.—The term “indecent manner” means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

§921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

§921a. Art. 121a. Fraudulent use of credit cards, debit cards, and other access devices

(a) IN GENERAL.—Any person subject to this chapter who, knowingly and with intent to defraud, uses—

(1) a stolen credit card, debit card, or other access device;

(2) a revoked, cancelled, or otherwise invalid credit card, debit card, or other access device; or

(3) a credit card, debit card, or other access device without the authorization of a person whose authorization is required for such use; to obtain money, property, services, or anything else of value shall be punished as a court-martial may direct.

(b) ACCESS DEVICE DEFINED.—In this section (article), the term “access device” has the meaning given that term in section 1029 of title 18.

§921b. Art. 121b. False pretenses to obtain services

Any person subject to this chapter who, with intent to defraud, knowingly uses false pretenses to obtain services shall be punished as a court-martial may direct.

§922. Art. 122. Robbery

Any person subject to this chapter who takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

§922a. Art. 122a. Receiving stolen property

Any person subject to this chapter who wrongfully receives, buys, or conceals stolen property, knowing the property to be stolen property, shall be punished as a court-martial may direct.

§923. Art. 123. Offenses concerning Government computers

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

(1) knowingly accesses a Government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;

(2) intentionally accesses a Government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any such Government computer; or

(3) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a Government computer; shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term “computer” has the meaning given that term in section 1030 of title 18.

(2) The term “Government computer” means a computer owned or operated by or on behalf of the United States Government.

(3) The term “damage” has the meaning given that term in section 1030 of title 18.

§923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

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(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

§924. Art. 124. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; shall, upon conviction, be punished as a court-martial may direct.

§924a. Art. 124a. Bribery

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value with the intent to have the person's decision or action influenced

with respect to an official matter in which the United States is interested; shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, with the intent to influence the decision or action of the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

§924b. Art. 124b. Graft

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States is interested; shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, as compensation for or in recognition of services rendered or to be rendered by the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

§925. Art. 125. Kidnapping

Any person subject to this chapter who wrongfully—

(1) seizes, confines, inveigles, decoys, or carries away another person; and

(2) holds the other person against that person's will; shall be punished as a court-martial may direct.

§926. Art. 126. Arson; burning property with intent to defraud

(a) AGGRAVATED ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein, to the knowledge of that person, there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) SIMPLE ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets fire to the property of another is guilty of simple arson and shall be punished as a court-martial may direct.

(c) BURNING PROPERTY WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, willfully, maliciously, and with intent to defraud, burns or sets fire to any property shall be punished as a court-martial may direct.

§927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

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§928. Art. 128. Assault

(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—

- (1) attempts to do bodily harm to another person;
- (2) offers to do bodily harm to another person; or
- (3) does bodily harm to another person; is guilty of assault and shall be punished as a court-martial may direct.

(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—

- (1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;
- (2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or
- (3) who commits an assault by strangulation or suffocation; is guilty of aggravated assault and shall be punished as a court-martial may direct.

(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—

- (1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.
- (2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.

§928a. Art. 128a. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

- (1) seriously disfigures his person by any mutilation thereof;
- (2) destroys or disables any member or organ of his body; or
- (3) seriously diminishes his physical vigor by the injury of any member or organ; is guilty of maiming and shall be punished as a court-martial may direct.

§928b. Art. 128b. Domestic Violence

Any person who—

- (1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;
- (2) with intent to threaten or intimidate a spouse, an intimate 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, 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, or an immediate family member of that person, violates a protection order; or
- (5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating shall be punished as a court-martial may direct.

§929. Art. 129. Burglary; unlawful entry

(a) BURGLARY.—Any person subject to this chapter who, with intent to commit an offense under this chapter, breaks and enters the building or structure of another shall be punished as a court-martial may direct.

(b) UNLAWFUL ENTRY.—Any person subject to this chapter who unlawfully enters—

- (1) the real property of another; or
- (2) the personal property of another which amounts to a structure usually used for habitation or storage; shall be punished as a court-martial may direct.

930. Art. 130. Stalking

(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;
- (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; 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;

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 “repeated”, with respect to conduct, means two or more occasions of such conduct.

(4) 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) 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

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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.

§931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct.

§931a. Art. 131a. Subornation of perjury

(a) IN GENERAL.—Any person subject to this chapter who induces and procures another person—

(1) to take an oath; and

(2) to falsely testify, depose, or state upon such oath; shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.

(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) The oath is administered with respect to a matter for which such oath is required or authorized by law.

(2) The oath is administered by a person having authority to do so.

(3) Upon the oath, the other person willfully makes or subscribes a statement.

(4) The statement is material.

(5) The statement is false.

(6) When the statement is made or subscribed, the person subject to this chapter and the other person do not believe that the statement is true.

§931b. Art. 131b. Obstructing justice

Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the due administration of justice shall be punished as a court-martial may direct.

§931c. Art. 131c. Misprision of serious offense

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

(1) who knows that another person has committed a serious offense; and

(2) wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or

military authorities as soon as possible; shall be punished as a court-martial may direct.

§931d. Art. 131d. Wrongful refusal to testify

Any person subject to this chapter who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, preliminary hearing, or an officer taking a deposition, of or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.

§931e. Art. 131e. Prevention of authorized seizure of property

Any person subject to this chapter who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.

§931f. Art. 131f. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.

§931g. Art. 131g. Wrongful interference with adverse administrative proceeding

Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent—

(1) to influence, impede, or obstruct the conduct of the proceeding; or

(2) otherwise to obstruct the due administration of justice; shall be punished as a court-martial may direct.

§932. Art. 132. Retaliation

(a) IN GENERAL.—Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication—

(1) wrongfully takes or threatens to take an adverse personnel action against any person; or

(2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person; shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term “protected communication” means the following:

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(A) A lawful communication to a Member of Congress or an Inspector General.

(B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) The term "Inspector General" has the meaning given that term in section 1034(j) of this title.

(3) The term "covered individual or organization" means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.

(4) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

§933. Art. 133. Conduct unbecoming an officer

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

§934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the preceding sentence, the term "crimes and offenses not capital" includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.

SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

Sec. Art.

935. 135. Courts of inquiry.
936. 136. Authority to administer oaths.
937. 137. Articles to be explained.
938. 138. Complaints of wrongs.
939. 139. Redress of injuries to property.
940. 140. Delegation by the President.
940a. 140a. Case management; data collection and accessibility.

§935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any

other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c)(1) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party.

(2) Any person who is (A) subject to this chapter, (B) employed by the Department of Defense, or (C) with respect to the Coast Guard, employed by the department in which the Coast Guard is operating when it is not operating as a service in the Navy, and who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court.

(3) Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

§936. Art. 136. Authority to administer oaths

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

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(6) All other persons designated by regulations of the armed forces or by statute.

(c) Each judge and senior judge of the United States Court of Appeals for the Armed Forces shall have the powers relating to oaths, affirmations, and acknowledgements provided to justices and judges of the United States by section 459 of title 28.

§937. Art. 137. Articles to be explained

(a) ENLISTED MEMBERS.—

(1) The sections (articles) of this chapter specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) OFFICERS.—

(1) The sections (articles) of this chapter specified in paragraph (2) shall be carefully explained to each officer at the time of (or within six months after)—

(A) the initial entrance of the officer on active duty as an officer; or

(B) the initial commissioning of the officer in a reserve component.

(2) This subsection applies with respect to the sections (articles) specified in subsection (a)(3) and such other sections (articles) as the Secretary concerned may prescribe by regulation.

(c) TRAINING FOR CERTAIN OFFICERS.—Under regulations prescribed by the Secretary concerned, officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter. Under regulations prescribed by the Secretary of Defense, officers assigned to duty in a combatant command, who have such authority, shall receive additional specialized training regarding the purposes and administration of this chapter with respect to joint commands and combatant commands.

(d) AVAILABILITY AND MAINTENANCE OF TEXT.—The text of this chapter and the text of the regulations prescribed by the President under this chapter shall be—

(1) made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination; and

(2) maintained by the Secretary of Defense in electronic formats that are updated periodically and made available on the Internet.

§938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to

the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

§939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

§940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

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

(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system (including with respect to the Coast Guard), including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).

(2) Case processing and management.

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

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

(b) PROTECTION OF CERTAIN PERSONALLY IDENTIFIABLE INFORMATION.—Records of trial, docket information, filings, and other records made publicly accessible in accordance with the

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uniform standards and criteria for conduct established by the Secretary under subsection (a) shall restrict access to personally identifiable information of minors and victims of crime (including victims of sexual assault and domestic violence), as practicable to the extent such information is restricted in electronic filing systems of Federal and State courts.

(c) INAPPLICABILITY TO CERTAIN DOCKETS AND RECORDS.—Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.

(d) PRESERVATION OF COURT-MARTIAL RECORDS WITHOUT DISREGARD TO OUTCOME.—The standards and criteria prescribed by the Secretary of Defense under subsection (a) shall provide for the preservation of general and special court-martial records, without regard to the outcome of the proceeding concerned, for not fewer than 15 years.

SUBCHAPTER XII. UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec. Art.

- 941. 141. Status.
- 942. 142. Judges.
- 943. 143. Organization and employees.
- 944. 144. Procedure.
- 945. 145. Annuities for judges and survivors.
- 946. 146. Military Justice Review Panel.
- 946a. 146a. Annual reports.

§941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

§942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—

(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2)(A) The term of a judge shall expire as follows:

(i) In the case of a judge who is appointed after January 31 and before July 31 of any year, the term shall expire on July 31 of the year in which the fifteenth anniversary of the appointment occurs.

(ii) In the case of a judge who is appointed after July 31 of any year and before February 1 of the following year, the term shall expire fifteen years after such July 31.

(B) If at the time of the appointment of a judge the date that is otherwise applicable under subparagraph (A) for the expiration of the term of service of the judge is the same as the date for the expiration of the term of service of a judge already on the court, then the term of the judge being appointed shall expire on the first

July 31 after such date on which no term of service of a judge already on the court will expire.

(3) No person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) A person may not be appointed as a judge of the court within seven years after retirement from active duty as a commissioned officer of a regular component of an armed force.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

- (1) neglect of duty;
- (2) misconduct; or

(3) mental or physical disability. A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the difference between—

(A) the daily equivalent of the annual rate of pay provided for a judge of the court; and

(B) the daily equivalent of the annuity of the judge under section 945 of this title (article 145), the applicable provisions of title 5, or any other retirement system for employees of the Federal Government under which the senior judge receives an annuity.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

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(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

§943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—

(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—

(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

§944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

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§945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—

(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest

which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (f)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—

(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(g) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(h) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—

(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

§946. Art. 146. Military Justice Review Panel

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the "Military Justice Review Panel" (in this section referred to as the "Panel").

(b) MEMBERS.—

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(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

(B) The Attorney General.

(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) The Chief Justice of the United States.

(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

(f) REVIEWS AND REPORTS.—

(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2021, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year 2020, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 56). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. The analysis under this paragraph shall be included in the assessment required by paragraph (1).

(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim

review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

(5) REPORTS.—With respect to each review and assessment under this subsection, the Panel shall submit a report to the Committees on Armed Services of the Senate and House of Representatives. Each report—

(A) shall set forth the results of the review and assessment concerned, including the findings and recommendations of the Panel; and

(B) shall be submitted not later than December 31 of the calendar year in which the review and assessment is concluded.

(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties under this section.

(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.

(i) ADMINISTRATIVE MATTERS.—

(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.

(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.

(j) CHAPTER 10 OF TITLE 5.—Chapter 10 of title 5 shall not apply to the Panel.

§946a. Art. 146a. Annual reports

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 of each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 of each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

(1) Data on the number and status of pending cases.

(2) Information on the appellate review process, including—

(A) information on compliance with processing time goals;

(B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were

(i) reversed because of command influence or denial of the right to speedy review or

(ii) otherwise remitted because of loss of records of trial or other administrative deficiencies;

(C) an analysis of each case in which a provision of this chapter was held unconstitutional; and

(D) an analysis of each case in which a Court of Criminal Appeals made a final determination that a finding of a court-martial

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was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.

(3)(A) An explanation of measures implemented by the armed force involved to ensure the ability of judge advocates—

(i) to participate competently as trial counsel and defense counsel in cases under this chapter;

(ii) to preside as military judges in cases under this chapter; and

(iii) to perform the duties of Special Victims' Counsel, when so designated under section 1044e of this title.

(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

(4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.

(5) Such other matters regarding the operation of this chapter as may be appropriate.

(c) SUBMISSION.—Each report under this section shall be submitted—

(1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.

Appendix 5

The Department of Defense Forms Management Program provides the following blank forms for reference and use in military justice processing. This is a non-exhaustive list. The forms are available at <https://www.esd.whs.mil/Directives/forms/>.

Form Number	Form Name
DD453	Subpoena to Testify and/or Produce or Permit Inspection of Items in a Court Martial
DD453-1	Travel Order
DD454	Warrant of Attachment
DD455	Report of Proceedings to Vacate Suspension of a Court-Martial Sentence
DD456	Interrogatories and Dispositions
DD457	Preliminary Hearing Officer's Report
DD458	Charge Sheet
DD490	Certified Record of Trial
DD491	Summarized Record of Trial
DD491-1	Summarized Record of Trial – Article 39(A) Session
DD493	Extract of Military Records of Previous Convictions
DD494	Court-Martial Data Sheet
DD1722	Request for Trial Before Military Judge Alone
DD2329	Record of Trial by Summary Court-Martial
DD2330	Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review
DD2331	Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General
DD2654	Involuntary Allotment Notice and Processing
DD2698	Application for Transitional Compensation
DD2701	Initial Information for Victims and Witnesses of Crime
DD2702	Court-Martial Information for Victims and Witnesses of Crime
DD2703	Post-Trial Information for Victims and Witnesses of Crime
DD2704	Victim/Witness Certification and Election Concerning Prisoner Status
DD2704-1	Victim Election of Post-Trial and Appellate Rights
DD2705	Notification to Victim/Witness of Prisoner Status
DD2706	Annual Report on Victim and Witness Assistance
DD2707	Confinement Order
DD2707-1	Department of Defense Report of Result of Trial
DD2708	Receipt for Pretrial/Post-Trial Prisoner or Detained Person
DD2717	Department of Defense Voluntary/Involuntary Appellate Leave Action
DD2873	Military Protection Order (MPO)
DD3056	Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703

Annex E

Sec. 1. Appendix 8 (MCM) is amended as follows:

(a) On page A8-4, the paragraph starting with the words “Examine the list of lesser included offenses” is revised to read as follows:

“[Examine the list of lesser included offenses under each punitive article alleged to have been violated. *See* Appendix 12A. If a lesser included offense may be at issue, give the following advice.] You may plead not guilty to Charge _____, Specification _____, as it now reads, but plead guilty to the lesser offense of _____, which is included in the offense charged. Of course, you are not required to do this. If you do, then I can find you guilty of this lesser offense without hearing evidence on it. Furthermore, I could still hear evidence on the greater offense for purposes of deciding whether you are guilty of it. Do you understand that?”

(b) On page A8-9, the paragraph starting with the words “Note 25” is revised to read as follows:

“[Note 25. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. *See* R.C.M. 918. It may not consider any facts that were not admitted into evidence, such as a confession or admission of the accused that was excluded because it was taken in violation of Mil. R. Evid. 304. In accordance with R.C.M. 1304(b)(2)(F), the summary court-martial shall apply the principles of R.C.M. 918 in determining the findings.]”

(c) On page A8-10, the paragraph starting with the words “Note 34” is revised to remove the last sentence.

Sec. 2. Appendix 12 (MCM) is amended as follows:

(a) A row for the maximum punishment for Article 117a is added to appear immediately following the row for Article 117 and reads as follows:

117a	Wrongful broadcast or distribution of intimate visual images.	DD, BCD	2 yrs.	Total
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(b) The row for the maximum punishment associated with Article 128 starting with the words “When committed with an unloaded firearm” is revised to read as follows:

When committed with a firearm/other dangerous weapon	DD, BCD	2 yrs.	Total
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(c) A row for the maximum punishment associated with Article 128 is added to immediately following the row beginning with the words “When committed with a firearm/other dangerous weapons” and reads as follows:

When committed with a loaded firearm	DD, BCD	4 yrs.	Total
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(d) Rows for the maximum punishment associated with Article 128b are added to follow immediately after the row beginning with the words “128a Maiming” and read as follows:

128b Domestic Violence

Commission of a violent offense against a spouse, an intimate 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, 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, 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, or an immediate 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, or an immediate family member of that person. .	DD, BCD	5 yrs.	Total
Assaulting a spouse, an intimate 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

(e) The offense descriptor for the maximum punishment associated with Article 133 is revised to read as follows: “Conduct unbecoming an officer.”

(f) A row for the maximum punishment associated with Article 134 – (Sexual Harassment) is added to follow immediately after the row starting with the words “Intentional self-inflicted injury” and reads as follows:

134	Sexual Harassment	DD, BCD	2 yrs.	Total
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Sec. 3. Appendix 15 (MCM) is amended as follows:

(a) Appendix 15’s title is revised as follows:

**“ANALYSIS OF THE COMPOSTION OF THE MANUAL, THE PREAMBLE
AND THE RULES FOR COURTS-MARTIAL”**

(b) The first paragraph of the Introduction is revised to read as follows:

“The Manual for Courts-Martial, United States (2024 edition) implements the military justice reforms enacted by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 133 Stat. 1198 (2019); William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (2020); National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541 (2021); and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 263, 136 Stat 2395 (2022). It also incorporates two Executive Orders, namely Executive Order No. 14062 (Jan. 26, 2022), and Executive Order No. 14103 (July 28, 2023).”

(c) The paragraphs following the words “*A note on citation form*” (page A15-2) and preceding the words “*Composition of the Manual*” are revised to read as follows:

“*A note on citation form.* The drafters generally have followed *The Bluebook, A Uniform System of Citation* (21st ed. 2020), subject to the following.

This edition of the Manual for Courts-Martial is referred to generally as “this Manual.” The Rules for Courts-Martial are cited, *e.g.*, as R.C.M. 101. The Military Rules of Evidence are cited, *e.g.*, as Mil. R. Evid. 101. Other provisions of this Manual are cited to the applicable part and paragraph, *e.g.*, MCM, Part V, paragraph 1a(1) (2024).

Previous editions of the Manual for Courts-Martial will be referred to as “MCM, (XXXX edition).”

The Uniform Code of Military Justice, 10 U.S.C. Sections 801–946a, is cited as follows: Each individual section is denominated in the statute as an “Article” and is cited to the corresponding Article. *E.g.*, 10 U.S.C. Section 801 is cited as “Article 1”; 10 U.S.C. Section 802 is cited as “Article 2”; 10 U.S.C. Section 940 is cited as “Article 140.” The entire legislation, Articles 1 through 146a, is referred to as “the Code” or “the UCMJ” without citation to the United States Code.

When a change from MCM, 2016 is based on the Military Justice Act of 2016 or subsequent legislation, this will be noted in the analysis, with citation to the appropriate section of the act.”

(d) The paragraph following the words “Executive Order” and preceding the words “a. Supplementary Materials” is revised to read as follows:

“The Manual for Courts-Martial consists of the Preamble; Rules for Courts-Martial; Military Rules of Evidence; the Punitive Articles; Nonjudicial Punishment Procedure; Appendix 12A, Presidentially-Prescribed Lesser Included Offenses pursuant to Article 79(b)(2), Uniform Code of Military Justice; Appendix 12B, Sentencing Parameter Table—Confinement Range Categories; Appendix 12C—Offense Category Chart; and Appendix 12D—List of Sentencing Criteria Offenses. Each rule states binding requirements except when the text of the rule expressly provides otherwise. Normally, failure to comply with a rule constitutes error. See Article 59 concerning the effect of errors.”

(e) The last paragraph of the Introduction portion of Appendix 15, starting with the words, “The Appendices contain various nonbinding materials” (page A15-3) is revised to read as follows:

“(3) The Appendices

Except for Appendix 2.1 and Appendices 12A-D, the Appendices are approved by the General Counsel of the Department of Defense and provide supplementary, non-binding materials to assist Manual users. While Appendix 2 offers a reproduction of the Uniform Code of Military Justice for user convenience, it is advisable to consult with the official and most up-to-date version of the law published by the Office of Law Revision Counsel at <https://uscode.house.gov>. When referencing excerpts of law or legal authority contained within the appendices, it is advisable to cross-reference the cited law or authority. For details on the issuing authority and scope of Appendix 2.1 and Appendices 12A-D, please refer to the respective sections.”

(f) A paragraph is added at the end of the analysis of Part I, paragraph 3 to read as follows:

“*2023 Amendment:* Paragraph 3 was revised to note that the purposes of military law include deterring misconduct and facilitating appropriate accountability.”

(g) An analysis of Part I, paragraph 4 is added to read as follows:

“4. The Evolving Military Justice System

2023 Amendment: A new paragraph 4 was added to discuss the evolution of the military justice system, including the reforms enacted by the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1546 (2021) [hereinafter FY2022 NDAA].”

(h) The analysis of Part I, paragraph 4 is redesignated as the analysis of Part I, paragraph 5 and is revised to read as follows:

“5. Structure and application of the Manual for Courts-Martial

Self-explanatory. *See also* the *Introduction* of the Analysis.

2023 Amendment: Paragraph 4 was renumbered as paragraph 5. Citations to the Department of Defense issuance governing the Joint Service Committee on Military Justice were updated.”

(i) The analysis of R.C.M. 103 is amended by adding new paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 103(10), (12), and (23) are amended to provide definitions regarding special trial counsel authorities. *See* Subtitle D, FY2022 NDAA. Other definitions are renumbered as appropriate without further amendment.

R.C.M. 103(12) defines the phrase “exercise authority over,” which is statutory language in Article 24a. The definition clarifies how a special trial counsel can exercise authority over an offense to the exclusion of a commander. The definition ensures that a special trial counsel and a convening authority each know when they are responsible for disposing of an offense.

R.C.M. 103(23) defines the term “referral authority.” This term is used throughout the R.C.M.s to discuss roles and responsibilities of the special trial counsel or the convening authority, as applicable.”

(j) The Analysis of R.C.M. 104 is revised to read as follows:

“Rule 104 Command influence

This rule is taken from R.C.M. 104 of the MCM (2016 edition), with the following amendments:

2018 Amendment: The Discussion accompanying R.C.M. 104(b)(2)(B) is amended to reflect the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

2023 Amendments:

The title of the rule is amended to reflect the change to Article 37. *See* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1359 (2019). The text of the rule is amended to implement changes to Article 37 as well as to clarify the role and responsibilities of special trial counsel.

R.C.M. 104(a)(2)(B)(ix) is added to include “taking action on the findings or sentence,” and all subsequent paragraphs are redesignated.”

(k) The analysis of R.C.M. 105 is revised to read as follows:

“Rule 105 Direct communication: convening authorities and staff judge advocates; among staff judge advocates

This rule is taken from Rule 105 of the MCM (2016 edition) with the following amendments:

2023 Amendments:

R.C.M. 105(c) is new and clarifies the ability to communicate with special trial counsel.

R.C.M. 105(d) is new and clarifies that all communications must be free from unlawful or unauthorized influence or coercion per Article 37, UCMJ.”

(l) The analysis of R.C.M. 201 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 201(e) is amended to clarify the procedure for reciprocal jurisdiction among the services.

The Discussion accompanying R.C.M. 201(b)(3) is amended to reflect that a referral to a general court-martial or special court-martial, when done at the direction of a special trial counsel for covered offenses, does not make the convening authority an accuser for purposes of R.C.M. 307. *See* FY2022 NDAA.

The Discussion accompanying R.C.M. 201(d)(3) is amended to reflect the document title of the memorandum of understanding (MOU) between the Department of Justice (DOJ) and Department of Defense at Appendix 3 and to note a similar MOU between the DOJ and the Department of Transportation for the U.S. Coast Guard at Appendix 4.

R.C.M. 201(f)(2)(C) is amended to account for referral of capital offenses by special trial counsel to special court-martial.”

(m) The title of the analyses of Chapter III of Part II of the MCM is revised to read as follows:

“CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS”

(n) The analysis of R.C.M. 301 is revised to read as follows:

“Rule 301 Report of offense

This rule is taken from Rule 301 of the MCM (2016 edition) with the following amendment:

2023 Amendment: Subparagraph (c) is added to ensure special trial counsel are made aware of all allegations of covered offenses. A special trial counsel must exercise authority over a covered offense and has exclusive authority to determine whether a reported offense is a covered offense.”

(o) The analysis of R.C.M. 302 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

The Discussion accompanying R.C.M. 302(b)(3) is amended to replace “passion” with “possession.”

The Discussion accompanying R.C.M. 302(c) is amended to remove the proposition that “reasonable grounds” is equivalent to “probable cause.””

(p) An analysis of R.C.M. 303A is added to immediately follow the analysis of R.C.M. 303 and reads as follows:

“Rule 303A Determination by special trial counsel to exercise authority

2023 Amendment: This rule is new and describes the initial determinations special trial counsel shall make prior to exercising authority over an offense.”

(q) The analysis of R.C.M. 304 is revised to read as follows:

“Rule 304 Pretrial restraint

This rule is taken from Rule 304 of the MCM (2016 edition) with the following amendments:

2018 Amendment: The Discussion accompanying R.C.M. 304(a)(4) is amended and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

2023 Amendment: R.C.M. 304(f) is added and ensures timely notice is given to special trial counsel when an accused suspected of a covered offense is placed under pretrial restraint. All other paragraphs are redesignated, without further amendment, to accommodate the addition of the new R.C.M. 304(f).”

(r) The analysis of R.C.M. 305 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 305(f) is added to ensure timely notice is given to special trial counsel when an accused suspected of a covered offense is placed in pretrial confinement. All other paragraphs are redesignated, without further amendment, to accommodate the addition of the new R.C.M. 305(f).

R.C.M. 305(j), now R.C.M. 305(k), is amended to provide procedures for pre-referral review of a pretrial confinement determination.”

(s) The title of the analysis of R.C.M. 306 is revised to read as follows:

“Rule 306 Initial disposition for offenses over which special trial counsel does not exercise authority”

(t) The analysis of R.C.M. 306 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 306 is amended to articulate command authority to make an initial disposition determination on reported offenses when a special trial counsel is not exercising authority or has deferred.”

(u) An analysis of R.C.M. 306A is added immediately after the analysis of R.C.M. 306 and reads as follows:

“Rule 306A Initial disposition for offenses over which special trial counsel exercises authority

2023 Amendment: This rule is new and describes the manner in which a special trial counsel disposes of offenses over which the special trial counsel has exercised authority. Under R.C.M. 307(a), any person subject to the UCMJ may prefer charges. If someone other than a special trial counsel prefers a charge for a covered offense, a special trial counsel must exercise authority over that offense upon learning of the referral of the charge. Special trial counsel have exclusive authority to dispose of preferred charges for covered offenses, and any other offenses over which a special trial counsel has exercised authority, regardless of who preferred the charges.”

(v) The analysis of R.C.M. 307 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 307(b)(3) is added to clarify that referral of charges by remote means is authorized.”

(w) The analysis of R.C.M. 308 is revised to read as follows:

“Rule 308 Notification to accused of charges and required disclosures

This rule is taken from Rule 308 of the MCM (2016 edition) with the following amendments:

2023 Amendment: R.C.M. 308(c) and (d) incorporate language regarding disclosures that was previously located in R.C.M. 404A(a)(1), (b), (c), and (d) in the MCM (2019 edition). Additionally, R.C.M. 308(c) specifically identifies the items accompanying the charges that are required for initial disclosure, and R.C.M. 308(d)(2) clarifies work product not subject to disclosure.”

(x) The analysis of R.C.M. 309 is revised to read as follows:

“Rule 309 Pre-referral judicial proceedings

2018 Amendment: R.C.M. 309 is new and implements Article 30a, as added by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017), which establishes the matters that may be addressed by a military judge or military magistrate in a pre-referral proceeding.

2023 Amendment: R.C.M. 309(a) is amended to limit the authority of the military judge in the pre-referral context.

R.C.M. 309(b)(4)-(10) are added to include matters that may be adjudicated at a pre-referral hearing under Article 30a. Of note, R.C.M. 309(b)(3)(10) is added to allow a party to ask a military judge to consider whether to order a pre-referral deposition.

R.C.M. 309(e) is amended to ensure the record from any pre-referral hearing in a case involving a special trial counsel is forwarded to the special trial counsel.”

(y) The analysis of R.C.M. 401 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 401 and the Discussions are amended to articulate command authority over the forwarding and disposition of charges when a special trial counsel has not exercised authority or has deferred.”

(z) The analysis of R.C.M. 401A is revised to read as follows:

“Rule 401A. Disposition of charges over which a special trial counsel exercises authority and has not deferred

2023 Amendment: R.C.M. 401A and the Discussions are new and describe the process special trial counsel must employ to dispose of preferred charges.”

(aa) The analysis of R.C.M. 402 is revised to read as follows:

“Rule 402 Action by commander not authorized to convene courts-martial

This rule is taken from Rule 402 of the MCM (2016 edition) with the following amendments:

2023 Amendment: R.C.M. 402 is amended to clarify the role of special trial counsel.”

(bb) The analysis of R.C.M. 403 is revised to read as follows:

“Rule 403 Action by commander exercising summary court-martial jurisdiction

This rule is taken from Rule 403 of the MCM (2016 edition) with the following amendments:

2018 Amendment: The Discussions accompanying R.C.M. 403 are amended and update cross-references. R.C.M. 403(b)(4) is amended and implements Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

2023 Amendment: R.C.M. 403 is amended to clarify the role of special trial counsel.”

(cc) The analysis of R.C.M. 404 is revised to read as follows:

“Rule 404 Action by Commander exercising special court-martial jurisdiction

This rule is taken from Rule 404 of the MCM (2016 edition) with the following amendments:

2018 Amendment: R.C.M. 404(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162

of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction for certain sex-related offenses to general courts-martial.

2023 Amendment: R.C.M. 404 is amended to clarify the role of special trial counsel.”

(dd) The analysis of R.C.M. 404A is revised to read as follows:

“Rule 404A Initial disclosures [Removed]

This rule is taken from Rule 404A of the MCM (2016 edition) with the following amendments:

2018 Amendments:

The rule is renamed “Initial disclosures.”

R.C.M. 404A(a) is amended and establishes the Government’s disclosure requirements at preferral of charges and at the direction of a preliminary hearing.

The Discussion accompanying R.C.M. 404A(c) is amended and updates a cross-reference.

The Discussion accompanying R.C.M. 404A(d) is amended and updates a reference.

2023 Amendment: R.C.M. 404A is removed. The substance of the rule is incorporated into R.C.M. 308 and R.C.M. 405.”

(ee) The analysis of R.C.M. 405 is revised to read as follows:

“Rule 405 Preliminary hearing

This rule is taken from Rule 405 of the MCM (2016 edition) with the following amendments:

2018 Amendments:

R.C.M. 405 and the accompanying Discussions are amended and reflect Articles 6b, 30a, 32, 33, 46, and 47, as amended or added by Sections 5105, 5202, 5203, 5204, and 5229 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Article 6b is further amended by Sections 531(a), 1081(a)(22), and 1081(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017). Article 30a is amended by Section 531(b) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

The Discussions following R.C.M. 405(i)(2)(D), R.C.M. 405(j)(8), and R.C.M. 405(k)(3) are new and reflect that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

2023 Amendments by Annex 1 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 405(f), now R.C.M. 405(g), is amended to clarify the rights of the accused at a preliminary hearing.

R.C.M. 405(h)(3)(B)(iii), now R.C.M. 405(i)(3)(B)(iii), is amended to clarify the use of an investigative subpoena for evidence not under the control of the Government during a preliminary hearing.

R.C.M. 405(i)(2)(A), now R.C.M. 405(j)(2)(A), is amended to change “any alleged victim’s sexual predisposition” to “the alleged victim’s sexual predisposition.” Additionally, subparagraph (i) is amended to replace “Mil. R. Evid. 412(b)(1)(A) or (B)” with “Mil. R. Evid. 412(b)(1) or (2),” and subparagraph (ii) is amended to remove “relevant” from the determination.

R.C.M. 405(j)(3), now R.C.M. 405(k)(3), is amended to clarify that preliminary hearings should remain open to the public whenever possible, whether conducted in person or via remote means. R.C.M. 405(j)(4), now R.C.M. 405(k)(4), is amended to clarify the requirements for an accused to appear via remote means at a preliminary hearing.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 405(c) is amended to clarify special trial counsel's role in determining whether a preliminary hearing is required.

R.C.M. 405(d) is added to incorporate disclosures previously contained in R.C.M. 404A. Other paragraphs are renumbered to accommodate this addition.

R.C.M. 405(d), now R.C.M. 405(e), is amended to add that for preliminary hearings, special trial counsel shall detail counsel for the Government consistent with regulations prescribed by the Secretary concerned.

R.C.M. 405(e), now R.C.M. 405(f), is amended to require the preliminary hearing officer to provide notice to the convening authority and submit a copy of the preliminary hearing report to a special trial counsel if an uncharged covered offense is adduced during the preliminary hearing.

R.C.M. 405(k)(4) is amended to clarify that remote presence of the accused for a preliminary hearing is authorized.”

(ff) The analysis of R.C.M. 406 is revised to read as follows:

“Rule 406 Pretrial advice and special trial counsel determinations

This rule is taken from Rule 406 of the MCM (2016 edition) with the following amendments:

2018 Amendments:

R.C.M. 406(a) and (b) and the accompanying Discussions are amended and reflect Article 34, as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charged, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 601(d).

The Discussion accompanying R.C.M. 406(a) is amended and refers to the non-binding disposition guidance required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 406(c) is added to address distribution of written advice from the staff judge advocate if charges are referred to a general court-martial.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 406(a)(2) is amended to incorporate R.C.M. 406A.

R.C.M. 406(c) is amended to account for the written determination made by a special trial counsel if charges are referred to a general or special court-martial.”

(gg) The analysis of R.C.M. 406A is revised to read as follows:

“Rule 406A Pretrial advice before referral to special court-martial [REMOVED]

2018 Amendments:

R.C.M. 406A is new and implements Article 34(b), as amended by Section 5202 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial.

The Discussion accompanying R.C.M. 406A(a) is amended and refers to guidance concerning disposition of charges and specifications required by Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). *See* Appendix 2.1.

2023 Amendment: R.C.M. 406A is removed. The substance of the rule is incorporated into R.C.M. 406.”

(hh) The analysis of R.C.M. 407 is revised to read as follows:

“Rule 407 Action by commander exercising general court-martial jurisdiction

This rule is taken from Rule 407 of the MCM (2016 edition) with the following amendments:

2018 Amendments:

R.C.M. 407(a)(4) and the accompanying Discussion are amended and reflect Article 18, as amended by Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013), as further amended by Section 5162 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which limits jurisdiction over certain sex-related offenses to general courts-martial.

The Discussion accompanying R.C.M. 407(a)(6) is amended and refers to Sections 1744(b)-(d) of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 980 (2013), as amended by the Section 541 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, 128 Stat. 3371 (2014), which require higher level review with respect to certain decisions involving allegations of sex-related offenses.

2023 Amendment: R.C.M. 407 is amended to clarify the role of special trial counsel.”

(ii) The analysis of R.C.M. 502 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 502(a)(2)(A) is amended to account for changes in the sentencing procedures in Articles 53 and 56, UCMJ, providing for judge-alone sentencing in all special and non-capital

general court-martial cases, enacted by Section 539E of FY2022 NDAA.

R.C.M. 502(d)(1)(C) is new and describes the qualifications of special trial counsel and requires a special trial counsel be detailed to all cases referred by special trial counsel.

R.C.M. 502(d)(3)(A) is amended to clarify that a special trial is not disqualified as an accuser by making a determination to prefer or refer a charge.

The Discussion accompanying R.C.M. 502(d)(4) is amended to clarify that the convening authority is responsible for addressing irregularities in the convening orders and allied papers in all cases. For cases over which a special trial counsel has exercised authority and has not deferred, the special trial counsel is responsible for addressing any irregularity in a charge. For cases in which the convening authority has referred the charges, the convening authority is responsible for addressing any irregularity in a charge.”

(jj) The analysis of R.C.M. 503 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 503(a)(1) is amended to reference Article 25, UCMJ, and to require the convening authority to provide a list of detailed members to the military judge to randomize in accordance with R.C.M. 911.

The Discussion accompanying R.C.M. 503(a)(1) is amended to require the convening authority to detail a sufficient number of qualified persons. In order to determine a sufficient number of qualified persons to detail to a court-martial, the convening authority, as advised by the staff judge advocate, should consider the following non-exclusive list of factors to ensure an adequate number of members remains after challenges: operational necessity; forum of the court-martial; availability of Article 25, UCMJ, qualified servicemembers to the convening authority; anticipated awareness of, and knowledge regarding, the parties or facts of the case; and the capability to detail additional members to the convening order.

The Discussion accompanying R.C.M. 503(a)(2) is amended to remove the reference to member sentencing.”

(kk) The analysis of R.C.M. 504 is revised to read as follows:

“Rule 504 Convening courts-martial

This rule is taken from Rule 504 of the MCM (2016 edition) with the following amendments:

2018 Amendment: R.C.M. 504(d) is amended and aligns with the 2018 amendments to R.C.M. 503(a).

2023 Amendment: R.C.M. 504(c)(1) is amended to clarify that a commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special or general court-martial to which charges and specifications were referred by a special trial counsel.”

(ll) The analysis of R.C.M. 505 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 505(c) is amended to specify that the convening authority

must follow the procedures in R.C.M 503(a) when detailing additional members to a court-martial.”

(mm) The title of the analysis of Chapter VI of Part II of the MCM is revised to read as follows:

“CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES”

(nn) The analysis of R.C.M. 601 is revised to read as follows:

“Rule 601 Referral

This rule is taken from Rule 601 of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendments:

2018 Amendments:

R.C.M. 601(a) is amended and clarifies that referral is the order of a convening authority that charges and specifications against an accused will be tried by a specified court-martial.

R.C.M. 601(d) is amended and implements Article 34(b), as amended by Section 5205 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which requires a convening authority to consult a judge advocate on relevant legal issues before referring charge(s) and specification(s) to a special court-martial and also prohibits a convening authority from referring charge(s) and specification(s) to a general court-martial unless a staff judge advocate provides written advice stating that the specification alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charged, and a court-martial would have jurisdiction over the accused and the offense. Prior to referring charge(s) and specification(s) to a general court-martial, the staff judge advocate is also required to provide a recommendation to the convening authority as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline. *See also* R.C.M. 406.

The Discussion accompanying R.C.M. 601(d)(1) is amended and references Appendix 2.1 (Non-binding disposition guidance), and reflects Article 33, as amended by Section 5204 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

The Discussion accompanying R.C.M. 601(d)(2) is new and reflects the opportunity of the accused to waive the preliminary hearing and the rules regarding waiver or forfeiture for failure to object to a defect under R.C.M. 601.

The Discussion accompanying R.C.M. 601(d)(3) is new and references limitations on referral of charges and specifications to special courts-martial.

R.C.M. 601(e)(1) is amended and implements Article 16, as amended by Section 5161 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017), concerning referring charges and specifications in a capital case or in a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

2023 Amendments:

R.C.M. 601(a) is amended to allow for referral by special trial counsel.

The Discussion accompanying R.C.M. 601(a) deletes the reference to elements of referral of charges because it is not applicable to cases referred by a special trial counsel.

R.C.M. 601(b) is amended to allow for referral by special trial counsel.

R.C.M. 601(c) is amended to clarify that a special trial counsel is not disqualified from referring a charge as a result of having preferred the charge or having directed that the charge be preferred.

R.C.M. 601(d)(1) is amended to describe the process for referral of charges by special trial counsel.

R.C.M. 601(d)(2) is new and requires referral authorities to consider whether admissible evidence will probably be sufficient to obtain and sustain a conviction. This provision is consistent with the Principles of Federal Prosecution, Section 9-27.220 (updated January 2023) and Appendix 2.1 of the MCM. This provision does not alter the probable cause standard for referral. It does not expand the disclosure and discovery requirements of R.C.M. 308 and 701.

R.C.M. 601(e) is amended to allow for referral by special trial counsel.

The Discussion accompanying R.C.M. 601(e) clarifies that a special trial counsel is not authorized to refer a charge to a special court-martial consisting of a military judge alone under Article 16(c)(2)(A).

The Discussion accompanying R.C.M. 601(e)(2) is amended to remove the language encouraging the convening authority to refer all known charges to a single court-martial, as this guidance may interfere with special trial counsel's exclusive authority.

R.C.M. 601(g)(2) is added, and the Discussion to R.C.M. 601(g) is amended, to allow for a convening authority to transfer charges to a parallel convening authority within the limitations prescribed by the Secretary concerned to avoid interfering with special trial counsel's exclusive authority."

(oo) The analysis of R.C.M. 603 is amended by adding a paragraph at the end to read as follows:

"2023 Amendment: R.C.M. 603(a) is amended to clarify the role of special trial counsel."

(pp) The analysis of R.C.M. 604 is revised to read as follows:

"This rule is taken from Rule 604 of the MCM (2016 edition) with the following amendment:

2023 Amendment: R.C.M. 604(a) and its Discussion are amended to clarify the role of special trial counsel."

(qq) The analysis of R.C.M. 701 is amended by adding a paragraph at the end to read as follows:

"2023 Amendment: R.C.M. 701(a)(1) is amended to clarify which papers accompanying the charges must be provided to the defense as soon as practicable after service of charges."

(rr) The analysis of R.C.M. 702 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 702(b) is amended to clarify who can order a deposition.”

(ss) The analysis of R.C.M. 703 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments by Annex 1 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 703(d) is amended to require the Services to promulgate regulations for government and defense funding of expert witnesses and consultants.

R.C.M. 703(g)(3)(G), now R.C.M. 703(g)(3)(I), is amended to allow a named victim in a specification to request relief.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 703(d)(2) is amended to change “shall” to “may,” which recognizes the defense may continue to request funding of expert witnesses and consultants by the Government.

RCM 703(d)(2) is amended to add the “appointment” of an expert in addition to the “employment” or “funding” of an expert to account for the appointment of employees of the government.

R.C.M. 703(d)(2)(A) is amended to expand the types of defense requests that may be raised before the military judge (previously the defense could only raise a “denied defense request” before the military judge).

R.C.M. 703(d)(3) is added to require notice by both parties for expert witnesses.

R.C.M. 703(g)(3)(D) is added to allow the defense to request a subpoena, after referral, for witnesses *ex parte* from the military judge and require the military judge to issue such a subpoena if the witness’s testimony is determined to be relevant and necessary.

R.C.M. 703(g)(3)(E) is amended to account for the addition of R.C.M. 703(g)(3)(D).

R.C.M. 703(g)(3)(F) is added to account for the addition of R.C.M. 703(g)(3)(D) by requiring notice to all parties for any subpoena issued for a witness post-referral unless the military judge issues a protective order.

All other paragraphs are shifted to accommodate the additions in R.C.M. 703(g)(3) without further amendment.”

(tt) The analysis of R.C.M. 704 is revised to read as follows:

“Rule 704 Immunity

This rule is taken from Rule 704 of the MCM (2016 edition) as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendments:

2018 Amendment: The Discussion accompanying R.C.M. 704(d) is amended and updates cross-references and reflects the reorganization of the punitive articles in the Military Justice Act of 2016. *See* Articles 79-134, as amended by Sections 5401-5452 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as further amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

2023 Amendments:

R.C.M. 704(c) and its Discussion are amended to allow a special trial counsel designated by the Secretary concerned (or that individual's designee) to grant immunity for offenses over which a special trial counsel has exercised authority and not deferred.

R.C.M. 704(d)(1) is amended to allow the special trial counsel designated by the Secretary concerned (or that individual's designee) to grant immunity.

R.C.M. 704(d)(2) is amended to move language from the Discussion into the rule and clarify that the convening authority, not the special trial counsel designated by the Secretary concerned, shall order a person subject to the UCMJ who receives a grant of immunity to answer questions pursuant to that grant of immunity.

R.C.M. 704(e) is amended to allow the special trial counsel designated by the Secretary concerned to grant immunity.”

(uu) The analysis of R.C.M. 705 is amended by adding paragraphs at the end to read as follows:

“*2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023):* R.C.M. 705(d)(1) is amended to allow the Secretary concerned to prescribe limitations pursuant to R.C.M. 705(a), and R.C.M. 705(d)(1)(D) is added to clarify that a plea agreement may include a specified sentence or portion of a sentence that shall be imposed by the court-martial.

2023 Amendment by Annex 2 of Executive Order No. 14103 (July 28, 2023): R.C.M. 705(a) and its Discussion are amended to account for plea agreements in cases over which a special trial counsel has exercised authority and not deferred. Under Article 53a, UCMJ, such plea agreements may only be entered into between a special trial counsel and the accused. Such plea agreements shall be subject to the same limitations and conditions applicable to other plea agreements under Article 53a, UCMJ. However, upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties (including the convening authority and special trial counsel in the case of a plea agreement entered into under Article 53a(a)(3)) and the court-martial. R.C.M. 705(a) requires plea agreements to be subject to limitations as prescribed by the Secretary concerned in order to provide clarity regarding the binding authority of a plea agreement.

R.C.M. 705(b) and its Discussion are amended to account for plea agreements in cases over which a special trial counsel has exercised authority and not deferred. R.C.M. 705(b)(3) is added to allow a promise by either the convening authority or special trial counsel to take other action within their authority to be included in the plea agreement.

R.C.M. 705(c) is amended to account for plea agreements in cases over which a special trial counsel has exercised authority and not deferred.

R.C.M. 705(e) and its Discussion are amended to account for plea agreements in cases over which a special trial counsel has exercised authority and not deferred.”

(vv) The analysis of R.C.M. 706 is revised to read as follows:

“Rule 706 Inquiry into the mental capacity or mental responsibility of the accused

This rule is taken from Rule 706 of the MCM (2016 edition) with the following amendments:

2023 Amendments by Annex 1 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 706(b)(1) is amended to add authority for a military judge or magistrate to order

an inquiry into the mental capacity or mental responsibility of an accused before referral, in accordance with R.C.M. 309.

R.C.M. 706(c)(3)(A) is amended to clarify that the only counsel entitled to the board's ultimate conclusions are government and defense counsel.

2023 Amendment by Annex 2 of Executive Order No. 14103 (July 28, 2023): R.C.M. 706(b) is amended to allow any applicable convening authority to order an inquiry into the mental capacity or mental responsibility of an accused. An "applicable convening authority" means a convening authority with authority over the accused."

(ww) The analysis of R.C.M. 707 is amended by adding paragraphs at the end to read as follows:

"2023 Amendments by Annex 1 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 707(c)(1) is amended to remove the language authorizing the Secretary concerned to prescribe regulations allowing for a military judge to resolve requests for pretrial delay.

R.C.M. 707(e) is amended to clarify that the accused is waiving, not forfeiting, speedy trial issues by pleading guilty.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 707(b)(3)(D) is amended to clarify when the 120-day time period for a rehearing begins for charges and specifications referred by special trial counsel.

R.C.M. 707(c)(1) and its Discussion are amended to require notification to the defense regarding pretrial delay requests. The rule is further amended by removing language from the Discussion and adding it to the rule to authorize the convening authority to delegate approval of pretrial delay requests to the preliminary hearing officer.

The Discussion accompanying R.C.M. 707(e) is removed."

(xx) The analysis of R.C.M. 804 is revised to read as follow:

"Rule 804 Presence of the accused at trial proceedings

This rule is taken from Rule 804 of the MCM (2016 edition) with the following amendments:

2018 Amendments:

The Discussion accompanying R.C.M. 804(a) is new and reflects the accused's entitlement to travel allowances for official travel to attend military justice proceedings.

R.C.M. 804(b) is amended and reflects the requirements of Article 39(b) with respect to remote proceedings and the physical presence of defense counsel with the accused and prohibits the use of remote sessions for presentencing proceedings.

2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 804(b) is amended to allow the use of remote sessions for presentencing proceedings under certain specified circumstances.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 804 is rewritten to consolidate the rules pertaining to presence at court-martial proceedings generally.

R.C.M. 804(a) contains the provisions regarding the presence of the accused at court-martial proceedings previously addressed in R.C.M. 804. R.C.M. 804(a)(3) addresses the use of

audiovisual technology to accomplish the presence of the accused in specific circumstances and allows the military judge to order presence by remote means for Article 39(a) sessions. R.C.M. 804(a)(3)(B) limits the accused's presence by remote means to guilty pleas and presentencing procedures unless exceptional circumstances exist, the defense counsel is co-located with the accused, and the accused consents.

The Discussion accompanying R.C.M. 804(a) is deleted to remove an incorrect reference to the Joint Travel Regulations.

The Discussion accompanying R.C.M. 804(a)(2) (formerly R.C.M. 804(c)) is amended to remove the language not requiring the accused to consent to presence by remote means, consistent with amendments to R.C.M. 804.

The Discussion in R.C.M. 804(c)(1) (formerly R.C.M. 805(b)) is amended to remove the reference to member sentencing.

R.C.M. 804(d) (formerly R.C.M. 805(c)) is amended to account for special trial counsel presence in cases where a special trial counsel is detailed. A special trial counsel may determine his or her presence is not required, so long as another trial counsel, who is qualified according to R.C.M. 502(d), is present. The rule is also amended by explicitly providing the option in Article 39(a) sessions for counsel to satisfy the presence requirement through the use of audiovisual technology pursuant to R.C.M. 804(a)(3).

R.C.M. 804(e) is new and permits the remote presence of the victim and victims' counsel in limited circumstances.”

(yy) The title of the analysis of R.C.M. 805 is revised to read as follows:

“Rule 805 [Reserved]”

(zz) The analysis of R.C.M. 805 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 805 is incorporated into an updated R.C.M. 804. R.C.M. 805 is now “Reserved” for future use.”

(aaa) The analysis of R.C.M. 810 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 810 is amended to account for rehearings in cases over which a special trial counsel has exercised authority. Specifically, R.C.M. 810(f) adds a requirement to notify special trial counsel because, in cases which were referred by a special trial counsel, special trial counsel exercise exclusive authority to determine whether an ordered rehearing is impracticable.”

(bbb) The analysis of R.C.M. 813 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 813 is amended to omit from announcement during the opening session of the court-martial the name, rank, or position of the convening authority, with the exception of the Secretary concerned, the Secretary of Defense, or the President.”

(ccc) The analysis of R.C.M. 902 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 902(b)(3) is amended to clarify that a military judge is disqualified if the military judge has previously referred any charges as the special trial counsel in that case.”

(ddd) The analysis of R.C.M. 902A [Removed] is revised to read as follows:

“Rule 902A Application of sentencing rules [Removed]

2018 Amendment: R.C.M. 902A is new and implements Section 5542 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which establishes effective dates for the amendments made by the Military Justice Act of 2016 and authorizes the President to prescribe regulations regarding applicable sentencing rules. R.C.M. 902A applies in cases where charges were referred to trial by court-martial after the effective date designated by the President for offenses allegedly committed both before and on or after the effective date. (Note, see text of Section 531(o), NDAA 2018).

2023 Amendment: R.C.M. 902A is removed. The substance of the rule is incorporated into the new R.C.M. 925.”

(eee) The analysis of R.C.M. 905 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 905(e)(2) is amended to require a motion for failure of a charge to allege an offense to be raised before adjournment.

The Discussion to R.C.M. 905(g) is amended to account for special trial counsel.”

(fff) The analysis of R.C.M. 906 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 906(b)(3) is amended to account for written determinations made by special trial counsel.

The Discussion accompanying R.C.M. 906(b)(10) is amended to delete the statement that all known charges should ordinarily be tried at a single court-martial.

R.C.M. 906(b)(12) is amended to delete references to member sentencing and move language from the Discussion to the rule stating that the ruling ordinarily should be deferred until after findings are entered.”

(ggg) The analysis of R.C.M. 908 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 908(b)(6) is amended to move the requirement that the Judge Advocate General decide whether to file the appeal with the Court of Criminal Appeals to R.C.M. 908(b)(7).

R.C.M. 908(b)(7) is amended to clarify who is responsible for determining whether to file an appeal on behalf of the United States.

The Discussion accompanying R.C.M. 908(c) is amended to recognize that a special trial counsel may ask the Judge Advocate General to certify a case to the Court of Appeals for the Armed Forces.”

(hhh) The analysis of R.C.M. 909 is amended to read as follows:

“Rule 909 Capacity of the accused to stand trial by court-martial

This rule is taken from Rule 909 of MCM (2016 edition) with the following amendments:
2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 909(c)(2), now R.C.M. 909(c)(3), is added to permit the government or the accused to request that the military judge conduct a hearing to determine the mental capacity of the accused any time prior to referral.

2023 Amendments by Annex 2 of Executive Order No. 14103 (July 28, 2023):

R.C.M. 909(c)(2) is added to clarify that the convening authority, not the special trial counsel, takes action on the results of an inquiry under R.C.M. 706.

R.C.M. 909(g) is amended to account for cases in which a special trial counsel has exercised authority and not deferred.”

(iii) The analysis of R.C.M. 910 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 910(f)(8) is added to establish the criteria a military judge shall use to reject a plea agreement.

R.C.M. 910(a) and its Discussion are amended to remove references to guilty pleas in cases in which death is the mandatory punishment. There no longer are any offenses for which a death sentence is mandatory.

The Discussions accompanying R.C.M. 910(f)(5) and (g) are amended to delete references to member sentencing.

R.C.M. 910(j) is amended to add that an accused waives any objections for non-jurisdictional defects in a plea of guilty.

The Discussion accompanying R.C.M. 910(j) is amended to change “forfeiture” to “waiver” and remove the “harmless error” standard.”

(jjj) The analysis of R.C.M. 911 is revised to read as follows:

“Rule 911 Randomization and assembly of the court-martial panel

This rule is taken from Rule 911 of the MCM (2016 edition) with the following amendments:

2018 Amendment: The Discussion accompanying R.C.M. 911 is amended and authorizes the convening authority to refer charges to a special court-martial consisting of a military judge alone under such limitations as the President may prescribe by regulation, and updates a cross-reference. *See* Articles 16 and 19, as amended by Sections 5161 and 5163 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal

Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

2023 Amendments:

R.C.M. 911 is amended to require randomization of court-martial members prior to assembly. Additionally, the amended rule describes the role of the military judge in the randomization process, to include determining how many members must be present at the initial session, how to temporarily excuse members, and how to cause members to be sworn before announcing the assembly of the court-martial.

R.C.M. 911(g) is amended to account for the randomization process in R.C.M. 911 and clarifies that each party is entitled to a peremptory challenge when additional members not previously subject to peremptory challenge are present and sworn.

The Discussion accompanying R.C.M. 911 is amended to delete reference to the order in which members are sworn at a court-martial.”

(kkk) The analysis of R.C.M. 912 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 912 is amended to account for the randomized selection of detailed members to serve on a court-martial panel as required by R.C.M. 911. R.C.M. 912(f)(5) is deleted because R.C.M. 911 requires assignment of random numbers to detailed members prior to examination and challenges.

R.C.M. 912(g) is amended to describe the updated process for challenging a member peremptorily. *See* Article 41(c) and *United States v. Carter*, 25 M.J. 471 (C.M.A. 1988).”

(lll) The analysis of R.C.M. 912A is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 912A(a) is amended to account for the randomization process in R.C.M. 911. Additionally, R.C.M. 912A(a)(4) is amended to prevent notifying alternate members that they are alternate members until the start of deliberations.

R.C.M. 912A(c) and (d) are amended to describe how the military judge orders additional detailed members to be present at the court-martial when the number of members is insufficient.

R.C.M. 912A(d)(3)(C) is added to allow the convening authority to instruct the military judge to prioritize impaneling a specific number of alternate enlisted members before impaneling alternate officer members.”

(mmm) The analysis of R.C.M. 914 is revised to read as follows:

“Rule 914 Production of statements of witnesses

This rule is taken from Rule 914 of MCM (2016 edition) with the following amendments:

2023 Amendments:

R.C.M. 914(e) is amended to address situations in which there is a failure to produce a statement in good faith.

R.C.M. 914(e) is amended to change “trial counsel” to “Government.””

(nnn) The analysis of R.C.M. 916 is amended by adding paragraphs at the end to read as follows:

“2022 Amendment: R.C.M. 916(e)(3) and (e)(5) are amended to include Article 128b, UCMJ.

2023 Amendment: R.C.M. 916(e)(2) is amended to change “assault with a dangerous weapon or means likely to produce death or grievous bodily harm” to “aggravated assault.””

(ooo) The analysis of R.C.M. 918 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 918(a)(1)(B) is amended to remove “named” before “lesser included offenses.””

(ppp) The analysis of R.C.M. 920 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 920(g) is added to prohibit instructions on a lesser included offense when both parties agree to its waiver.”

(qqq) The analysis of R.C.M. 922 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: The Discussion accompanying R.C.M. 922(a) is removed.”

(rrr) The analysis of R.C.M. 924 is revised by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 924(c)(2) is amended to replace “in the case of a complete acquittal” with “where there are no findings of guilty.””

(sss) An analysis of R.C.M. 925 is added to immediately follow the analysis of Rule 924 and reads as follows:

“Rule 925 Application of sentencing rules

2023 Amendment: This rule is new and identifies which sentencing rules apply at a court-martial in order to carry out the amendments of Articles 53 and 56, UCMJ, as enacted by Section 539E of FY2022 NDAA. R.C.M. 925 determines the applicable sentencing rules based on the date of an offense for which the accused has been found guilty. If the accused is convicted of any offense committed on or before December 27, 2023, the court-martial shall follow the sentencing rules in effect at the time of the offense. R.C.M. 902A(d), regarding the accused’s irrevocable election made prior to arraignment, is no longer applicable. If the accused is convicted only of non-capital offenses occurring after December 27, 2023, then the court-martial shall follow R.C.M. 925(c)(2), and the military judge shall sentence the accused.”

(ttt) The analysis of R.C.M. 1001 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 1001(a)(1) is amended to remove the reference to the accused’s sentencing election to reflect the amendments of Articles 53 and 56, as enacted by Section 539E of FY2022 NDAA.

R.C.M. 1001(b)(2) and R.C.M. 1001(b)(3)(B) are amended to relocate a provision designating the point at which a summary court-martial conviction is admissible evidence of character of prior service of the accused during a sentencing proceeding.

R.C.M. 1001(b)(4) is amended to include additional aggravating factors, such as pregnancy and gender identity.

R.C.M. 1001(c)(1) is amended to permit a crime victim to make a request for a specific sentence in a non-capital case in sentencing proceedings conducted by a military judge in accordance with Section 539E of FY2022 NDAA.

R.C.M. 1001(c)(2)(B) is amended to strike the word “directly” in subparagraph (c)(2)(B) to allow victims to discuss the impacts of crimes upon others, such as family members.

R.C.M. 1001(c)(2)(D)(i) is amended and a Discussion section is added to reflect that, in capital courts-martial, the “right to be reasonably heard” may not include a recommendation of a specific sentence. *See Booth v. Maryland*, 482 U.S. 496 (1987); *Bosse v. Oklahoma*, 580 U.S. 1 (2016) (per curiam).

R.C.M. 1001(c)(2)(D)(ii) is amended to add the right of a crime victim to be heard on any objection to an unsworn statement.

R.C.M. 1001(c)(3) is amended to permit a crime victim to recommend a specific sentence. However, note that R.C.M. 1001(c)(2)(D)(i) is amended to prohibit a crime victim’s statement in a capital case from including a recommendation of a specific sentence.

R.C.M. 1001(c)(5) is amended to allow a crime victim’s unsworn statement to be made by the crime victim, counsel representing the crime victim, or both. It is also amended to remove the procedure for reviewing a victim’s proffer of an unsworn statement in sentencing proceedings conducted by military judges in accordance with Section 539E of FY2022 NDAA. The purpose of the amendment is to streamline the process, allowing victims to express crime impacts and allowing defense counsel to object or rebut as necessary.

R.C.M. 1001(f)(1) is amended to clarify that during presentencing proceedings, a dispute as to the production of a witness at Government expense is a matter within the discretion of the military judge.

R.C.M. 1001(h) is amended to specify that the trial counsel’s argument may not speak for the convening authority or any other higher authority. That revision prohibits a trial counsel’s sentencing argument from purporting to speak on behalf of a special trial counsel’s leadership.”

(uuu) The analysis of R.C.M. 1002 to revised to read as follows:

“Rule 1002 Sentencing determination

This rule is taken from Rule 1002 of the MCM (2016 edition) with the following amendments:

2018 Amendment: This rule and its accompanying Discussions amend R.C.M. 1002 of the MCM (2016 edition) in its entirety and implement Articles 25, 53, 53a, and 56, as amended by Sections 5182, 5236, 5237, and 5301 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), which provides an accused the option to elect sentencing by members in lieu of sentencing by military judge in a general or special court-martial with a military judge and members; reflects that sentences adjudged by a military judge shall provide for segmented sentences of confinement and fines; and sets forth statutory guidance for determining an appropriate sentence. Article 53a was further amended by Sections 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017). Article 56 was further amended by Section 531(e) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017).

2023 Amendments:

R.C.M. 1002(a)(1) and its accompanying Discussion are amended to clarify that plea agreements for sentences less than the mandatory minimum are prohibited unless otherwise authorized. “Unless otherwise authorized” provides for the possibility that future amendments to the UCMJ may specifically authorize plea agreements for sentences less than the mandatory minimum for violations of Article 118(1) and (4), UCMJ.

R.C.M. 1002(a)(2) is added to incorporate sentencing parameters and criteria. R.C.M. 1002(a)(2), now R.C.M. 1002(a)(3), is amended to clarify when a military judge may reject a plea agreement, in accordance with the Section 539E of FY2022 NDAA.

R.C.M. 1002(b)-(d) are amended and combined into subsection (b), deleting all references to sentencing forum selection and sentencing by members in noncapital cases.

R.C.M. 1002(e) is incorporated into an updated R.C.M. 1004.

The remaining sections are renumbered accordingly.”

(vvv) The analysis of R.C.M. 1003 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 1003(b) is amended to clarify when forfeitures greater than two-thirds’ pay may be imposed.

R.C.M. 1003(b)(5) is amended to clarify that the maximum duration of restriction that may be adjudged is two months. In calculating the maximum authorized sentence for an accused sentenced to both confinement and restriction in the same case, each month of confinement is equal to two months of restriction. For example, an accused may be sentenced to two months of restriction and also no more than five months of confinement for violating Article 91 for contempt or disrespect towards a superior noncommissioned or petty officer, which has a maximum confinement of six months.

R.C.M. 1003(c)(1) is amended to reflect the military sentencing parameter provisions of Section 539E(c) of FY2022 NDAA.

R.C.M. 1003(c)(2)(A)(ii) is deleted and the remaining subsections are renumbered. Under the amended rule, a commissioned or warrant officer or a cadet or midshipman can be sentenced to confinement by a special or general court-martial.”

(www) The analysis of R.C.M. 1004 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 1004 is amended to consolidate the rules pertaining to sentencing in capital cases (R.C.M. 1004-1006, 1008, and 1009). Additionally, it accounts for the authority of special trial counsel in the referral process and amends the procedure for member voting in capital cases.

R.C.M. 1004(f)(4) is amended to replace the phrase “shall constitute waiver of the objection” with “forfeits the objection,” aligning it with established definitions of waiver and forfeiture.”

(xxx) The title of the analysis of R.C.M. 1005 is revised to read as follows:

“Rule 1005 Reconsideration of sentence in noncapital cases”

(yyy) The analysis of R.C.M. 1005 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 1005 is a re-written version of R.C.M. 1009. It explains the process for reconsideration in noncapital cases and accounts for the authorities of special trial counsel in the reconsideration process.”

(zzz) The analysis of R.C.M. 1009 is revised to read as follows:

“Rule 1009 [Reserved]

This rule is taken from Rule 1009 of the MCM (2016 edition) with the following amendments:

2018 Amendments:

R.C.M. 1009 and its accompanying Discussion are amended and implement Articles 52 and 53, as amended by Sections 5235 and 5236 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), regarding reconsideration of the sentence, including in a capital sentencing proceeding.

R.C.M. 1009(b)(3) is new and reflects the addition of Article 53a, as added by Section 5237 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), as amended by Section 531(d) and 1081(c)(1)(H) of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131Stat. 1283 (2017).

2023 Amendment: R.C.M. 1009 is incorporated into an updated R.C.M. 1004. R.C.M. 1009 is now “Reserved” for future use. Portions of the rule that pertained to capital cases were moved to R.C.M. 1004. Provisions no longer applicable in light of changes to sentencing procedures enacted by Section 539E of FY2022 NDAA were deleted.”

(aaaa) The analysis of R.C.M. 1101 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1101(e) is new and describes how the Statement of Trial Results may be modified.”

(bbbb) The analysis of R.C.M. 1102 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1102(b)(1) is amended and R.C.M. 1102(b)(6) is added to clarify language for enlisted reductions in grade.”

(cccc) The title of the analysis of R.C.M. 1102A is revised to read as follows:

“Rule 1102A [REMOVED]”

(dddd) The title of the analysis of R.C.M. 1103A is revised to read as follows:

“Rule 1103A [REMOVED].”

(eeee) The analysis of R.C.M. 1104 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1104(e) is amended to require notice to victims of certain post-trial motions and hearings.”

(ffff) The title of the analysis of R.C.M. 1105A is revised to read as follows:

“Rule 1105A [REMOVED].”

(gggg) The analysis of R.C.M. 1107 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1107(b)(2) is amended to clarify that only the convening authority may suspend the unexecuted portions of the sentence.”

(hhhh) The analysis of R.C.M. 1109 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1109(e) is amended to clarify that only the convening authority may act on reducing the sentence of the accused for substantial assistance. R.C.M. 1109(g)(2) is amended to expand the written requirement to explain when any part of a sentence is reduced, commuted, or suspended.”

(iiii) The analysis of R.C.M. 1111 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1109(e) is amended to clarify the process for a military judge to modify a judgment.”

(jjjj) The analysis of R.C.M. 1112 is amended by adding paragraphs at the end to read as follows:

**“Rule 1112 Certification of record of trial; general and special courts-martial
2018 Amendments:**

R.C.M. 1112 (“Review by a judge advocate”) of the MCM (2016 edition) and its accompanying Discussion are deleted.

R.C.M. 1112 (“Certification of record of trial; general and special courts-martial”) and its accompanying Discussion are new. R.C.M. 1112 implements Articles 54 and 60-60c, as amended by Sections 5238, 5321, 5322, 5323, and 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), providing for the certification and contents of records of trial in general and special courts-martial.

R.C.M. 1112 incorporates portions of R.C.M. 1103 of the MCM (2016 edition). The Discussion following R.C.M. 1112(e)(3)(B)(iii) reflects that the terms of a sealing order may authorize listed persons or entities to examine or receive disclosure of sealed materials outside of the procedures set forth in R.C.M. 1113(b).

2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1112(b)(5) is amended to require the election for application of sentencing rules in effect on or after January 1, 2019, to be included in the record of trial.

2023 Amendment by Annex 3 of Executive Order No. 14103 (July 28, 2023): The former provisions of R.C.M. 1112(b)(5) are deleted because the accused’s sentencing election will no longer be applicable under the sentencing reform measures enacted by Section 539E(c) of FY2022 NDAA. Subsequent subparagraphs are redesignated.”

(kkkk) The analysis of R.C.M. 1113 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1113(b)(3)(C) is amended to add the Judge Advocates General to those empowered to authorize the disclosure of sealed materials. The authority of the Judge Advocates General applies in cases eligible for review under R.C.M. 1203 or 1204.

2023 Amendment by Annex 2 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1113(b)(1) is amended to authorize special trial counsel to examine and disclose sealed materials for the purposes of making a determination on referral.”

(llll) The analysis of R.C.M. 1115 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1115(a) is amended to reflect the expansion of appeal-as-of-right to the Courts of Criminal Appeals enacted by Section 544 of the James M. Inhofe NDAA for FY 2023, Pub. L. No. 117-263, 136 Stat. 2395, 2582 (2022) [hereinafter FY2023 NDAA].”

(mmmm) The analysis of R.C.M. 1116 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1116(c) is amended to reflect the expansion of appeal-as-of-right to the Courts of Criminal Appeals enacted by Section 544 of FY2023 NDAA.”

(nnnn) The analysis of R.C.M. 1117 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 1117(a) is amended to permit the Government to appeal a sentence to the Court of Criminal Appeals on the grounds that the sentence is a result of an incorrect application of a sentencing parameter or criterion, as authorized by Article 56(d), UCMJ.

R.C.M. 1117(c)(3) is amended to require that the statement of reasons in support of an appeal under R.C.M. 1117(a)(2) identify the parameters or criteria at issue and the facts supporting how the parameters or criteria were applied incorrectly. The subsequent paragraphs are redesignated.

R.C.M. 1117(e), which provided a standard for what is “plainly unreasonable,” is removed, thereby enabling the application of those words according to their plain language as provided in Article 66(e). Likewise, R.C.M. 1117(c)(3) is redesignated as R.C.M. 1117(c)(4) and the following words are deleted: “because no reasonable sentencing authority would adjudge such a sentence in view of the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.”

(oooo) The analysis of R.C.M. 1201 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

R.C.M. 1201(f)(4) is amended to account for special trial counsel.

R.C.M. 1201(h) is amended to reflect the limitations of Article 69 appeals in general and special court-martial cases as enacted by Section 544(c) of FY2023 NDAA.”

(pppp) The analysis of R.C.M. 1202 is amended by adding paragraphs at the end to read as follows:

“2023 Amendments:

Rule 1202(a)(2)(A) is amended to account for expanded appellate rights pursuant to Section 544 of FY2023 NDAA.

Rule 1202(c) is amended to account for the application of regulations of the Department of Homeland Security that would govern the compensation of appellate defense counsel for cases arising in the Coast Guard. Also, the word “death” is substituted for “the death penalty”; this change is stylistic in nature and not substantive.”

(qqqq) The analysis of R.C.M. 1203 is amended by adding paragraphs at the end to read as follows:

“2023 Amendment: R.C.M. 1203(e)(2) is added to address when a finding is set aside. The convening authority or special trial counsel, as applicable, shall determine if a rehearing is impracticable and, if so, determine whether to dismiss a charge. All subsequent sections are redesignated.

R.C.M. 1203(e)(2), now R.C.M. 1203(e)(3), is amended to authorize special trial counsel to determine if a rehearing is impracticable when a sentence is set aside. If a special trial counsel determines a rehearing is impracticable as to sentencing, the special trial counsel may dismiss the applicable charges. Alternatively, if a special trial counsel makes a determination to not dismiss the applicable charges, the convening authority shall order a sentence of no punishment be imposed.”

(rrrr) The analysis of R.C.M. 1204 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1204 is amended to account for special trial counsel determining if a rehearing is impracticable.”

(ssss) The analysis of R.C.M. 1208 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1208(c) is added to clarify the effective date of the new sentence after a previous sentence has been set aside or disapproved.”

(tttt) The analysis of R.C.M. 1210 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1210(h) is amended to change “convening authority” to “appropriate authority” to account for special trial counsel.”

(uuuu) The analysis of R.C.M. 1304 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment by Annex 1 of Executive Order No. 14103 (July 28, 2023): R.C.M. 1304(b)(2)(F) is amended to correct a scrivener’s error.”

(vvvv) The analysis of R.C.M. 1306 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: R.C.M. 1306 is amended to clarify the convening authority may approve the sentence as adjudged.”

Sec. 4. Appendix 16 (MCM) is amended as follows:

(a) The analysis of Mil. R. Evid. 311 is revised to read as follows:

“This rule is taken from Rule 311 of the MCM (2016 edition), as amended by Exec. Order No. 13825, 83 Fed. Reg. 9889 (March 1, 2018), with the following amendments.

2023 Amendments:

Mil. R. Evid. 311(c)(3) is amended to expand the good faith exception. *See United States v. Perkins*, 78 M.J. 381 (C.A.A.F. 2019).

Mil. R. Evid. 311(d)(4)(B) is amended to include references to omitting a material fact knowingly and intentionally or with reckless disregard for the truth. *See United States v. Garcia*, 80 M.J. 379 (C.A.A.F. 2020).”

(b) The analysis of Mil. R. Evid. 315 is revised to read as follows:

“This rule is taken from Rule 315 of the MCM (2016 edition) with the deletion of the Discussion following Mil. R. Evid. 315(a) and the following additional amendments:

2023 Amendments:

Mil. R. Evid. 315(b)(2) is amended to add a reference to search warrants under R.C.M. 703A.

Mil. R. Evid. 315(b)(3) is amended to clarify that only a military judge may issue a warrant for wire or electronic communications.

Mil. R. Evid. 315(d)(3) is amended to add a “Other competent search authority” to the list of those who may authorize a search.”

(c) The analysis of Mil. R. Evid. 404 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Mil. R. Evid. 404(b)(3) is amended to align with the Federal Rules of Evidence.”

(d) The analysis of Mil. R. Evid. 503 is revised to read as follows:

“This rule is taken from Rule 503 of the MCM (2016 edition) with the following amendment.

2023 Amendment: Mil. R. Evid. 503 is amended to use gender-neutral language.”

(e) The analysis of Mil. R. Evid. 505 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Mil. R. Evid. 505(f)(4) is amended to account for special trial counsel.”

(f) The analysis of Mil. R. Evid. 506 is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Mil. R. Evid. 506(f)(4) is amended to account for special trial counsel.”

(g) The analysis of Mil. R. Evid. 507 is revised to read as follows:

“This rule is taken from Rule 507 of the MCM (2016 edition) with the following amendment:

2023 Amendment: Mil. R. Evid. 507(e)(3) is amended to account for special trial counsel.”

(h) The analysis of Mil. R. Evid. 611 is revised to read as follows:

“This rule is taken from Rule 611 of the MCM (2016 edition) with the following amendment:

2023 Amendment: Mil. R. Evid. 611(d)(2) is amended to clarify the definition of domestic violence.”

(i) The analysis of Mil. R. Evid. 803 is revised to read as follows:

“This rule is taken from Rule 803 of the MCM (2016 edition) with the following amendments.

2023 Amendments:

Mil. R. Evid. 803(16) is amended to change the definition of an ancient document to one that was prepared before January 1, 1998.

Mil. R. Evid. 803(22) is amended to correct a scrivener’s error.”

(j) The analysis of Mil. R. Evid. 807 is revised to read as follows:

“This rule is taken from Rule 807 of the MCM (2016 edition) with the following amendment.

2023 Amendment: Mil. R. Evid. 807 is amended to align with the Federal Rules of Evidence.”

(k) The analysis of Mil. R. Evid. 902 is revised to read as follows:

“This rule is taken from Rule 902 of the MCM (2016 edition) with the following amendments:

2023 Amendments:

Mil. R. Evid. 902(12) is added and reserved.

Mil. R. Evid. 902(13) is added and allows “Certified Records Generated by an Electronic Process or System” to be self-authenticating.

Mil. R. Evid. 902(14) is added and allows “Certified Data Copied from an Electronic Device Storage Medium, or File” to be self-authenticating.”

Sec. 5. Appendix 17 (MCM) is amended as follows:

(a) The analysis of paragraph 3 [Article 79 (10 U.S.C. § 879)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Subparagraph b. *Explanation* (4) *Sua sponte duty* is amended to align with R.C.M. 920(g) allowing the parties to waive instructions on a lesser included offense.”

(b) The analysis of paragraph 6 [Article 82 (10 U.S.C. 822)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Paragraph 6.d. is amended to clarify the maximum punishment for solicitation offenses.”

(c) The analysis of paragraph 19 [Article 93 (10 U.S.C. 893)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Subparagraph c. *Explanation* (2) *Nature of the Act* is amended to clarify the definition of sexual harassment for purposes of Article 93.”

(d) The analysis of paragraph 20 [Article 93a (10 U.S.C. 893a)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Subparagraph b *Elements* is amended to change the knowledge requirement to “knew” from “knew, or reasonably should have known” for both offenses under Article 93a. For subparagraph b(2), elements (c) and (d) are combined into one paragraph. Subparagraph c. *Explanation* is amended to add an explanation of “Prohibited activity” and update the definition of “Knowledge.” Subparagraph e. *Sample specifications* is amended to reflect the amendments in Subparagraph b.”

(e) The analysis of paragraph 51 [Article 113 (10 U.S.C. 913)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Paragraph 51.d. was amended to correct a scrivener’s error.”

(f) The analysis of paragraph 55 [Article 117 (10 U.S.C. 917)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Amended to remove a note that is no longer applicable due to the promulgation of paragraph 55a by Executive Order 14062.”

(g) An analysis of paragraph 55a [Article 117a (10 U.S.C. 917a)] is added immediately following the analysis of paragraph 55 to read as follows:

“55a. Article 117a (10 U.S.C. 917a)—Wrongful broadcast or distribution of intimate visual images

2022 Amendment: This is a new enumerated offense pursuant to Section 533 of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017), which criminalizes the wrongful broadcast or distribution of intimate visual images.”

(h) The analysis of paragraph 60 [Article 120 (10 U.S.C. 920)] is amended by adding a paragraph at the end to read as follows:

“2023 Amendment: Subparagraph e. *Sample specifications* is amended to add “[directly] (through the clothing)]” for all offenses under “Aggravated sexual contact” and “Abusive sexual contact.””

(i) The analysis of paragraph 63 [Article 120c (10 U.S.C. 920c)] is amended by adding a new paragraph at the end to read as follows

“2023 Amendment: Subparagraph b. *Elements* is amended to add “without legal justification or lawful authorization” for the offenses of “Indecent viewing,” “Indecent recording,” “Broadcast of an indecent recording,” and “Distribution of an indecent recording.” Subparagraph e. *Sample specifications* is amended to reflect the amendments in Subparagraph b.”

(j) The analysis of paragraph 64 [Article 121 (10 U.S.C. 921)] is amended by adding a new paragraph at the end to read as follows:

“2023 Amendment: Paragraph 64.d.(1)(c) is amended to correct a scrivener’s error.”

(k) The analysis of paragraph 69 [Article 123 (10 U.S.C. 923)] is amended by adding a new paragraph at the end to read as follows:

“2023 Amendment: Subparagraph c. *Explanation* (1) *Access* is amended to include “computer system or computer network.””

(l) The analysis of paragraph 77 [Article 128 (10 U.S.C. 928)] is amended as follows:

(1) In the second paragraph, which starts with the words “2018 amendment,” a sentence is added at the end to read as follows:

“Pursuant to Section 533 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018), subparagraph a. Text of the statute is amended to add element (b)(3).”

(2) Two paragraphs are added at the end of the analysis to read as follows:

“2022 Amendment: Subparagraph b. *Elements* is amended to remove references to “a spouse, intimate partner, or an immediate family member of the accused” for all applicable elements; those scenarios are now covered by Article 128b. Subsequent parallel amendments are made to subparagraphs c-e. Subparagraph b. *Elements* is amended to add the offense of “Aggravated Assault by strangulation or suffocation.” Subsequent parallel amendments are added to subparagraphs c-e.

2023 Amendment: The descriptor for subparagraph d. *Maximum punishment* (1)(b) is amended to read, “When committed with an unloaded firearm or other dangerous weapon.” Subparagraph d.(1)(b) is further amended to change the maximum confinement from three years to two years. Subparagraph d.(1)(c) is added. The maximum punishment under subparagraph d.(5)(b) is amended to align with the offense under subparagraph c.(6)(d).”

(m) An analysis of paragraph 78a [Article 128b (10 U.S.C. 928b)] is added immediately following the analysis of paragraph 78 to read as follows:

“78a. Article 128b (10 U.S.C. 928b)—Domestic Violence

2022 Amendment. This is a new punitive article enacted by Section 532 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018), which criminalizes domestic violence.”

(n) The analysis of paragraph 89 [Article 132 (10 U.S.C. 932)] is amended by adding a new paragraph at the end to read as follows:

“2023 Amendment: Subparagraph c. *Explanation* (2)(b) is added to expand the definition of “Personnel action” to include actions affecting civilian employees.”

(o) The analysis of paragraph 90 [Article 133 (10 U.S.C. 933)] is amended as follows:

(1) The title of the analysis is amended by removing the words “and a gentleman.”

(2) A paragraph is added at the end to read as follows:

“2023 Amendment: Pursuant to Section 532 of the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No 117-81, 135 Stat. 1546 (2021), the name of this article and the text of the statute are amended to remove “and a gentleman.” Subparagraph b. *Elements* (2) is amended to remove “and a gentleman.” Subparagraph c. *Explanations* is re-written in its entirety to clarify the meaning of “officership” and to update the explanation of the nature of the offense.”

(p) An analysis of paragraph 107a [(Article 134 (Sexual Harassment))] is added immediately following the analysis of paragraph 107 to read as follows:

“107a. Article 134—(Sexual Harassment)

2023 Amendment: This is a new enumerated offense establishing sexual harassment as a stand-alone offense under Article 134, UCMJ. See National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539D, 135 Stat. 1546 (2021).”

Sec. 6. Appendix 18 (MCM) is amended as follows:

The analysis of paragraph 1 [General] is amended as follows:

(1) A paragraph is added immediately following the paragraph starting with the words “e. Minor offenses” to read as follows:

“2018 Amendment: Paragraph 1.e. is amended and addresses the definition of minor offense.”

(2) In the paragraph starting with the words “(4) *Statute of limitations*,” the words are removed after the word “*limitations*.”

(3) Two paragraphs are added to appear immediately after the paragraph starting with the words “(4) *Statute of limitations*” but before the paragraph starting with the words “(5) *Civilian courts*” to read as follows:

“2018 Amendment: Paragraph 1.f.(4) is amended and clarifies that a member may waive the statute of limitations applicable to nonjudicial punishment. This is consistent with court-martial practice. *See United States v. Moore*, 32 M.J. 170 (CMA 1991).

2023 Amendment: Paragraph 1.f.(4) is amended to update the citation to Article 43, UCMJ.”

(4) The paragraph starting with the words “h. 2005 Amendment: Subsection (h) is new” is revised to read as follows:

“h. *Burden of proof*.

2023 Amendment: This paragraph is amended to establish “preponderance of the evidence” as the burden of proof for imposition and appellate adjudication of nonjudicial punishment.”

(5) A paragraph is added after the paragraph starting with the words “i. *Effect of errors*” and before the paragraph starting with the words “l. 2018 Amendments” and reads as follows:

“j. *Applicable standards*.

2023 Amendment: This paragraph was deleted from subparagraph (h) and is now added to a new subparagraph (j). This subsection clarifies that nonjudicial punishment proceedings conducted in a combatant or joint command are to be conducted in accordance with the implementing regulations and procedures of the service of which the accused is a member.”

(6) The paragraph starting with the words “l. 2018 Amendments” is deleted.

Sec. 7. Appendix 19 (MCM) is amended as follows:

(a) The section of text that starts with the words “EXECUTIVE ORDER 12484” and the two lines appearing immediately under it are revised to read as follows:

“EXECUTIVE ORDER 12484
49 Fed. Reg. 28825 (July 17, 1984)
President Ronald W. Reagan (July 13, 1984)”

(b) The section of text that starts with the words “EXECUTIVE ORDER 13387” and the two lines appearing immediate under it are revised to read as follows:

“EXECUTIVE ORDER 13387
70 Fed. Reg. 60697 (Oct. 18, 2005)
President George W. Bush (Oct. 14, 2005)”

(c) The section of text that starts with the words “EXECUTIVE ORDER 13696” and the two lines appearing immediately under it are revised to read as follows:

“EXECUTIVE ORDER 13696
80 Fed. Reg. 35781 (June 22, 2015)
President Barack H. Obama (June 17, 2015)”

(d) The section of text that starts with the words “EXECUTIVE ORDER 13825” and the two lines appearing immediately under it are revised to read as follows:

“EXECUTIVE ORDER 13825
83 Fed. Reg. 9889 (Mar. 8, 2018)
President Donald J. Trump (Mar. 1, 2018)”

(e) Two sections of text are added to appear immediately following the section starting with the words “Executive Order 13825” to read as follows:

“EXECUTIVE ORDER 14062
87 Fed. Reg. 4763 (Jan. 31, 2022)
President Joseph R. Biden (Jan. 26, 2022)

EXECUTIVE ORDER 14103
88 Fed. Reg. 50535 (Aug. 2, 2023)
President Joseph R. Biden (July 28, 2023)”