

## **Executive Summary of Proposed Amendments to the Manual for Courts-Martial**

The proposed amendments to the Manual for Courts-Martial include a complete reissuance of the Manual for Courts-Martial with many revisions to implement the Military Justice Act of 2016 (MJA). The proposed amendments also include some recommendations unrelated to the MJA, such as a recommendation to establish a new Presidentially prescribed Article 134 offense of nonconsensual distribution of intimate images originally made with the subject's consent. (Nonconsensual distribution of such images initially made without the subject's consent is already an offense under Article 120c.)

Major themes of the changes include:

- Modernizing criminal offenses, such as by implementing the MJA's enactment of several new offenses including computer crimes and retaliation, as well as updating other offenses, such as lowering the blood alcohol level for drunk driving and similar purposes from .1 to .08.
- Better protecting privacy interests involved in the military justice process by generally requiring a court order before making sealed exhibits available for review.
- Improving the investigation of alleged Uniform of Code of Military Justice violations by implementing the MJA's authorization of investigative subpoenas and allowing military judges to resolve certain matters pre-referral, including challenges to such investigative subpoenas.
- Standardizing military justice practice, such as by implementing the MJA's provision that special courts-martial, non-capital courts-martial, and capital courts-martial will have a prescribed number of members and generally determine findings and sentence by a vote of at least three-fourths of those members.
- Updating the rules on plea bargaining to implement the changes enacted by the MJA, including the elimination of the "beat the deal" concept under which the accused received the lesser of the adjudged sentence or the sentence cap negotiated with the convening authority.
- Implementing the MJA's sentencing reform, including allowing the government to appeal sentences that the prosecution considers unreasonable.

### **Significant Dates:**

July 11, 2017: Federal Register notice published and proposed Executive Order and annexes released for public notice and comment.

August 3, 2017: Joint Service Committee on Military Justice public hearing to receive comments on the proposed Executive Order and annexes.

September 11, 2017: Public comment period closes.

December 23, 2017: Statutory deadline for the President's issuance of regulations implementing the MJA.

**Significant Changes Proposed by Annex 1 (changes to take effect upon the Executive Order's approval and proposed supplementary materials concerning those changes)**

**R.C.M. 104, Unlawful command influence**, be amended to include civilian counsel in the class of victims' counsel protected from receiving a less favorable rating or evaluation because of the zeal with which such counsel represents any client.

*The Discussion accompanying R.C.M. 308(a)* be amended to explain that where charges are immediately referred after preferral, service of referred charges fulfills the R.C.M. 308 notice requirement.

**R.C.M. 601, Referral**, be amended to clarify that the requirement that a general court-martial convening authority receive Article 34 advice from a staff judge advocate before referring charges to a general court-martial may not be waived.

**R.C.M. 701, Discovery**, be amended to address when a military judge must seal materials reviewed *in camera* and to refer to R.C.M. 1103A for guidance regarding when reviewing and appellate authorities may examine such materials.

**R.C.M. 704, Immunity**, be amended to permit, subject to Service regulations, general court-martial convening authorities to delegate the authority to grant immunity to special court-martial convening authorities and no further. This authority may be limited by superior competent authority. (This proposal responds to an RSP recommendation to study grants of immunity for collateral misconduct of victims of sexual assault.)

*The Discussion accompanying R.C.M. 704(c)* be amended to provide additional guidance on the delegation of authority to grant immunity.

**R.C.M 1103, Preparation of record trial**, be amended to make the rules governing the preparation of verbatim transcripts consistent for general and special courts-martial.

**R.C.M. 1103A, Sealed exhibits and proceedings**, be amended to clarify the procedures for examining and disclosing sealed materials throughout the court-martial process and upon review. Amendments would include providing separate procedures for appellate counsel to examine materials that were released to trial government and defense counsel and those that were not released to counsel at the trial level. The Rule would also provide definitions for "examination" and "disclosure."

*A new Discussion accompanying R.C.M. 1103A(b)(4)(C)(ii)* would provide guidance regarding when and how appellate and reviewing authorities may authorize disclosure of sealed portions of the court-martial record.

**Mil. R. Evid. 311, Evidence obtained from unlawful searches and seizures**, be amended to provide that evidence obtained unlawfully may still be admissible if the official seeking the evidence acted in reasonable reliance on binding precedent that was valid at the time of the search. This change would incorporate the Supreme Court's holding in *Davis v. United States*, 564 U.S. 229 (2011).

**Mil. R. Evid. 505, Classified information**, be amended to clarify the rules governing *in camera* reviews and to conform with amendments made to R.C.M. 701(g)(2).

*A new Discussion accompanying Mil. R. Evid. 506(b)* would refer practitioners to DoDI 6055.07 for additional procedures concerning information contained in safety investigations.

**Mil. R. Evid. 506, Government information other than classified information**, be amended to clarify the rules governing *in camera* reviews and to conform with amendments made to R.C.M. 701(g)(2).

**Mil. R. Evid. 513, Psychotherapist-patient privilege, and Mil. R. Evid. 514, Victim advocate-victim and Department of Defense Safe Helpline staff-victim privilege**, be amended to refer practitioners to R.C.M. 701(g)(2) and R.C.M. 1103A for rules regarding examination of sealed materials.

**Pt. IV, ¶ 45c, Art. 120c—Other sexual misconduct**, be amended to correct mistaken indications that Article 120c applies to the nonconsensual broadcast of an image of a private area where the image was initially created with the subject's consent.

**Pt. IV, ¶ 111A, Art. 134—Visual depiction, nonconsensual distribution or broadcast**, be added to the Manual as a new Presidentially prescribed Article 134 offense providing an express criminalization of, and maximum punishment for, the nonconsensual distribution of images of private areas where the original image was made with the subject's consent. (Such nonconsensual distribution where the original image was made without the subject's consent is already criminalized by Article 120c(a).)

### **Significant Changes Proposed by Annex 2 (changes to take effect on January 1, 2019)**

**Pt. II, Rules for Courts-Martial**, be amended to implement the MJA's establishment of a new form of court-martial consisting of a military judge alone with no right of the accused to elect trial by members. Changes are proposed to multiple R.C.M.s to implement this new form of court-martial and to reflect the elimination of special courts-martial without a military judge. In R.C.M. 201(f), two alternatives are set out to avoid a service member being subjected to trial by the new form of judge-alone special court-martial over his or her objection if a conviction would lead to sex offender registration.

**Pt. II, Rules for Courts-Martial** also be amended to implement the MJA's establishment of the new position of military magistrate.

**R.C.M. 309, Pre-referral judicial proceedings**, be added to implement the MJA's authorization for the military judge to rule on certain designated matters before referral of charges to a court-martial.

**R.C.M. 404A, Initial Disclosures**, be amended to address the government's pre-referral disclosure obligations.

**R.C.M. 405, Preliminary hearing**, be amended to implement the MJA's amendments to Article 32 governing preliminary hearings.

**R.C.M. 406A, Pretrial advice before referral to special court-martial**, be added to implement the MJA's requirement that a convening authority consult with a judge advocate before referring a charge for trial by special court-martial.

**R.C.M. 501, Composition and personnel of courts-martial**, be amended to reflect the MJA's adoption of fixed panel sizes for special, non-capital general, and capital general courts-martial.

**R.C.M. 502, Qualifications and duties of personnel of courts-martial**, be amended to implement: (1) the MJA's authorization for convening authorities to detail enlisted members to general and special courts-martial without requiring a request for such members from an enlisted accused; (2) the MJA's limitations on when non-lawyers may serve as counsel at courts-martial; and (3) the MJA's provision that, 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 capital cases.

**R.C.M. 503, Detailing members, military judge, and counsel, and designating military magistrates**, be amended to implement the MJA's amendments regarding detailing of members, excusal of members, and impanelment of alternate members.

**R.C.M. 601, Referral**, be amended to implement the MJA's requirement that a convening authority consult with a judge advocate before referring a charge for trial by special court-martial.

**R.C.M. 603, Changes to charges and specifications**, be amended to revise and clarify the definition of major and minor changes that may be made to charges and specifications that have been referred to trial by court-martial, and the timing of requirements for making such changes to the charges and specifications.

**R.C.M. 701, Discovery**, be amended to clarify discovery duties and to expressly require that the trial counsel disclose to the defense adverse information regarding prosecution witnesses.

**R.C.M. 702, Depositions**, be amended to clarify the circumstances in which depositions may be ordered and their uses at trial.

**R.C.M. 703, Production of witnesses and evidence**, be amended to clarify the procedures for requesting the production of witnesses and evidence at trial and to implement the MJA's authorization to issue pre-referral investigative subpoenas and for the military judge to review requests for relief from such subpoenas.

**R.C.M. 703A, Warrant or order for wire or electronic communications**, be added to implement the MJA's authorization for military judges to issue a warrant or order for the disclosure of the contents of electronic communications.

**R.C.M. 705, Plea agreements**, be amended to reflect the MJA's revision of the military justice system's pretrial agreement process.

**R.C.M. 707, Speedy trial**, be amended to clarify the effect of dismissal of charges or mistrial on the 120-day deadline for bringing a case to trial and to provide that the trial or other disposition of charges against any accused held in arrest or confinement shall be given priority.

**R.C.M. 801, Military judge's responsibilities; other matters**, be amended to implement Article 6b's provisions for appointing a representative to assume the victim's rights in certain circumstances.

**R.C.M. 802, Conferences**, be amended to implement the MJA's authorization for military judges to preside over specified proceedings before referral.

**R.C.M. 803, Court-martial sessions without members under Article 39(a)**, be amended to implement the MJA's creation of the entry of judgment.

**R.C.M. 804, Presence of the accused at trial proceedings**, be amended to include circumstances in which the accused may consent to participate in trial proceedings by remote means without having defense counsel physically present at the accused's location but with the ability to have confidential communication with the defense counsel.

**R.C.M. 805, Presence of military judge, members, and counsel**, be amended to reflect the MJA's provision establishing fixed number of members for general and special courts-martial.

**R.C.M. 809, Contempt proceedings**, be amended to reflect that the military judge is the sole contempt authority at a special or general court-martial and to remove members from the contempt adjudication process.

**R.C.M. 810, Procedures for rehearings, new trials, other trials, and remands**, be amended to reflect the MJA's amendments to the limitations on sentences at rehearings and to codify current practice regarding limited evidentiary hearings ordered by appellate courts.

**R.C.M. 901, Opening session**, be amended to require that a defense counsel who has been detailed to a capital case as a counsel learned in the law applicable to such cases shall state such qualifications on the record.

**R.C.M. 902, Disqualification of military judge**, be amended to reflect the MJA's authorization for military judges to take certain actions before referral of charges.

**R.C.M. 903, Accused's elections on composition of court-martial**, be amended to implement the MJA's authorization for an accused to elect trial by military judge alone or by members and, if the accused is enlisted, trial by a panel with at least one-third enlisted members or by an all-officer panel.

**R.C.M. 905, Motions generally**, be amended to authorize the military judge to decide whether an in-court hearing is unnecessary for the resolution of a motion.

**R.C.M. 906, Motions for appropriate relief**, be amended to clarify the rules governing amendment of charges after referral, to clarify the standards governing severance of charges in capital and non-capital cases, and to clarify the remedies available to address findings of unreasonable multiplication of charges.

**R.C.M. 907, Motions to dismiss**, be amended to clarify the point at which jeopardy attaches for double jeopardy purposes.

**R.C.M. 908, Appeal by the United States**, be amended to implement the MJA's authorization for the government to appeal a military judge's order setting aside a panel's guilty verdict.

**R.C.M. 910, Pleas**, be amended to reflect the MJA’s authorization for the accused to plead guilty to a capitally referred charge for which the death penalty is not mandatory and to reflect the MJA’s revisions of pretrial agreement and sentencing practices.

**R.C.M. 912, Challenge of selection of members; examination and challenges of members**, be amended to reflect the MJA’s authorization for convening authorities to appoint enlisted members to court-martial panels without a request from an enlisted accused.

**R.C.M. 912A, Impaneling members and alternate members**, be added to provide procedures to implement the MJA’s adoption of fixed panel sizes for general and special courts-martial. This rule sets out four possible methods of removing excess members and invites public comment on those, or alternative, methods.

**R.C.M. 917, Motion for a finding of not guilty**, be amended to allow a military judge to rule on a motion for finding of not guilty after a panel returns findings, similar to existing practice in U.S. district courts, and to allow a military judge to reconsider a denial of a motion for a finding of not guilty at any time before entry of judgment.

**R.C.M. 918, Findings**, be amended to provide that any special findings will be entered before the entry of judgment.

**R.C.M. 919, Argument by counsel on findings**, be amended to change a reference to “waiver” of certain legal issues to the legally correct term, “forfeiture.”

**R.C.M. 920, Instructions on findings**, be amended to change a reference to “waiver” of certain legal issues to the legally correct term, “forfeiture.”

**R.C.M. 921, Deliberations and voting on findings**, be amended to reflect the MJA’s provision that findings be by a vote of at least three-fourths of the members.

**R.C.M. 922, Announcement of findings**, be amended to conform to changes regarding the acceptance of guilty pleas by the military judge and the announcement of findings by the members.

**R.C.M. 924, Reconsideration of findings**, be amended to reflect the MJA’s provision that findings be by a vote of at least three-fourths of the members and elimination of any offense for which there is a mandatory death sentence.

**R.C.M. 1001, Presentencing procedure, and R.C.M. 1102, Sentencing determination**, be amended to implement the MJA’s provisions: (1) requiring that in non-capital cases, the sentence be adjudged by the military judge unless, in a case in which the accused pleads guilty or is tried on the merits by members, the accused elects to be sentenced by members; (2) providing factors that should be considered when determining an appropriate sentence; and (3) providing that confinement and fines adjudged by military judges will be segmented by providing a separate period or confinement or amount of fine for each offense that resulted in a finding of guilty.

**R.C.M. 1004, Capital cases**, be amended to: (1) implement the MJA’s provision allowing an accused to plead guilty to a death-eligible offense; (2) delete an aggravating factor that, in addition to the death-eligible offense of which the accused was convicted, the accused was

convicted of violating article 120b when the victim was under the age of 12 or violating article 120 or 120b while maiming or attempting to kill the victim; and (3) implement the MJA's provision eliminating the mandatory death sentence for spying in time of war.

**R.C.M. 1005, Instructions on sentence**, be amended to: (1) require the members' consideration of the sentencing guidance set forth in R.C.M. 1002; and (2) change a reference to "waiver" of certain legal issues to the legally correct term, "forfeiture."

**R.C.M. 1006, Deliberations and voting on sentence**, be amended to implement the MJA by: (1) providing that any sentence, other than death, adjudged by members must have the concurrence of at least three-fourths of the members; and (2) providing that in a members sentencing case in which the military judge accepts a plea agreement with a sentence limitation, the members must vote on a sentence in accordance with that limitation.

**R.C.M. 1007, Announcement of sentence**, be amended to reflect the accused's right to elect member sentencing in lieu of sentencing by military judge in certain non-capital cases and the requirement that the military judge announce the sentence as soon as it is determined when the accused has not elected to be sentenced by members.

**R.C.M. 1009, Reconsideration of sentence**, be amended to provide that a sentence may be reconsidered if it is not in accordance with a plea agreement's sentence limitation and to specify the number of votes required for reconsideration at various phases of a capital sentencing proceeding.

**R.C.M. 1010, Notice concerning post-trial and appellate rights**, be amended to implement the MJA's reforms of the military justice appellate system.

**R.C.M.s 1101-1116** be revised to implement the MJA's considerable revisions court-martial post-trial processing.

**R.C.M. 1117, Appeal of sentence by the United States**, be added to implement the MJA's authorization for the government to appeal the sentence in certain circumstances.

**R.C.M. 1201, Review by the Judge Advocate General**, be amended to implement the MJA's substantial revision of the military justice appellate system.

**R.C.M. 1202, Appellate counsel**, be amended to reflect the MJA's provision regarding detail of appellate defense counsel learned in the law of capital cases for appeals of death sentences.

**R.C.M. 1203, Review by a Court of Criminal Appeals**, be amended to implement the MJA's substantial revision of the military justice appellate system.

**R.C.M. 1208, Restoration**, be amended to provide that in certain cases where an executed part of a court-martial sentence is set aside pending a rehearing, new trial, or other trial, that part of the sentence will not be enforced from the effective date of the order setting it aside.

**R.C.M. 1201, New trial**, be amended to reflect the MJA's extension of the petition for new trial filing period from two years after convening authority's action to three years after entry of judgment.

**R.C.M. 1209, Finality of courts-martial**, be amended to implement the MJA’s provisions regarding when the results of a court-martial become final.

**R.C.M. 1301, Summary courts-martial**, be amended to clarify that a summary court-martial is not a criminal forum and a finding of guilty does not constitute a criminal conviction.

**R.C.M. 1304, Trial procedure**, be amended to clarify the victim’s rights at a summary court-martial.

**R.C.M. 1306, Post-trial procedure, summary court-martial**, be amended to implement the MJA’s provisions amending the appellate procedures for summary courts-martial.

**R.C.M. 1307, Review of summary courts-martial by a judge advocate**, be added to implement the MJA’s provision for a judge advocate’s review of the record of a summary court-martial and to permit an accused to apply for appellate review for correction of legal error.

**Mil. R. Evid. 412, Sex-offense cases: The victim’s sexual behavior or predisposition**, be amended to bring its language into accord with case law applying it and with the portion of Fed. R. Evid. 412 that applies in criminal cases.

**Mil. R. Evid. 513, Psychotherapist-patient privilege**, be amended to allow a patient to authorize any counsel representing the patient to claim the privilege on the patient’s behalf and to clarify the meaning of the term “reasonable likelihood” in assessing the circumstances when a military judge may conduct an in camera review of protected records or communications to determine whether they must be produced or admitted into evidence.

**Mil. R. Evid. 514, Victim advocate-victim privilege**, be amended to clarify the meaning of the term “reasonable likelihood” in assessing the circumstances in which a military judge may conduct an in camera review of protected records or communications to determine whether they must be produced or admitted into evidence.

**Pt. IV, Punitive Articles**, be amended to reflect the MJA’s reorganization of many of the punitive articles and the enactment of several previously enumerated Article 134 offenses as punitive articles.

**Pt. IV, ¶ 3, Art. 79—Conviction of offense charged, lesser included offenses, and attempts**, be amended to reflect the MJA’s authorization for the President to prescribe lesser included offenses that are reasonably included in the greater offense.

**Pt. IV, ¶ 6, Art. 82—Soliciting commission of offenses**, be amended to adjust the maximum punishment for several solicitation offenses where the underlying offense is not committed.

**Pt. IV, ¶ 8, Art. 84—Breach of medical quarantine**, be amended to enhance the maximum punishment for breaking a medical quarantine in connection with a Presidentially prescribed quarantinable communicable disease.

**Pt. IV, ¶ 15, Art. 89—Disrespect toward superior commissioned officer; assault of superior commissioned officer**, be amended to remove distinct treatment of superior commissioned officers from a separate Service for purposes of certain offenses against authority and to adjust the maximum punishment.

**Pt. IV, ¶ 16 Art. 90—Willfully disobeying superior commissioned officer**, be amended to remove distinct treatment of superior commissioned officers from a separate Service.

**Pt. IV, ¶ 19 Art. 93—Cruelty and maltreatment**, be amended to increase the maximum authorized confinement for maltreatment from two to three years.

**Pt. IV, ¶ 20, Art. 93a—Prohibited activities with military recruit or trainee by person in position of special trust**, be added to reflect the new offense of “Prohibited activities with military recruit or trainee by person in position of special trust” and to prescribe the maximum punishment for the offense.

**Pt. IV, ¶ 24, Art. 96—Release of prisoner without authority; drinking with prisoner**, be amended to enlarge the scope of the offense of drinking with a prisoner and to adjust the maximum authorized punishments for the offenses of allowing a prisoner to escape through neglect or design and drinking with a prisoner.

**Pt. IV, ¶ 31, Art. 103—Spies**, be amended to reflect the MJA’s elimination of the mandatory death penalty for spying in time of war.

**Pt. IV, ¶ 40, Art. 106a—Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button**, be amended to adjust the maximum punishment for wearing without authority certain medals or awards.

**Pt. IV, ¶ 43, Art. 108—Military property of United States—Loss, damage, destruction, or wrongful disposition**, be amended to reflect that for purposes of the offense of loss, damage, destruction, or wrongful disposition of military property, ammunition is included within the phrase “firearms and explosives” and to adjust the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 44, Art. 108a—Captured or abandoned property**, be amended to adjust the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 45, Art. 109—Property other than military property of United States—waste, spoilage, or destruction**, be amended to adjust the maximum authorized punishment and the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 49, Art. 112—Drunkenness and other incapacitation offenses**, be amended to clarify that for the offense of incapacitation for duty, the indulgence in alcohol or drugs leading to the incapacitation need not be wrongful for the offense to be established; rather, the wrongfulness is in the incapacitation.

**Pt. IV, ¶ 51, Art. 113—Drunken or reckless operation of a vehicle, aircraft, or vessel**, be amended to reflect the statutory lowering of the blood alcohol level to .08 for purposes of drunken or reckless operation of a vehicle, aircraft, or vessel.

**Pt. IV, ¶ 52, Art. 114—Endangerment offenses**, be amended to adjust the maximum authorized punishment for reckless endangerment and for carrying a concealed weapon.

**Pt. IV, ¶ 59, Art. 119b—Child endangerment**, be amended to modify the explanation for the offense of child endangerment.

**Pt. IV, ¶ 60, Art. 120—Rape and sexual assault generally**, be amended to remove a discussion of consent as an element of an Article 120 offense, to clarify that the scope of the offense of threatening or placing another person in fear includes, but is not limited to, abuse of military rank, position, or power to engage in a sexual act or contact with the victim, and to consolidate the sample specifications.

**Pt. IV, ¶ 62, Art. 120b—Rape and sexual assault of a child**, be amended to consolidate the elements and sample specifications.

**Pt. IV, ¶ 63, Art. 120c—Other sexual misconduct**, be amended to increase the maximum authorized punishment for forcible pandering.

**Pt. IV, ¶ 64, Art. 121—Larceny and wrongful appropriation**, be amended to adjust the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 65, Art. 121a—Fraudulent use of credit cards, debit cards, and other access devices**, be added to reflect the new punitive article enacted by the MJA and to prescribe maximum punishments for offenses established by the new punitive article.

**Pt. IV, ¶ 66, Art. 121b—False pretenses to obtain services**, be amended to adjust the maximum authorized punishments for offenses.

**Pt. IV, ¶ 67, Art. 122—Robbery**, be amended to remove the element of “with the intent to deprive permanently” and to adjust the maximum authorized punishments.

**Pt. IV, ¶ 68, Art. 122a—Receiving stolen property**, be amended to adjust the maximum authorized punishments.

**Pt. IV, ¶ 69, Art. 123—Offenses concerning Government computers**, be added to reflect the new punitive article enacted by the MJA and to prescribe maximum punishment for offenses established by the new punitive article.

**Pt. IV, ¶ 70, Art. 123a—Making, drawing, or uttering check, draft, or order without sufficient funds**, be amended to adjust the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 71, Art. 124—Frauds against the United States**, be amended to adjust the value at which the maximum authorized punishment is enhanced.

**Pt. IV, ¶ 75, Art. 126—Arson**, be amended to clarify that neither proof that the property belonged to a certain person nor proof that it was of a certain value is necessary for a conviction and to adjust the maximum authorized punishments.

**Pt. IV, ¶ 77, Art. 126—Assault**, be amended to clarify the extent of bodily harm necessary to constitute certain types of assault, to clarify the definition of “dangerous weapon,” and to provide maximum punishments for additional two specific forms of assault.

**Pt. IV, ¶ 79, Art. 129—Burglary**, be amended to reflect the MJA’s elimination of occurrence in the nighttime and entry of a dwelling house as elements of burglary.

**Pt. IV, ¶ 80, Art. 130—Stalking**, be amended to reflect the MJA’s inclusion of cyberstalking and threats to intimate partners as aspects of the stalking offense.

**Pt. IV, ¶ 86, Art. 131e—Prevention of authorized seizure of property**, be amended to adjust the maximum authorized punishment.

**Pt. IV, ¶ 89, Art. 132—Retaliation**, be added to reflect the new punitive article enacted by the MJA and to prescribe the maximum punishment for the offense.

**Pt. IV, ¶ 90, Art. 133—Conduct unbecoming an officer and a gentlemen**, be amended to emphasize that the term “gentleman” connotes failings in an officer’s personal character regardless of gender.

**Pt. IV, ¶ 91, Art. 134—General article**, be amended to reflect the MJA’s amendment of Article 134 to provide extraterritorial jurisdiction for noncapital federal crimes committed outside the United States which otherwise require that the offense be committed “within the special maritime and territorial jurisdiction of the United States.”

**Pt. IV, ¶ 95, Art. 134—Child pornography**, be amended to emphasize that the presidentially prescribed Article 134 offense of child pornography is not intended to preempt prosecution under applicable federal and state child pornography and obscenity statutes.

**Pt. IV, ¶ 99, Art. 134—Extramarital sexual conduct**, be amended to redesignate the previous offense of adultery, to broaden the kinds of extramarital conduct that can constitute the offense, and to establish legal separation as an affirmative defense.

**Pt. V, Nonjudicial Punishment Procedures** be amended to reflect Congress’s elimination of confinement on bread and water or diminished rations as an authorized nonjudicial punishment for enlisted personnel attached to or embarked in a vessel.

**Pt. V, Nonjudicial Punishment Procedures** also be amended to clarify that a service member can waive the two-year statute of limitations that applies for nonjudicial punishment purposes.

A new **Appendix 2.1** be added to provide non-binding guidance concerning the disposition of allegations of offenses.

**Appendix 12A** be amended to provide a table of Presidentially approved lesser included offenses.