

EXECUTIVE ORDER

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2017 AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice (UCMJ), 10 U.S.C. 801-946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part II, Part III, and Part IV of the Manual for Courts-Martial, United States, are amended as described in Annex 1 attached to and made a part of this order.

Sec. 2. The amendments in Annex 1 shall take effect on the date of this order, subject to the following:

(a) Nothing in the amendments to Annex 1 shall be construed to make punishable any act done or omitted prior to the date of this order that was not punishable when done or omitted.

(b) Nothing in the amendments in Annex 1 shall be construed to invalidate the prosecution of any offense committed before the date of this order. The maximum punishments for an offense committed before the date of this order shall not exceed the applicable limit in effect at the time of the commission of such offense. For offenses committed before the date of this order,

for which a sentence is adjudged on or after the date of this order, if the maximum punishment authorized under the amendments in Annex 1 is less than previously authorized, the lesser maximum punishment shall apply.

(c) Nothing in the amendments in Annex 1 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if the amendments in Annex 1 had not been prescribed.

Sec. 3. (a) The Manual for Courts-Martial, United States, as amended by Section 1 of this order, is amended as set forth in Annex 2.

(b) Appendix 12A is promulgated as described in Annex 2 and made a part of this order.

Sec. 4. (a) Pursuant to Section 5542 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) (Military Justice Act of 2016), except as otherwise provided by the Military Justice Act of 2016 or this order, the amendments to the UCMJ made by the Military Justice Act of 2016 shall take effect on January 1, 2019.

(b) Nothing in the Military Justice Act of 2016 shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(c) Nothing in the Military Justice Act of 2016 shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishments for an offense committed before January 1, 2019, shall not exceed the applicable limit in effect at the time of the commission of such offense. For offenses committed before January 1, 2019, for which a sentence is adjudged on or after January 1, 2019, if the maximum punishment authorized under the Military Justice Act of 2016 is less than previously authorized, the lesser maximum punishment shall apply.

(d) Nothing in the Military Justice Act of 2016 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order. Except as otherwise provided in this order, the Military Justice Act of 2016 shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been prescribed.

Sec. 5. The amendments in Annex 2, including Appendix 12A, shall take effect on January 1, 2019, subject to the following:

(a) Nothing in the amendments in Annex 2 shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(b) Nothing in the amendments in Annex 2 shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishments for an offense committed before January 1, 2019, shall not exceed the applicable limit in effect at the time of the commission of such offense. For offenses committed before January 1, 2019, the lesser maximum punishment shall apply if:

- (i) a sentence is adjudged on or after January 1, 2019, and
- (ii) the maximum punishment authorized under the amendments in Annex 2 is less than previously authorized.

(c) Nothing in the amendments in Annex 2 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order. Except as otherwise provided in this order, neither the Military Justice Act of 2016 nor the amendments in Annex 2 shall apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be

held in the same manner and with the same effect as if such amendments had not been prescribed.

Sec. 6. The amendments to Articles 2, 16, 19, 56, 58a, 60, and 63 of the UCMJ enacted by Sections 5102, 5161, 5163, 5302, 5303, 5321, and 5327 of the Military Justice Act of 2016 apply only to offenses committed on or after January 1, 2019.

Sec. 7. Articles 60a and 60b of the UCMJ, as enacted by Sections 5322 and 5323 of the Military Justice Act of 2016, apply only to offenses committed on or after January 1, 2019.

Sec. 8. The amendment to Article 15 of the UCMJ enacted by Section 5161 of the Military Justice Act of 2016 shall apply to any nonjudicial punishment imposed on or after January 1, 2019.

Sec. 9. The amendments to Articles 32 and 34 of the UCMJ enacted by Sections 5203 and 5205 of the Military Justice Act of 2016 apply with respect to preliminary hearings conducted and advice given on or after January 1, 2019.

Sec. 10. The amendments to Article 43 of the UCMJ enacted by Section 5225 of the Military Justice Act of 2016 apply only to offenses for which the statute of limitations, as determined under the version of Article 43 of the UCMJ that was in effect the day before the date of this order, has not expired as of the date of this order.

Sec. 11. The amendments to Article 79 of the UCMJ enacted by Section 5402 of the Military Justice Act of 2016 and Appendix

12A made by this order apply only to offenses committed on or after January 1, 2019.

Sec. 12. Any change to sentencing procedures:

(a) made by Articles 25, 25a, 39, 52, 53, 56, or 57 of the UCMJ as amended by Sections 5182, 5183, 5222, 5235, 5236, 5301, and 5302 of the Military Justice Act of 2016;

(b) made by Article 53a as enacted by Section 5237 of the Military Justice Act of 2016; or

(c) included in Annex 2 in rules implementing those articles

does not apply to any offense committed before January 1, 2019. The sentencing procedures included in those articles and rules apply to any offense committed on or after January 1, 2019.

Sec. 13. In accordance with Article 33 of the UCMJ, as amended by Section 5204 of the Military Justice Act of 2016, the Secretary of Defense, in consultation with the Secretary of Homeland Security, will issue 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 Articles 30 and 34 of the UCMJ. That guidance will 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.

THE WHITE HOUSE,