

**AMENDMENTS TO THE MILITARY RULES OF EVIDENCE
SINCE 1984 (2025 Edition)**

EDITED BY GREGORY E. MAGGS

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PREFACE

Article 36(a) of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 836(a), grants the President of the United States authority to prescribe “[p]retial, trial, and post-trial procedures, including modes of proof, for cases . . . triable in courts-martial.” In 1984, the President exercised this authority by issuing an executive order that created the Military Rules of Evidence (M.R.E.). *See* Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Since 1984, the President has issued more than twenty additional executive orders amending the M.R.E. A list of these executive orders, with links for finding them online, is included in this publication. In addition, as discussed in more depth herein, M.R.E. 1102 provides that some amendments to the Federal Rules of Evidence automatically amend the M.R.E.

The large number of amendments to the M.R.E. sometimes makes it difficult for counsel and judges to determine which version of a rule applies to a case under consideration or which version applied in a past case. This publication attempts to address this difficulty by making it easier to track the amendments to the M.R.E. and to find the text of all versions of the rules.

In preparing and editing this publication, I had substantial help from Ben Forsgren, Cooper Millhouse, and Mari Vogel (my law clerks at the U.S. Court of Appeals for the Armed Forces), from Abe Finley (law clerk to the Clerk of the U.S. Court of Appeals for the Armed Forces), and from Thomas Albers-Fiedler, Min-Soo Choi, Crystal Clanton, Jackie Corbo, Janese Duley, Sebastian Napoli, and Patrick Walters (law student research assistants). Mr. Clark Price of the Central Legal Staff of the U.S. Court of Appeals for the Armed Forces also provided excellent assistance. I am grateful for all their hard work. Because I plan to produce future editions of this book as new amendments occur, I earnestly welcome suggestions for correction of errors or other improvements.

Finally, I would also like to salute the Joint Service Committee on Military Justice, a working group of civilians and service members who drafted all the executive orders creating and amending the R.C.M. and who compiled the changes to the M.R.E. in the Manual for Courts-Martial. No one could review the scores of amendments, as I have done in preparing this work, without admiring the Joint Service Committee’s drafting skill, policy choices, and meticulous care.

No copyright is claimed on this work. Please feel free to copy and distribute it to anyone who might find it useful.

GREGORY E. MAGGS

WASHINGTON, D.C.

LINKS TO ALL EDITIONS OF THE MANUAL FOR COURTS-MARTIAL

Researchers can find amended and prior versions of the Military Rules of Evidence (M.R.E.) in the current and former editions of the Manual for Courts-Martial (M.C.M.). These editions are now available online in .pdf format at the links provided below. The following pages of this publication identify the edition to consult for each version of an amended M.R.E.

A few points about historic editions of the M.C.M. deserve mention. In 1984, the Joint Service Committee published the first edition of the M.C.M. that contained the M.R.E. The publication consisted of a three-ring binder with loose-leaf sheets. Later in 1984, and then again in 1986, 1987, 1990, and 1991, the Joint Service Committee published five supplements called “Change No. 1,” “Change No. 2,” and so forth. These supplements contained loose-leaf sheets that users could add to the three-ring binders. Starting in 1994, the Joint Service Committee stopped using the three-ring binder and started publishing each new edition of the M.C.M. as a separate paperback volume. Please note that a supplement published in 2012 contains only a revised version of the Military Rules of Evidence, and that the 2023 edition omits most of the appendices usually included in each M.C.M.

M.C.M. Edition:	Link:
Manual for Courts-Martial, United States (2024 Edition) [<i>hereinafter</i> M.C.M. (2024 ed.).]	https://jsc.defense.gov/Portals/99/2024%20MCM%20files/MCM%20(2024%20ed)%20(2024_01_02).pdf?ver=6Sk4QFffDE45HeNjOd7KpQ%3d%3d
Manual for Courts-Martial, United States (2023 Edition) [<i>hereinafter</i> M.C.M. (2023 ed.).]	https://jsc.defense.gov/Portals/99/Documents/M.C.M.%20editions/2023%20M.C.M.%20(2023_08_30).pdf
Manual for Courts-Martial, United States (2019 Edition) [<i>hereinafter</i> M.C.M. (2019 ed.).]	https://tile.loc.gov/storage-services/service/ll/llmlp/M.C.M.-2019/M.C.M.-2019.pdf
Manual for Courts-Martial, United States (2016 Edition) [<i>hereinafter</i> M.C.M. (2016 ed.).]	https://tile.loc.gov/storage-services/service/ll/llmlp/M.C.M.-2016/M.C.M.-2016.pdf
Supplement to Manual for Courts-Martial, United States, Military Rules of Evidence (2012 Edition)	https://jsc.defense.gov/Portals/99/Documents/M.C.M.Supplement.pdf?ver=2015-03-17-114352-930
Manual for Courts-Martial, United States (2012 Edition) [<i>hereinafter</i> M.C.M. (2012 ed.).]	https://tile.loc.gov/storage-services/service/ll/llmlp/M.C.M.-2012/M.C.M.-2012.pdf
Manual for Courts-Martial, United States (2008 Edition) [<i>hereinafter</i> M.C.M. (2008 ed.).]	https://tile.loc.gov/storage-services/service/ll/llmlp/M.C.M.-2008/M.C.M.-2008.pdf

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M.C.M. Edition:	Link:
Manual for Courts-Martial, United States (2005 Edition) [<i>hereinafter</i> M.C.M. (2005 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-2005/manual-2005.pdf
Manual for Courts-Martial, United States (2002 Edition) [<i>hereinafter</i> M.C.M. (2002 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-2002/manual-2002.pdf
Manual for Courts-Martial, United States (2000 Edition) [<i>hereinafter</i> M.C.M. (2000 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-2000/manual-2000.pdf
Manual for Courts-Martial, United States (1998 Edition) [<i>hereinafter</i> M.C.M. (1998 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-1998/manual-1998.pdf
Manual for Courts-Martial, United States (1995 Edition) [<i>hereinafter</i> M.C.M. (1995 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-1995/manual-1995.pdf
Manual for Courts-Martial, United States, 1984 (1994 Edition) [<i>hereinafter</i> M.C.M. 1984 (1994 ed.)]	https://tile.loc.gov/storage-services/service/ll/lmlp/manual-1994/manual-1994.pdf
Change No. 5, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1991) [<i>hereinafter</i> M.C.M. 1984 (Change No. 5 1991)]	http://maggs.us/M.C.M./M.C.M.-1984-Change-5-1991.pdf
Change No. 4, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1990) [<i>hereinafter</i> M.C.M. 1984 (Change No. 4 1990)]	http://maggs.us/M.C.M./M.C.M.-1984-Change-4-1990.pdf
Change No. 3, Manual for Courts-Martial, United States, 1984 (Jun. 1, 1987) [<i>hereinafter</i> M.C.M. 1984 (Change No. 3 1987)]	https://tile.loc.gov/storage-services/service/ll/lmlp/M.C.M._1984-change3/M.C.M._1984-change3.pdf
Change No. 2, Manual for Courts-Martial, United States, 1984 (May 15, 1986) [<i>hereinafter</i> M.C.M. 1984 (Change No. 2 1986)]	https://tile.loc.gov/storage-services/service/ll/lmlp/M.C.M._1984-change2/M.C.M._1984-change2.pdf
Change No. 1, Manual for Courts-Martial, United States, 1984 (Nov. 15, 1984) [<i>hereinafter</i> M.C.M. 1984 (Change No. 1 1984)]	https://tile.loc.gov/storage-services/service/ll/lmlp/M.C.M._1984-change1/M.C.M._1984-change1.pdf

LINKS TO ALL EDITIONS OF THE MANUAL FOR COURTS-MARTIAL

M.C.M. Edition:	Link:
Manual for Courts-Martial, United States, 1984 [<i>hereinafter</i> M.C.M. 1984]	https://tile.loc.gov/storage-services/service/l1/l1mlp/manual-1984/manual-1984.pdf

LINKS TO EXECUTIVE ORDERS AMENDING THE MILITARY RULES OF EVIDENCE

The President of the United States from time to time amends the Rules for Courts-Martial (R.C.M), Military Rules of Evidence (M.R.E.), and other parts of the Manual for Courts-Martial, United States (M.C.M.) by issuing executive orders. The following table lists all of the executive orders that the President has issued and the M.R.E. (if any) that the orders have amended.

Executive Order:	M.R.E. Amended:	First Publication:
Exec. Order No. 14,130, 889 Fed. Reg. 105343 (Dec. 20, 2024), https://www.govinfo.gov/content/pkg/FR-2024-12-27/pdf/2024-31354.pdf	M.R.E. 513	Not yet included in any M.C.M.
Exec. Order No. 14,103, 88 Fed. Reg. 50535 (Aug. 2, 2023), https://www.govinfo.gov/content/pkg/FR-2023-08-02/pdf/2023-16570.pdf	M.R.E. 311, 315, 404, 503, 505, 506, 507, 611, 803, 807, 902	M.C.M. (2023 ed.)
Exec. Order No. 14,062, 87 Fed. Reg. 4763 (Jan. 26, 2022), https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2022-02027.pdf	None	N/A
Exec. Order No. 13,825, 83 Fed. Reg. 9889 (Mar. 1, 2018), https://www.govinfo.gov/content/pkg/FR-2018-03-08/pdf/2018-04860.pdf	M.R.E. 101, 104, 304, 311, 315, 404, 412, 505, 506, 512, 513, 514, 606, 609, 804, 1101 Note: The Executive Order also made stylistic amendments to numerous rules. These stylistic changes are not covered in this document.	M.C.M. (2019 ed.)
Exec. Order No. 13,740, 81 Fed. Reg. 65,175 (Sep. 16, 2016), https://jsc.defense.gov/Portals/99/Documents/EO13740.pdf	None	N/A
Exec. Order No. 13,730, 81 Fed. Reg. 33,331 (May 20, 2016), https://jsc.defense.gov/Portals/99/Documents/EO13730.pdf	M.R.E. 304, 311, 414, 504, 505, 801, 803, 804, 1101	M.C.M. (2016 ed.)

LINKS TO EXECUTIVE ORDERS AMENDING THE MILITARY RULES OF EVIDENCE

Executive Order:	M.R.E. Amended:	First Publication:
Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015), https://jsc.defense.gov/Portals/99/Documents/EO13696.pdf	M.R.E. 404, 412, 513, 514, 615	M.C.M. (2016 ed.)
Exec. Order No. 13,669, 79 Fed. Reg. 34,999 (Jun. 13, 2014), https://jsc.defense.gov/Portals/99/Documents/EO13669.pdf	None	N/A
Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013), https://jsc.defense.gov/Portals/99/Documents/EO13643.pdf	M.R.E. 101, 105, 201, 201A, 202, 301, 304, 305, 311, 312, 313, 314, 315, 316, 317, 401, 402, 404, 408, 409, 410, 413, 414, 501, 504, 505, 506, 507, 509, 511, 513, 601, 602, 603, 605, 606, 607, 608, 609, 611, 612, 613, 614, 615, 702, 703, 705, 706, 801, 802, 803, 804, 806, 901, 902, 903, 1001, 1005, 1006, 1007 Note: The Executive Order also made stylistic amendments to numerous rules to align them with the Federal Rules of Evidence. These stylistic changes are not covered in this document.	Supplement to Manual for Courts-Martial, United States, Military Rules of Evidence (2012 Edition)
Exec. Order No. 13,593, 76 Fed. Reg. 78,451 (Dec. 13, 2011), https://jsc.defense.gov/Portals/99/Documents/EO13593.pdf	M.R.E. 504, 513, 514, 609	M.C.M. (2012 ed.)
Exec. Order No. 13,552, 75 Fed. Reg. 54,263 (Aug. 31, 2010), https://jsc.defense.gov/Portals/99/Documents/EO13552.pdf	None	N/A
Exec. Order No. 13,468, 73 Fed. Reg. 43,827 (Jul. 24, 2008), https://jsc.defense.gov/Portals/99/Documents/EO13468.pdf	None	N/A
Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sep. 28, 2007), https://jsc.defense.gov/Portals/99/Documents/EO13447.pdf	M.R.E. 412, 503, 504	M.C.M. (2008 ed.)

LINKS TO EXECUTIVE ORDERS AMENDING THE MILITARY RULES OF EVIDENCE

Executive Order:	M.R.E. Amended:	First Publication:
Exec. Order No. 13,430, 72 Fed. Reg. 20,213 (Apr. 18, 2007), https://jsc.defense.gov/Portals/99/Documents/EO13430.pdf	None	N/A
Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005), https://jsc.defense.gov/Portals/99/Documents/EO13387.pdf	M.R.E. 317	M.C.M. (2008 ed.)
Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004), https://jsc.defense.gov/Portals/99/Documents/EO13365.pdf	M.R.E. 103, 404, 701, 702, 703, 803, 902, 1102	M.C.M. (2005 ed.)
Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002), https://jsc.defense.gov/Portals/99/Documents/EO13262.pdf	M.R.E. 615	M.C.M. (2002 ed.)
Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 6, 1999), https://jsc.defense.gov/Portals/99/Documents/EO13140.pdf	M.R.E. 513, 611	M.C.M. (2000 ed.)
Exec. Order No. 13,086, 63 Fed. Reg. 30,065 (May 27, 1998), https://jsc.defense.gov/Portals/99/Documents/EO13086.pdf	M.R.E. 412, 413, 414, 1102	M.C.M. (1998 ed.)
Exec. Order No. 12,960, 60 Fed. Reg. 26,647 (May 12, 1995), https://jsc.defense.gov/Portals/99/Documents/EO12,960.pdf	M.R.E. 311, 506	M.C.M. (1995 ed.)
Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994), https://jsc.defense.gov/Portals/99/Documents/EO12936.pdf	M.R.E. 305, 314, 404	M.C.M. (1995 ed.)
Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993), https://jsc.defense.gov/Portals/99/Documents/EO12888.pdf	M.R.E. 311, 505, 609, 1101	M.C.M. 1984 (1994 ed.)

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Executive Order:	M.R.E. Amended:	First Publication:
Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (Jun. 27, 1991), https://jsc.defense.gov/Portals/99/Documents/EO12767.pdf	M.R.E. 707	M.C.M. 1984 (Change No. 5 1991)
Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990), https://jsc.defense.gov/Portals/99/Documents/EO12708.pdf	M.R.E. 304, 506	M.C.M. 1984 (Change No. 4 1990)
Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987), https://jsc.defense.gov/Portals/99/Documents/EO12586.pdf	M.R.E. 304, 613, 902	M.C.M. 1984 (Change No. 3 1987)
Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 19, 1986), https://jsc.defense.gov/Portals/99/Documents/EO12550.pdf	M.R.E. 304, 311, 609, 804	M.C.M. 1984 (Change No. 2 1986)
Exec. Order No. 12,484, 49 Fed. Reg. 28,825 (Jul. 13, 1984), https://jsc.defense.gov/Portals/99/Documents/EO12484.pdf	M.R.E. 315, 321, 601	M.C.M. 1984 (Change No. 1 1984)
Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984), https://jsc.defense.gov/Portals/99/EO%2012473_1.pdf	This executive order created the initial version of the M.R.E.	M.C.M. 1984

NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

Military Rule of Evidence (M.R.E.) 1102 provides that amendments to the Federal Rules of Evidence (F.R.E.) shall apply to the M.R.E. unless the amendments fall within certain exceptions or unless the President directs otherwise. This rule helps to ensure that the M.R.E. generally will continue to match the F.R.E., as required by Article 36(a), UCMJ.

The possibility that an amendment to an F.R.E. may also amend a corresponding M.R.E. is a potential trap for the unwary because amendments to the F.R.E. may not appear in the Manual for Courts-Martial. For example, Federal Rule of Evidence (F.R.E.) 807 was amended effective December 1, 2019. By operation of M.R.E. 1102, the amendment to F.R.E. 807 amended M.R.E. 807 effective May 1, 2021. The President, however, did not issue an executive order amending the text of M.R.E. 807 in the Manual for Courts-Martial (M.C.M.) until July 28, 2023. Accordingly, Military judges and the counsel appearing before them easily could have overlooked this amendment if they relied solely on the M.C.M.

Amendments to the F.R.E. may come about in two ways. First, the U.S. Supreme Court can amend the F.R.E. using authority that Congress granted in the Rules Enabling Act, 28 U.S.C. § 2072 (2024). The Supreme Court issues these amendments by orders that are posted on its website. *See, e.g.*, Proposed Amendments to the Federal Rules of Evidence https://www.supremecourt.gov/orders/courtorders/frev24_9o6b.pdf (amending numerous rules). Second, Congress can amend the F.R.E. directly by enacting legislation. *See, e.g.*, Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, tit. IV, § 40141(b) (Sept. 13, 1994) (amending F.R.E. 412). To guide judge and counsel, this publication lists all of the amendments to the F.R.E. since 1984 as the last entry for each M.R.E. (No entries are included for M.R.E. for which there is not a corresponding F.R.E., such as M.R.E. 315.)

Because the President has amended M.R.E. 1102 several times, the effect of amendments to the F.R.E. on the M.R.E. depends on when the amendments to the F.R.E. were made. The applicable rules are shown below:

Amendments to the F.R.E. between April 13, 1984, and May 27, 1998

The following version of M.R.E. 1102 addressed the applicability of amendments to the F.R.E. that were made between April 13, 1984, and May 27, 1998:

Rule 1102. Amendments.

Amendments to the Federal Rules of Evidence shall apply to the Military Rules of Evidence 180 days after the effective date of such amendments unless action to the contrary is taken by the President.

For example, the Supreme Court made technical amendments to F.R.E. 104 on March 2, 1987, which became effective October 1, 1987. Pursuant to this version of M.R.E. 1102, M.R.E. 104 was amended 180 days later on March 29, 1988.

Amendments to the F.R.E. between May 27, 1998, and January 2, 2005

The following version of M.R.E. 1102 addressed the applicability of amendments to the F.R.E. that were made between May 27, 1998, and January 2, 2005:

NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

Rule 1102. Amendments.

Amendments to the Federal Rules of Evidence shall apply to the Military Rules of Evidence 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

Notice that this revised version of M.R.E. 1102 extended the period before amendments to the F.R.E. affect the M.R.E. from 180 days to eighteen months. For example, the Supreme Court added F.R.E. 807 by order on April 11, 1997, with an effective date of December 1, 1997. Under this version of M.R.E. 1102, a new rule M.R.E. 807 went into effect eighteen months later on May 1, 1999.

Amendments to the F.R.E. between January 2, 2005, and May 15, 2013

The following version of M.R.E. 1102 addressed the applicability of amendments to the F.R.E. that were made between January 2, 2005, and May 15, 2013:

Rule 1102. Amendments.

(a) Amendments to the Federal Rules of Evidence shall apply to the Military Rules of Evidence 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

(b) Rules Determined Not To Apply. The President has determined that the following Federal Rules of Evidence do not apply to the Military Rules of Evidence: Rules 301, 302, 415, and 902(12).

Notice that exceptions were created for M.R.E. 301, 302, 415, and 902(12). For example, although F.R.E. 302 was amended by Supreme Court order on April 26, 2011, with an effective date of December 1, 2011, this amendment F.R.E. 301 did not apply to M.R.E. 301.

Amendments to the F.R.E. between May 15, 2013, and the Present

The following version of M.R.E. 1102 addressed the applicability of amendments to the F.R.E. that were made between May 15, 2013, and the present:

Rule 1102. Amendments

(a) General Rule. Amendments to the Federal Rules of Evidence—other than Articles III and V—will amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

(b) Rules Determined Not to Apply. The President has determined that the following Federal Rules of Evidence: Rules 301, 302, 415, and 902(12).

Notice that categorical exceptions now exclude amendments to Articles III and V of the M.R.E. These categorical exceptions have a limited effect because the F.R.E. contain only two rules in the “300s” (namely, F.R.E. 301 and F.R.E. 302) and only two rules in the “500s” (namely, F.R.E. 501 and F.R.E. 502).

EXPLANATORY NOTES

This document contains an entry for every current or former Military Rule of Evidence (M.R.E.). Each entry begins with a heading that presents the number and title of the M.R.E. If amendments have changed the number or title of an M.R.E., the entry uses the most recent number and title. If amendments have deleted the M.R.E., the number and title appear in brackets and the deletion is noted.

After providing the number and title of the M.R.E., the entry first provides information about the promulgation of the original version of the M.R.E. The President promulgated the original version of most M.R.E. in 1984. Accordingly, most entries begin by stating: “The President promulgated the original version of this rule in Manual for Courts-Martial, 1984, Executive Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. 1984.”

For rules that the President has amended, the entry then separately describes each amendment by date, with the date being the date of the President’s executive order rather than the effective date of the amendment. The description describes the source of the amendment, which is the executive order that created the amendment. It also identifies an edition of the M.C.M. that includes the text of amended rule prior to any subsequent changes. The description next explains then addresses the effective date of the amendment. Finally, the description provides the text or a summary of the amendment. A summary is used when the executive order replaced the rule without specifying the changes to the rule, which was true for most of the changes made by Executive Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013), and Executive Order No. 13,825, 83 Fed. Reg. 9889 (Mar. 1, 2018).

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RULE 101. SCOPE

Rule 101. Scope

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 101(a) is amended to delete the words “including summary courts-martial” because Mil. R. Evid. 1101 already addresses the applicability of this rule to summary courts-martial.
- Mil. R. Evid. 101(b) is amended to change the word “shall” to “will.”
- Mil. R. Evid. 101 is amended to add a discussion section.

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 101(c)(1) is amended and reflects the elimination of special courts-martial without a military judge and to include within the definition of military judge a military magistrate who has been designated to preside at a special court-martial or pre-referral proceedings under Article 30a. *See* Articles 16 and 30a, as amended and added,

RULE 102. PURPOSE

respectively, by Sections 5161 and 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 further amended and amended, respectively, by Sections 1081(c)(1) and 531(b), respectively, of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 155-91, 131 Stat. 1283 (2017).

Mil. R. Evid. 101(c)(2) is amended and aligns military rules regarding electronically stored information with Federal civilian practice and the broader definitions of “writing” contained in R.C.M. 103 and Mil. R. Evid. 1001. The new language is based on Fed. R. Evid. 101(b)(6).

Amendments to F.R.E. 101

F.R.E. 101 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 102. Purpose

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 102

F.R.E. 101 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 103. Rulings on evidence

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(a), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

RULE 104. PRELIMINARY QUESTIONS

3. *First publication of the amended rule:* M.C.M. (2005 ed.).

4. *Text of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 103(a)(2) is amended to read as follows:

“(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. The standard provided in this subdivision does not apply to errors involving requirements imposed by the Constitution of the United States as applied to members of the armed forces except insofar as the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.”

Amendments to F.R.E. 103

F.R.E. 103 was amended by Supreme Court order on Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 104. Preliminary questions

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. See *id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 104(c) is amended and reflects the elimination of special courts-martial without a military judge. See Article 16, as amended by Section 5161 of the Military Justice

RULE 105. LIMITING EVIDENCE THAT IS NOT ADMISSIBLE AGAINST OTHER PARTIES OR FOR OTHER PURPOSES

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 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendments to F.R.E. 104

F.R.E. 104 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 105. Limiting evidence that is not admissible against other parties or for other purposes

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendment: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 105 is amended to change the title to “Limiting evidence that is not admissible against other parties for other purposes.”

Amendments to F.R.E. 105

F.R.E. 105 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 106. Remainder of or related writings or recorded statements

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 106

F.R.E. 106 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 24, 2023, eff. Dec. 1, 2023. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 201. Judicial notice of adjudicative facts

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendment: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 201(d) is subsumed into subsection (c). The remaining subsections are renumbered accordingly.
- Mil. R. Evid. 201(b) is amended to move subsection (b)(2) to a discussion section.

Amendments to F.R.E. 201

F.R.E. 201 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 201A Judicial Notice of Law [Renumbered]

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The rule was renumbered as shown below.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 201A is renumbered so that it now appears as Rule 202. The phrase “in accordance with Mil. R. Evid. 104” was added to subsection (b) to clarify that Rule 104 controls the military judge’s relevancy determination.

Rule 202. Judicial notice of law

The President originally promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984), as M.R.E. 201A. It was renumbered as shown below.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or

RULE 301. PRIVILEGE CONCERNING COMPULSORY SELF-INCRIMINATION

how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 201A is renumbered so that it now appears as Rule 202. The phrase “in accordance with Mil. R. Evid. 104” was added to subsection (b) to clarify that Rule 104 controls the military judge’s relevancy determination.

Rule 301. Privilege concerning compulsory self-incrimination

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 301(c) is amended to remove the phrase “concerning the issue of guilt or innocence.”
- Mil. R. Evid. 301(d) and (f)(2) are combined for ease of use. The remaining subsections are renumbered accordingly.

Amendments to F.R.E. 301

Although F.R.E. 301 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011, amendments to F.R.E. 301 after January 2, 2005, do not amend M.R.E. 301. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 302. Privilege concerning mental examination of an accused

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 302

Although F.R.E. 302 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011, amendments to F.R.E. 302 after January 2, 2005, do not amend M.R.E. 301. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 303 Degrading questions

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Rule 304. Confessions and admissions

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(a), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date “with respect to all court-martial processes taken on and after that date” subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil.R.Evid. 304 is amended as follows:

RULE 304. CONFESSIONS AND ADMISSIONS

(1) Subdivision (a) is amended by striking out “An involuntary” and inserting in lieu thereof “Except as provided in subsection (b), an involuntary”.

(2) Subdivision (b) is amended by --

(A) striking out “Exception” and inserting in lieu thereof “Exceptions”;

(B) designating the first sentence as subsection (1); and

(C) adding the following new subsection at the end thereof:

“(2) Evidence that was obtained as a result of an involuntary statement may be used when the evidence would have been obtained even if the involuntary statement had not been made.”.

(3) Paragraph (e)(3) is amended by --

(A) striking out “either”;

(B) striking out “or” and inserting in lieu thereof a comma; and

(C) inserting “, or that the evidence would have been obtained even if the statement had not been made” after “use of the statement”.

Amendment of March 3, 1987

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(a), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. *Effective date of the amendment:* March 12, 1987. *See id.* § 5 (making the amendments effective on this date subject to the standard exception precluding invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 3 1987).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 304(h) is amended by inserting the following new paragraph at the end thereof:

“(4) Refusal to obey order to submit body substance. If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

“(A) A charge of violating an order to submit such a sample; or

“(B) Any other charge on which the results of the chemical analysis would have been admissible.”.

Amendment of March 23, 1990

1. *Source of the amendment:* 1990 Amendments to the Manual for Courts-Martial, United States, § 2(a), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

RULE 304. CONFESSIONS AND ADMISSIONS

2. *Effective date of the amendment*: The amendment shall apply only in cases in which arraignment has been completed on or after April 1, 1990. *See id.* § 5(b).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 4 1990).

4. *Text of the amendment*:

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 304(b)(1) is amended to read as follows:

“Where the statement is involuntary only in terms of noncompliance with the requirements of Mil. R. Evid. 305(c) or 305(f), or the requirements concerning counsel under Mil. R. Evid. 305(d), 305(e), or 305(g), this rule does not prohibit use of the statement to impeach by contradiction the in-court testimony of the accused or the use of such statement in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.”

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 304(c) is moved so that it immediately follows subsection (a) and is highly visible to the practi[tioner.
- Mil. R. Evid. 304(h)(3) is moved to subsection (a)(2) so that it is included near the beginning of the rule to highlight the importance of an accused’s right to remain silent. The remaining subsections were renumbered.
- Mil. R. Evid. 304(b) is amended to add the term “allegedly.”
- Mil. R. Evid. 304(c)(5), (d), (f)(3)(A), and (f)(7) are amended to replace the word “shall” with “will” or “must.”

RULE 304. CONFESSIONS AND ADMISSIONS

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(a), 81 Fed. Reg. 33,331 (May 20, 2016).
2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).
3. *First publication of the amended rule:* M.C.M. (2016).
4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 304(c) is amended to read as follows:

“(c) Corroboration of a Confession or Admission.

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of the admission or confession, then it may be considered as evidence against the accused. Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) Quantum of Evidence Needed. The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the admission or confession. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) Procedure. The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

RULE 305. WARNINGS ABOUT RIGHTS

2. *Effective date of the amendment*: January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. *Text or summary of the amendment*: Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 304(f)(7) is amended and reflects the elimination of special courts-martial without a military judge. *See* 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, 130Stat. 2000 (2016), as amended by Section 1081(c)(1)(C) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 305. Warnings about rights

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of November 10, 1994

1. *Source of the amendment*: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(a)-(d), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. *Effective date of the amendment*: December 9, 1994. *See id.* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. (1995 ed.).

4. *Text or summary of the amendment*:

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 305(d)(1)(B) is amended to read as follows:

“(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of charges.”

b. Mil. R. Evid. 305(e) is amended to read as follows:

“(e) Presence of counsel.

RULE 305. WARNINGS ABOUT RIGHTS

(1) Custodial interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) Post-prefferal interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.”.

c. Mil. R. Evid. 305(f) is amended to read as follows:

“(f) Exercise of rights.

(1) The privilege against self-incrimination. If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) The right to counsel. If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.”.

d. Mil. R. Evid. 305(g)(2) is amended to read as follows:

“(2) Counsel.

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(A) requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that——

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.”.

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

RULE 306. STATEMENTS BY ONE OF SEVERAL ACCUSED

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 305 is amended to revise the definition of “person subject to the code” to clarify that it includes a person acting as a knowing agent only in subsection (c).
- Mil. R. Evid. 305 is amended to move the definition of “custodial interrogation” from subsection (b) to subsection (d) in order to co-locate the definition.
- Mil. R. Evid. 305(c)(2) and (c)(3) are amended to change the titles to “Fifth Amendment right to counsel” and “Sixth Amendment right to counsel” respectively because practitioners are more familiar with those terms.
- Mil. R. Evid. 305(c)(2) is amended to add the words “after such request” to clarify that any statements made prior to a request for counsel are admissible, assuming, of course, that Article 31(b) rights were given.
- Mil. R. Evid. 305(a)(d), and (f) are amended to change the word “shall” to “will.”
- Mil. R. Evid. 305(f)(2) is amended to replace the word “abroad” with “outside of a state, district, commonwealth, territory, or possession of the United States.”

Rule 306. Statements by One of Several Accused

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Rule 311. Evidence obtained from unlawful searches and seizures

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

RULE 311. EVIDENCE OBTAINED FROM UNLAWFUL SEARCHES AND SEIZURES

Amendment of February 19, 1986

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(b), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. *Effective date of the amendment:* March 1, 1986. *See id.* § 6 (making the amendments effective on this date “with respect to all court-martial processes taken on and after that date” subject to the standard exception precluding invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 2 1986).

4. *Text of the amendment:*

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Mil.R.Evid. 311 is amended as follows:

(1) Subdivision (b) is amended to read as follows:

“b. Exceptions.

“(1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

“(2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

“(3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

“(A) The search or seizure resulted from an authorization to search, seize, or apprehend issued by an individual competent to issue the authorization under Mil.R.Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

“(B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

“(C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith shall be determined on an objective standard.”.

(2) Paragraph (e)(1) is amended by striking out the period at the end thereof and inserting in lieu thereof “, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.”.

(3) Paragraph (e)(2) is amended by striking out the period at the end thereof and inserting in lieu thereof “, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably

RULE 311. EVIDENCE OBTAINED FROM UNLAWFUL SEARCHES AND SEIZURES

and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.”.

Amendment of December 23, 1993

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(a), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).
2. *Effective date of the amendment:* January 21, 1994. *Id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule:* M.C.M. 1984 (1994 ed.).
4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 311(e)(2) is amended to read as follows:

“(2) Derivative Evidence. Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence ultimately would have been obtained by lawful means even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant. Notwithstanding other provisions of this Rule, an apprehension made in a dwelling in a manner that violates R.C.M. 302(d)(2) & (e) does not preclude the admission into evidence of a statement of an individual apprehended provided (1) that the apprehension was based on probable cause, (2) that the statement was made subsequent to the apprehension at a location outside the dwelling, and (3) that the statement was otherwise in compliance with these rules.”.

Amendment of May 12, 1995

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 3(a), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).
2. *Effective date of the amendment:* June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).
3. *First publication of the amended rule:* M.C.M. (1995 ed.).
4. *Text or summary of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. M.R.E. 311(g)(2) is amended to read as follows:

RULE 311. EVIDENCE OBTAINED FROM UNLAWFUL SEARCHES AND SEIZURES

“(2) *False statements.* If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under these rules.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 311 is amended to move the definition of “unlawful” from subsection (c) to subsection (b) so that it immediately precedes the subsection in which the term is first used in the rule.

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(b)-(d), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2016).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) Mil. R. Evid. 311 (a) is amended to read as follows:

RULE 311. EVIDENCE OBTAINED FROM UNLAWFUL SEARCHES AND SEIZURES

“(a) General rule. Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) the accused makes a timely motion to suppress or an objection to the evidence under this rule;

(2) the accused had a reasonable expectation of privacy in the person, place, or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the Armed Forces; and

(3) exclusion of the evidence results in appreciable deterrence of future unlawful searches or seizures and the benefits of such deterrence outweigh the costs to the justice system.”

(c) A new Mil. R. Evid. 311(c)(4) is inserted immediately after Mil. R. Evid. 311(c)(3)(C) and reads as follows:

“(4) Reliance on Statute. Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acts in objectively reasonable reliance on a statute later held violative of the Fourth Amendment.”

(d) Mil. R. Evid. 311(d)(5)(A) is amended to read as follows:

“(A) In general. When the defense makes an appropriate motion or objection under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant; that the evidence was obtained by officials in objectively reasonable reliance on a statute later held violative of the Fourth Amendment; or that the deterrence of future unlawful searches or seizures is not appreciable or such deterrence does not outweigh the costs to the justice system of excluding the evidence.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 1, § 2(a)-(b), Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* March 1, 2018. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:*

Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:

(a) Mil. R. Evid. 311(c)(4) is amended to read as follows:

RULE 311. EVIDENCE OBTAINED FROM UNLAWFUL SEARCHES AND SEIZURES

(4) Reliance on Statute or Binding Precedent. Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acted ~~aets~~ in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment.

(b) Mil. R. Evid. 311(d)(5)(A) is amended to read as follows:

(A) In general. When the defense makes an appropriate motion or objection under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure; that the evidence would have been obtained even if the unlawful search or seizure had not been made; that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant; that the evidence was obtained by officials in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment; or that the deterrence of future unlawful searches or seizures is not appreciable or such deterrence does not outweigh the costs to the justice system of excluding the evidence.

Amendment of July 28, 2023

1. *Source of the amendment*: 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(a)-(b), 88 Fed. Reg. 50572 (Aug. 2, 2023).

2. *Effective date of the amendment*: July 28, 2023. *See id.* § 1(b) (“These amendments in Annex 1 shall take effect on the date of this order.”).

3. *First publication of the amended rule*: M.C.M. (2023 ed.).

4. *Text or summary of the amendment*:

(a) Mil. R. Evid. 311(c)(3) is amended to read as follows:

“(3) *Good Faith Exception of a Warrant or Search Authorization*: Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) the search or seizure resulted from an authorization to search, seize, or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority, or from such an authorization or warrant issued by an individual whom the officials seeking and executing the authorization or warrant reasonably and with good faith believed was competent to issue the authorization or warrant;

(B) the individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause or the officials seeking and executing the authorization or warrant reasonably and with good faith believed that the individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) the officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith is to be determined using an objective standard.”

RULE 312. BODY VIEWS AND INTRUSIONS

(b) Mil. R. Evid. 311(d)(4)(B) is amended to read as follows:

“(B) *False Statements.* If the defense makes a substantial preliminary showing that a government agent knowingly and intentionally or with reckless disregard for the truth included a false statement or omitted a material fact in the information presented to the authorizing officer, and if the allegedly false statement or omitted material fact is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion must be granted unless the search is otherwise lawful under these rules.”

Rule 312. Body views and intrusions

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 312(b)(2) is moved to a discussion paragraph because it addresses the conduct of the examiner rather than the admissibility of evidence.
- Mil. R. Evid. 312(c)(2)(a) is amended to replace the words “clear indication” with “probable cause.”
- Mil. R. Evid. 312(d) is amended to replace the term “involuntary” with “nonconsensual.”

RULE 313. INSPECTIONS AND INVENTORIES IN THE ARMED FORCES

- Mil. R. Evid. 312(e) is amended to add a discussion paragraph to address a situation in which a person is compelled to ingest a substance in order to locate property within the person's body.
- Mil. R. Evid. 312(f) is amended to add a line at the end of the subsection to conform with the rule from CAAF's holding in *United States v. Stevenson*, 66 M.J. 15 (C.A.A.F. 2008).

Rule 313. Inspections and inventories in the Armed Forces

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 313(c) is amended to add the definition of “inventory” to further distinguish inventories from inspections.

Rule 314. Searches and requiring probable cause

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of November 10, 1994

1. *Source of the amendment*: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(e), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

RULE 314. SEARCHES AND REQUIRING PROBABLE CAUSE

2. *Effective date of the amendment*: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. (1995 ed.).

4. *Text or summary of the amendment*:

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

e. Mil. R. Evid. 314(g)(3) is amended to read as follows:

“(3) Examination for other persons.

(A) Protective sweep. When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Search of attack area. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.”.

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id*. § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 314(a) is amended to add language to clarify that the rules as written afford at least the minimal amount of protection required under the Constitution as applied to servicemembers.

RULE 315. PROBABLE CAUSE SEARCHES

- Mil. R. Evid. 314(c) is amended to limit the ability of a commander to search persons or property upon entry or exits from the installation alone, rather than anywhere on the installation, despite the indication of some courts in dicta that security personnel can search a personally owned vehicle anywhere on a military installation based on no suspicion at all.
- Mil. R. Evid. 314(c) is further amended to add a discussion section below the rule.
- Mil. R. Evid. 314(f)(2) is amended to change the phrase “reasonably believed” to “reasonably suspected.”
- Mil. R. Evid. 314(f)(3) is amended to change the phrase “reasonably believed” to “reasonably suspected.”

Rule 315. Probable cause searches

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 4(a), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).
2. *Effective date of the amendment*: Not stated.
3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 1 1984).
4. *Text of the amendment*:

Sec. 4. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

- a. Mil. R. Evid. 315(e) is amended by striking out “guard of police” and inserting in lieu thereof “guard or police”

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).
2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

RULE 315. PROBABLE CAUSE SEARCHES

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 315 is amended to move former subsection (h) so that it immediately follows subsection (a).
- Mil. R. Evid. 315(b) is amended to change the term “authorization to seach” to “search authorization.”
- Mil. R. Evid. 315 is amended to move the second sentence from subsection (d)(2) to subsection (d) to clarify that its content applies to both commanders under subsection (d)(1) and military judges under subsection (d)(2).
- Mil. R. Evid. 315(f)(2) is amended to change the word “shall” to “will.”
- Mil. R. Evid. 315(g) is amended to include a definition of exigency rather than to provide examples that may not encompass the wide range of situations where exigency might apply.

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5.

3. *Where to find the text of the amended rule (prior to any subsequent amendment):* Manual for Courts-Martial, United States, 2019 Edition.

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

This rule is taken from Rule 315 of the M.C.M. (2016 edition) without amendment [except that the Discussion following Mil. R. Evid. 315(a) has been deleted].

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(c)-(e), 88 Fed. Reg. 50573 (Aug. 2, 2023).

2. *Effective date of the amendment:* July 28, 2023. *See id.* § 1(b) (“These amendments in Annex 1 shall take effect on the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(c) Mil. R. Evid. 315(b)(2) is amended to read as follows:

RULE 316. SEIZURES

“(2) “Search warrant” means express permission to search and seize issued by competent civilian authority or under R.C.M. 703A.”(d) A new Mil. R. Evid. 315(b)(3) is inserted immediately after Mil. R. Evid. 315(b)(2) to read as follows:

“(3) “Warrant for wire or electronic communications” means a warrant issued by a military judge pursuant to 18 U.S.C. §§ 2703(a), (b)(1)(A), or (c)(1)(A) in accordance with 10 U.S.C. § 846(d)(3) and R.C.M. 309(b)(2) and R.C.M. 703A.”

(e) Mil. R. Evid. 315(d) is amended to read as follows:

“(d) *Who May Authorize.* A search authorization under this rule is valid only if issued by an impartial individual in one of the categories set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this rule. Only a military judge may issue a warrant for wire or electronic communications under this rule. An otherwise impartial authorizing official does not lose impartiality merely because the official is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) *Commander.* A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war;

(2) *Military Judge or Magistrate.* A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned; or

(3) *Other competent search authority.* A competent, impartial official as designated under regulations by the Secretary of Defense or the Secretary concerned as an individual authorized to issue search authorizations under this rule.”

Rule 316. Seizures

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

RULE 317. INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS

4. Text or summary of the amendment: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 316(a) is amended to add the word “reasonable.”

Rule 317. Interception of wire and oral communications

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of October 14, 2005

1. Source of the amendment: 2005 Amendments to the Manual for Courts-Martial, United States, § 2, Exec. Order No. 13,387, 70 Fed. Reg. 60,697 (Oct. 14, 2005).

2. Effective date of the amendment: November 13, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.)

4. Text of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

Mil. R. Evid. 317(b) is amended by replacing the word “Transportation” with the words “Homeland Security.”

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendment: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

RULE 321. EYEWITNESS IDENTIFICATION

- Mil. R. Evid. 317 is amended to move former subsections (b) and (c)(3) to a discussion paragraph.

Rule 321. Eyewitness identification

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of July 13, 1984

1. Source of the amendment: 1984 Amendments to the Manual for Courts-Martial, United States, § 4(b), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).
2. *Effective date of the amendment*: Not stated.
3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 1 1984).
4. *Text of the amendment*:

Sec. 4. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Mil. R. Evid. 321(a)(2) is amended --

(1) by inserting a colon after “if” in the introductory clause; and

(2) by capitalizing the first letter of the first word in subparagraphs (A) and (B).

Rule 401. Test for relevant evidence

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).
2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

RULE 402. GENERAL ADMISSIBILITY OF RELEVANT EVIDENCE

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendment:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 401 is amended to change the title to “Test for relevant evidence.”

Amendments to F.R.E. 401

F.R.E. 401 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 402. General admissibility of relevant evidence

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 402 is amended to change the title to “General admissibility of relevant evidence.”

Amendments to F.R.E. 402

F.R.E. 402 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

RULE 403. EXCLUDING RELEVANT EVIDENCE FOR PREJUDICE, CONFUSION, WASTE OF TIME, OR OTHER REASONS

Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 403

F.R.E. 403 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 404. Character evidence, crimes or other acts

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of November 10, 1994

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(f), Exec. Order No. 12,936, 59 Fed. Reg. 59,075 (Nov. 10, 1994).

2. Effective date of the amendment: December 9, 1994. *See id* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1995 ed.).

4. Text or summary of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

f. Mil. R. Evid. 404(b) is amended to read as follows:

“(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided, that upon request by the accused, the prosecution shall provide reasonable notice in advance of trial, or during trial if the military judge excuses pretrial

RULE 404. CHARACTER EVIDENCE, CRIMES OR OTHER ACTS

notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.”.

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(b), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).
2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule:* M.C.M. (2005 ed.).
4. *Text of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) Mil. R. Evid. 404(a) is amended to read as follows:

“(a) Character evidence generally. Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

“(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a pertinent trait of character of the alleged victim of the crime is offered by an accused and admitted under Mil. R. Evid. 404(a)(2), evidence of the same trait of character, if relevant, of the accused offered by the prosecution;

“(2) Character of alleged victim. Evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peace-fulness of the alleged victim offered by the prosecution in a homicide or assault case to rebut evidence that the alleged victim was an aggressor;

“(3) Character of witness. Evidence of the character of a witness, as provided in Mil. R. Evid. 607, 608, and 609.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).
2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

RULE 404. CHARACTER EVIDENCE, CRIMES OR OTHER ACTS

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 404 is amended to change the title to “Character evidence: crime or other acts.”

Amendment of June 17, 2015

1. *Source of the amendment:* 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 2(a), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. *Effective date of the amendment:* June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2016 ed.)

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(a) Mil. R. Evid. 404(a)(2)(A) is amended to read as follows:

“(A) The accused may offer evidence of the accused’s pertinent trait and, if the evidence is admitted, the prosecution may offer evidence to rebut it. General military character is not a pertinent trait for the purposes of showing the probability of innocence of the accused for the following offenses under the UCMJ:

(i) Articles 120-123a;

(ii) Articles 125-127;

(iii) Articles 129-132;

(iv) Any other offense in which evidence of general military character of the accused is not relevant to any element of an offense for which the accused has been charged; or (v) An attempt or conspiracy to commit one of the above offenses.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

RULE 404. CHARACTER EVIDENCE, CRIMES OR OTHER ACTS

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 404(a)(2)(A) 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 amended by Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(f), 88 Fed. Reg. 50574 (Aug. 2, 2023).

2. *Effective date of the amendment:* July 28, 2023. *See id.* § 1(b) (“These amendments in Annex 1 shall take effect on the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(f) Mil. R. Evid. 404(b) is amended to read as follows:

“(b) *Other Crimes, Wrongs, or Acts.*

(1) *Prohibited Uses.* Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

(3) *Notice in a Criminal Case.* In a criminal case, the trial counsel must:

(A) provide reasonable notice of any such evidence that the trial counsel intends to offer at trial, so the accused has a fair opportunity to meet it;

(B) articulate in the notice the permitted purpose for which the trial counsel intends to offer the evidence and the reasoning that supports the purpose; and

(C) do so in writing before trial-or in any form during trial if the court, for good cause, excuses lack of pretrial notice.”

Amendments to F.R.E. 404

F.R.E. 404 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 27, 2020, eff. Dec. 1, 2020. *See* “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 405. Methods of proving character

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 405

F.R.E. 405 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 406. Habit; routine practice

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 406

F.R.E. 406 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 407. Subsequent remedial measures

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 407

F.R.E. 407 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rules 408. Compromise offers and negotiations

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 408 is amended to change the title to “Compromise offers and negotiations.”

Amendments to F.R.E. 408

F.R.E. 408 was amended by Supreme Court order on Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 409. Offers to pay medical and similar expenses

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

RULE 410. PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 409 is amended to change the title to “Offers to pay medical and similar expenses.”

Amendments to F.R.E. 409

F.R.E. 409 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 410. Pleas, plea discussions, and related statements

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 410 is amended to change the title to “Pleas, plea discussion, and related statements.”

Amendments to F.R.E. 410

F.R.E. 410 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 411. Liability insurance

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 411

F.R.E. 411 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 412. Sex offense cases: The victim’s sexual behavior or predisposition

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of May 27, 1998

1. Source of the amendment: 1998 Amendments to the Manual for Courts-Martial, United States, § 2(a), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. Effective date of the amendment: May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. First publication of the amended rule: M.C.M. (1998 ed.).

4. Text of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

a. M.R.E. 412 is amended to read as follows:

“Rule 412. Nonconsensual sexual offenses; relevance of victim’s behavior or sexual predisposition

(a) Evidence generally inadmissible. The following evidence is not admissible in any proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c) of this rule:

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior;
and

RULE 412. SEX OFFENSE CASES: THE VICTIM’S SEXUAL BEHAVIOR OR PREDISPOSITION

(2) Evidence offered to prove any alleged victim’s sexual predisposition.

(b) Exceptions.

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) Evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) Evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) Evidence the exclusion of which would violate the constitutional rights of the accused.

(c) Procedure to determine admissibility.

(1) A party intending to offer evidence under subdivision (b) of this rule must:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim’s guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The victim must be afforded a reasonable opportunity to attend and be heard. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subdivision that the evidence that the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term “sexual behavior” includes any sexual behavior not encompassed by the alleged offense. The term “sexual predisposition” refers to an alleged victim’s mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder.

(e) A “nonconsensual sexual offense” is a sexual offense in which consent by the victim is an affirmative defense or in which the lack of consent is an element of the offense. This term includes rape, forcible sodomy, assault with intent to commit rape or forcible sodomy, indecent assault, and attempts to commit such offenses.”

RULE 412. SEX OFFENSE CASES: THE VICTIM'S SEXUAL BEHAVIOR OR PREDISPOSITION

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex § 2(a), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 412 is amended to read as follows:

“Rule 412. Sex offense cases; relevance of alleged victim’s sexual behavior or sexual predisposition

(a) Evidence generally inadmissible. The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim’s sexual predisposition.

(b) Exceptions.

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the accused.

(c) Procedure to determine admissibility.

(1) A party intending to offer evidence under subsection (b) must—

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim’s guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable

RULE 412. SEX OFFENSE CASES: THE VICTIM’S SEXUAL BEHAVIOR OR PREDISPOSITION

opportunity to attend and be heard. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39 (a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subsection that the evidence that the accused seeks to offer is relevant for a purpose under subsection M.R.E. 413(d)(b) and that the probative value of such evidence

outweighs the danger of unfair prejudice to the alleged victim’s privacy, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined. Such evidence is still subject to challenge under Mil. R. Evid. 403.

(d) For purposes of this rule, the term “sexual offense” includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law or state law. “Sexual behavior” includes any sexual behavior not encompassed by the alleged offense. The term “sexual predisposition” refers to an alleged victim’s mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder.

Amendment of June 17, 2015

1. *Source of the amendment:* 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 2(b), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. *Effective date of the amendment:* June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2016 ed.)

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) Mil. R. Evid. 412(c)(2) is amended to read as follows:

“(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims’ Counsel under section 1044e of title 10, United States Code. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed in

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accordance with R.C.M. 1103A and remain under seal unless the military judge or an appellate court orders otherwise.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 412(b) is amended and more closely aligns with Federal Rule of Evidence 412. The amendment also addresses the Court of Appeals for the Armed Forces’ opinion in *United States v. Gaddis*, 70 M.J. 248 (C.A.A.F. 2011) with regard to evidence the admission of which is required by the United States Constitution.

Mil. R. Evid. 412(c)(2) is amended and updates a cross-reference to R.C.M. 1103A, which is deleted and redesignated as R.C.M. 1113.

Amendments to F.R.E. 412

F.R.E. 412 was amended by Pub. L. 100-690, Title VII, § 7046(a), Nov. 18, 1988, 102 Stat. 4400; by Supreme Court order on Apr. 29, 1994, eff. Dec. 1, 1994; by Pub. L. 103-322, Title IV, § 40141(b), Sept. 13, 1994, 108 Stat. 1919; and by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 413. Similar crimes in sexual offense cases

The original version of the Military Rules of Evidence did not contain this rule. The President added the rule in the 1998 Amendments to the Manual for Courts-Martial, United States, § 2(b), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998), as described below.

Amendment of May 27, 1998

1. *Source of the amendment:* 1998 Amendments to the Manual for Courts-Martial, United States, § 2(b), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. *Effective date of the amendment:* May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

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3. *First publication of the amended rule:* M.C.M. (1998 ed.).

4. *Text of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

b. M.R.E. 413 is added to read as follows:

“Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

(a) In a court-martial in which the accused is charged with an offense of sexual assault, evidence of the accused’s commission of one or more offenses of sexual assault is admissible and may be considered for its bearing on any matter to which it is relevant.

(b) In a court-martial in which the Government intends to offer evidence under this rule, the Government shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 5 days before the scheduled date of trial, or at such later time as the military judge may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule, “offense of sexual assault” means an offense punishable under the Uniform Code of Military Justice, or a crime under Federal law or the law of a State that involved—

(1) any sexual act or sexual contact, without consent, proscribed by the Uniform Code of Military Justice, Federal law, or the law of a State;

(2) contact, without consent of the victim, between any part of the accused’s body, or an object held or controlled by the accused, and the genitals or anus of another person;

(3) contact, without consent of the victim, between the genitals or anus of the accused and any part of another person’s body;

(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in paragraphs (1) through (4).

(e) For purposes of this rule, the term “sexual act” means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this rule, contact occurs upon penetration, however slight, of the penis into the vulva or anus;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

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(4) 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.

(f) For purposes of this rule, the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(g) For purposes of this rule, the term “State” includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 413 is amended to change the title to “Similar crimes in sexual offense cases.”

Amendments to F.R.E. 413

F.R.E. 413 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 414. Similar crimes in child-molestation cases

The original version of the Military Rules of Evidence did not contain this rule. The President added the rule in the 1998 Amendments to the Manual for Courts-Martial, United States, § 2(b), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998), as described below.

RULE 414. SIMILAR CRIMES IN CHILD-MOLESTATION CASES

Amendment of May 27, 1998

1. *Source of the amendment:* 1998 Amendments to the Manual for Courts-Martial, United States, § 2(c), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. *Effective date of the amendment:* May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (1998 ed.).

4. *Text of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

c. M.R.E. 414 is added to read as follows:

“Rule 414. Evidence of Similar Crimes in Child Molestation Cases

(a) In a court-martial in which the accused is charged with an offense of child molestation, evidence of the accused’s commission of one or more offenses of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.

(b) In a court-martial in which the Government intends to offer evidence under this rule, the Government shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 5 days before the scheduled date of trial or at such later time as the military judge may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule, “child” means a person below the age of sixteen, and “offense of child molestation” means an offense punishable under the Uniform Code of Military Justice, or a crime under Federal law or the law of a State that involved—

(1) any sexual act or sexual contact with a child proscribed by the Uniform Code of Military Justice, Federal law, or the law of a State;

(2) any sexually explicit conduct with children proscribed by the Uniform Code of Military Justice, Federal law, or the law of a State;

(3) contact between any part of the accused’s body, or an object controlled or held by the accused, and the genitals or anus of a child;

(4) contact between the genitals or anus of the accused and any part of the body of a child;

(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1) through (5) of this subdivision.

(e) For purposes of this rule, the term “sexual act” means:

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(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this rule contact occurs upon penetration, however slight, of the penis into the vulva or anus;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) 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.

(f) For purposes of this rule, the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(g) For purpose of this rule, the term “sexually explicit conduct” means actual or simulated:

(1) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(2) bestiality;

(3) masturbation;

(4) sadistic or masochistic abuse; or

(5) lascivious exhibition of the genitals or pubic area of any person.

(h) For purposes of this rule, the term “State” includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

RULE 501. PRIVILEGE IN GENERAL

- Mil. R. Evid. 414 is amended to change the title to “Similar crimes in child-molestation cases.”

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(e), 81 Fed. Reg. 33,331 (May 20, 2016).
2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).
3. *First publication of the amended rule:* M.C.M. (2016).
4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(e) Mil. R. Evid. 414(d)(2)(A) is amended to read as follows:

“(A) any conduct prohibited by Article 120 and committed with a child, or prohibited by Article 120b.”

Amendments to F.R.E. 414

F.R.E. 414 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 501. Privilege in general

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).
2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).
4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface

RULE 502. LAWYER-CLIENT PRIVILEGE

to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 501 is amended to change the title to “Privilege in general.”

Amendments to F.R.E. 501

F.R.E. 501 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. Amendments to F.R.E. 501 after May 15, 2013, do not amend M.R.E. 501. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 502. Lawyer-client privilege

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 502

F.R.E. 502 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. Amendments to F.R.E. 502 after May 15, 2013, do not amend M.R.E. 502. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 503. Communications to clergy

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of September 28, 2007

1. Source of the amendment: Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex § 2(b), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. Effective date of the amendment: October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. (2008 ed.).

4. Text or summary of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

RULE 503. COMMUNICATIONS TO CLERGY

* * *

(b) Mil. R. Evid. 503(b) is amended by renumbering the existing subsection (2) as subsection (3) and inserting the following new subsection (2) after current Mil. R. Evid. 503(b) (1) to read as follows:

“(2) A “clergyman’s assistant” is a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor.”

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(g), 88 Fed. Reg. 50575 (Aug. 2, 2023).

2. *Effective date of the amendment:* July 28, 2023. *See id.* § 1(b) (“These amendments in Annex 1 shall take effect on the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(g) Mil. R. Evid. 503 is amended to read as follows:

“Rule 503. Communications to clergy

(a) *General Rule.* A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergy member or to a clergy member's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) *Definitions.* As used in this rule:

(1) “Clergy member” means a minister, priest, rabbi, imam, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergy member.

(2) “Clergy member's assistant” means a person employed or assigned to assist a clergy member in the clergy member's capacity as a spiritual advisor.

(3) A communication is “confidential” if made to a clergy member in the clergy member's capacity as a spiritual advisor or to a clergy member's assistant in the assistant's official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the person, guardian, or conservator, or by a personal representative if the person is deceased. The clergy member or clergy member's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergy member or clergy member's assistant to do so is presumed in the absence of evidence to the contrary.”

RULE 504. MARITAL PRIVILEGE

Rule 504. Marital privilege

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of September 28, 2007

1. *Source of the amendment:* Further 2007 Amendments to the Manual for Courts-Martial, United States, Annex § 2(c), Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).

2. *Effective date of the amendment:* October 1, 2007. *See id.* § 3 (providing that the amendments take effect on this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2008 ed.).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) Mil. R. Evid. 504 is amended by inserting new subsection (d) after Mil.R. Evid. 504 (c) to read as follows:

“(d) Definitions. As used in this rule:

(1) The term “a child of either” includes not only a biological child, adopted child, or ward of one of the spouses but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is: (i) an individual under the age of 18; or (ii) an individual with a mental handicap who functions under the age of 18.

(2) The term “temporary physical custody” includes instances where a parent entrusts his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody nor must there be a written agreement. Rather, the focus is on the parent’s agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments.”

Amendment of December 13, 2011

1. *Source of the amendment:* 2011 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,593, Annex § 1(a), 76 Fed. Reg. 78,451 (Dec. 13, 2011).

2. *Effective date of the amendment:* January 12, 2012. *See id.* § 3 (providing that the amendments “shall take effect 30 days from the date of this Order” subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2008 ed.).

RULE 504. MARITAL PRIVILEGE

4. Text or summary of the amendment:

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) M.R.E. 504 (c)(2)(D) is added to read as follows:

“(D) Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).”.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 504 is amended to add subsection (c)(2)(D).

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(f), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2016).

4. Text or summary of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(f) Mil. R. Evid. 504 is amended to read as follows:

“Rule 504. Marital privilege

RULE 504. MARITAL PRIVILEGE

(a) Spousal Incapacity. A person has a privilege to refuse to testify against his or her spouse. There is no privilege under subdivision (a) when, at the time of the testimony, the parties are divorced, or the marriage has been annulled.

(b) Confidential Communication Made During the Marriage.

(1) General Rule. A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were married and not separated as provided by law.

(2) Who May Claim the Privilege. The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.

(c) Exceptions.

(1) To Confidential Communications Only. Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).

(2) To Spousal Incapacity and Confidential Communications. There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or with respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 8 U.S.C. § 1328; with transporting the other spouse in interstate commerce for prostitution, immoral purposes, or another offense in violation of 18 U.S.C. §§ 2421-2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(d) Definitions. As used in this rule:

(1) “A child of either” means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

RULE 505. CLASSIFIED INFORMATION

(A) an individual under the age of 18; or

(B) an individual with a mental handicap who functions under the age of 18.

(2) “Temporary physical custody” means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent’s agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of his or her child for recurring care or during absences due to temporary duty or deployments.

(3) As used in this rule, a communication is “confidential” if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.”

Rule 505. Classified information

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of December 23, 1993

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(b)-(g), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. *Effective date of the amendment:* January 21, 1994. *Id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. 1984 (1994 ed.).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Mil. R. Evid. 505(a) is amended to read as follows:

“(a) General rule of privilege. Classified information is privileged from disclosure if disclosure would be detrimental to the national security. As with other rules of privilege this rule applies to all stages of the proceedings.”.

c. Mil. R. Evid. 505(g)(1)(D) is amended by adding the following at the end:

“All persons requiring security clearances shall cooperate with investigatory personnel in any investigations which are necessary to obtain a security clearance.”.

d. Mil. R. Evid. 505(h)(3) is amended to read as follows:

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“(3) Content of notice. The notice required by this subdivision shall include a brief description of the classified information. The description, to be sufficient, must be more than a mere general statement of the areas about which evidence may be introduced. The accused must state, with particularity, which items of classified information he reasonably expects will be revealed by his defense.”.

e. Mil. R. Evid. 505(i)(3) is amended to read as follows:

“(3) Demonstration of national security nature of the information. In order to obtain an in camera proceeding under this rule, the Government shall submit the classified information and an affidavit ex parte for examination by the military judge only. The affidavit shall demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute, or regulation.”.

f. Mil. R. Evid. 505(i)(4)(B) is amended to read as follows:

“Standard. Classified information is not subject to disclosure under this subdivision unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment shall be admitted only if no unclassified version of such information is available.”.

g. Mil. R. Evid. 505(j)(5) is amended to read as follows:

“(5) Closed session. The military judge may exclude the public during that portion of the presentation of evidence that discloses classified information.”.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 505 is amended to significantly restructure the rule to bring greater clarity and regularity to military practice. The changes focus primarily on expanding the military judge’s explicit authority to conduct ex parte pretrial conferences in connection with classified information.

RULE 505. CLASSIFIED INFORMATION

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(g), 81 Fed. Reg. 33,331 (May 20, 2016).
2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).
3. *First publication of the amended rule:* M.C.M. (2016).
4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) Mil. R. Evid. 505(e)(2) is amended by replacing “investigating officer” with “preliminary hearing officer.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 1, § 2(c) & Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).
2. *Effective date of the amendment:* The amendment to M.R.E. 505(l), which was made in Annex 1, § 2(c), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date). The additional amendments that were made in Annex 2, § 3, took effect on January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).
3. *First publication of the amended rule:* The version of M.R.E. 505 that existed after its amendment by Annex 1, § 2(c) and before its amendment by Annex 2, § 2, was not published in any version of the M.C.M. The version of M.R.E. 505 after its amendment by Annex 2, § 2, was first published in M.C.M. (2019 ed.).
4. *Text or summary of the amendment:* The amendment to M.R.E. 505(l), made in Annex 1, § 2(c), is as follows:

Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:

* * *

(c) Mil. R. Evid. 505(l) is amended to read as follows:

(l) Record of Trial. If under this rule any information is reviewed in camera by the military judge and withheld from the accused, the accused objects to such withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as ~~the prosecution’s~~ any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) or R.C.M. 1103A and attached to the record of trial as an appellate exhibit. Such material will be made

RULE 505. CLASSIFIED INFORMATION

available to reviewing and appellate authorities in accordance with R.C.M. 701(g)(2) or 1103A ~~closed proceedings for the purpose of reviewing the determination of the military judge~~. The record of trial with respect to any classified matter will be prepared under R.C.M. 1103(h) and 1104(b)(1)(D).

Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the additional changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 505, as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), further amends Mil. R. Evid. 505(j)(3), 505(k)(1)(B), and 505(l) updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113), and updates cross-references to R.C.M. 1103(h) and 1104(b)(1)(D), which are deleted and redesignated as R.C.M. 1112(e)(3).

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 3(a), 88 Fed. Reg. 50697 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(a) Mil. R. Evid. 505(f)(4) is amended to read as follows:

“(4) *Convening Authority and Special Trial Counsel Notice and Action.* If a claim of privilege has been made under this rule with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority and special trial counsel, as applicable.

(A) The convening authority may institute action to obtain the classified information for use by the military judge in making a determination under Mil. R. Evid. 505(j);

(B) The convening authority or special trial counsel, as applicable, may:

(i) dismiss the charges;

(ii) dismiss the charges or specifications or both to which the information relates; or

(iii) take such other action as may be required in the interests of justice.”

Rule 506. Government information

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of March 23, 1990

1. *Source of the amendment:* 1990 Amendments to the Manual for Courts-Martial, United States, § 2(c), Exec. Order No. 12,708, 55 Fed. Reg. 11,353 (Mar. 23, 1990).

2. *Effective date of the amendment:* The amendment shall apply only in cases in which arraignment has been completed on or after April 1, 1990. *See id.* § 5(b).

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 4 1990).

4. *Text of the amendment:*

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Mil. R. Evid. 506(c) is amended to read as follows:

“(c) Who may claim the privilege. The privilege may be claimed by the head of the executive or military/[sic] department or government agency concerned. The privilege for records and information of the Inspectors General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or the trial counsel to claim the privilege on his or her behalf. The authority of a witness or the trial counsel to do so is presumed in the absence of evidence to the contrary.”

Amendment of May 12, 1995

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 3(b)-(j), Exec. Order No. 12,960 of May 12, 1995, 60 Fed. Reg. 26,647 (May 17, 1995).

2. *Effective date of the amendment:* June 10, 1995. *See id.* § 5 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (1995 ed.).

4. *Text or summary of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

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* * *

b. M.R.E. 506(e) and (f) are amended to read as follows:

“(e) Pretrial session. At any time after referral of charges and prior to arraignment, any party may move for a session under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such motion, or sua sponte, the military judge promptly shall hold a pretrial session under Article 39(a) to establish the timing of requests for discovery, the provision of notice under subsection (h), and the initiation of the procedure under subsection (i). In addition, the military judge may consider any other matters that relate to government information or that may promote a fair and expeditious trial.

(f) Action after motion for disclosure of information. After referral of charges, if the defense moves for disclosure of government information for which a claim of privilege has been made under this rule, the matter shall be reported to the convening authority. The convening authority may:

- (1) institute action to obtain the information for use by the military judge in making a determination under subdivision (i);
- (2) dismiss the charges;
- (3) dismiss the charges or specifications or both to which the information relates; or
- (4) take other action as may be required in the interests of justice. If, after a reasonable period of time, the information is not provided to the military judge, the military judge shall dismiss the charges or specifications or both to which the information relates.”

c. M.R.E. 506(h) is amended to read as follows:

“(h) Prohibition against disclosure. The accused may not disclose any information known or believed to be subject to a claim of privilege under this rule unless the military judge authorizes such disclosure.”

d. M.R.E. 506(i) is amended to read as follows:

“(i) In camera proceedings.

(1) Definition. For purposes of this subsection, an “in camera proceeding” is a session under Article 39(a) from which the public is excluded.

(2) Motion for in camera proceeding. Within the time specified by the military judge for the filing of a motion under this rule, the Government may move for an in camera proceeding concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Thereafter, either prior to or during trial, the military judge for good cause shown or otherwise upon a claim of privilege may grant the Government leave to move for an in camera proceeding concerning the use of additional government information.

(3) Demonstration of public interest nature of the information. In order to obtain an in camera proceeding under this rule, the Government shall demonstrate, through the submission of affidavits and information for examination only by the military judge, that

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disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(4) In camera proceeding.

(A) Finding of identifiable damage. Upon finding that the disclosure of some or all of the information submitted by the Government under subsection (i)(3) reasonably could be expected to cause identifiable damage to the public interest, the military judge shall conduct an in camera proceeding.

(B) Disclosure of the information to the defense. Subject to subsection (F), below, the Government shall disclose government information for which a claim of privilege has been made to the accused, for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military judge shall enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subsection (g), above. The accused shall not disclose any information provided under this subsection unless, and until, such information has been admitted into evidence by the military judge. In the in camera proceeding, both parties shall have the opportunity to brief and argue the admissibility of the government information at trial.

(C) Standard. Government information is subject to disclosure at the court-martial proceeding under this subsection if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(D) Ruling. No information may be disclosed at the court-martial proceeding or otherwise unless the military judge makes a written determination that the information is subject to disclosure under the standard set forth in subsection (C), above. The military judge will specify in writing any information that he or she determines is subject to disclosure. The record of the in camera proceeding shall be sealed and attached to the record of trial as an appellate exhibit. The accused may seek reconsideration of the determination prior to or during trial.

(E) Alternatives to full disclosure. If the military judge makes a determination under this subsection that the information is subject to disclosure, or if the Government elects not to contest the relevance, necessity, and admissibility of the government information, the Government may proffer a statement admitting for purposes of the court-martial any relevant facts such information would tend to prove or may submit a portion or summary to be used in lieu of the information. The military judge shall order that such statement, portion, summary, or some other form of information which the military judge finds to be consistent with the interests of justice, be used by the accused in place of the government information, unless the military judge finds that use of the government information itself is necessary to afford the accused a fair trial.

(F) Sanctions. Government information may not be disclosed over the Government's objection. If the Government continues to object to disclosure of the information following rulings by the military judge, the military judge shall issue any order that the interests of justice require. Such an order may include:

(i) striking or precluding all or part of the testimony of a witness;

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- (ii) declaring a mistrial;
- (iii) finding against the Government on any issue as to which the evidence is relevant and necessary to the defense;
- (iv) dismissing the charges, with or without prejudice; or
- (v) dismissing the charges or specifications or both to which the information relates.”

e. A new M.R.E. 506(j) is added as follows:

“(j) Appeals of orders and rulings. In a court-martial in which a punitive discharge may be adjudged, the Government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The Government also may appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The Government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.”

f. M.R.E. 506(j) and (k) are redesignated as (k) and (l), respectively.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 506 is amended to significantly revise the rule to bring greater clarity and also to align it with changes made to Mil. R. Evid. 505.

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 1, § 2(d)-(e) & Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* The amendments to M.R.E. 506(b) and 506(m), which were made in Annex 1, § 2(c), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto

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punishments or invalidation of proceedings that began before this date). The additional amendments that were made in Annex 2, § 3, took effect on January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* The version of M.R.E. 506 that existed after its amendment by Annex 1, § 2(c) and before its amendment by Annex 2, § 2, was not published in any version of the M.C.M. The version of M.R.E. 506 after its amendment by Annex 2, § 2, was first published in M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* The amendments to M.R.E. 506(b) and 506(m), made in Annex 1, § 2(c), are as follows:

Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:

* * *

(d) Mil. R. Evid. 506(b) is amended to read as follows:

“(b) Scope. “Government information” includes official communication and documents and other information within the custody or control of the Federal Government. This rule does not apply to ~~classified information (Mil. R. Evid. 505)~~ or to the identity of an informant (Mil. R. Evid. 507).”

(e) Mil. R. Evid. 506(m) is amended to read as follows:

“(m) Record of Trial. If under this rule any information is reviewed in camera by the military judge and withheld from the accused, the accused objects to such withholding, and the trial continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as the ~~prosecution’s~~ any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) or 1103A and attached to the record of trial as an appellate exhibit. Such material must be made available to the reviewing and appellate authorities in accordance with R.C.M. 701(g)(2) or R.C.M. 1103A ~~closed proceedings for the purpose of reviewing the determination of the military judge.~~”

Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 506, as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), further amends Mil. R. Evid. 506(b) and broadens the scope of the rule to cover classified information. The government may now claim a privilege with respect to classified information under either Mil. R. Evid. 505 or Mil. R. Evid. 506, or both.

Mil. R. Evid. 506(j)(3), 506(l)(2), and 506(m) are amended and update cross-references to R.C.M. 1103A, which is deleted and redesignated as R.C.M. 1113.

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 3(b), 88 Fed. Reg. 50697 (Aug. 2, 2023).

RULE 507. IDENTITY OF INFORMANTS

2. *Effective date of the amendment*: December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule*: M.C.M. (2023 ed.).

4. *Text or summary of the amendment*:

(b) Mil. R. Evid. 506(f)(4) is amended to read as follows:

“(4) *Convening Authority and Special Trial Counsel Notice and Action*. If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority and special trial counsel, as applicable.

(A) The convening authority may institute action to obtain the information for use by the military judge in making a determination under Mil. R. Evid. 505(j); relates; or

(B) The convening authority or special trial counsel, as applicable, may:

(i) dismiss the charges;

(ii) dismiss the charges or specifications or both to which the information

(iii) take such other action as may be required in the interests of justice.”

Rule 507. Identity of informants

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

RULE 508. POLITICAL VOTE

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 507 is amended to add subsection (b) to define terms that are used throughout the rule and add subsection (e)(1) to permit the military judge to hold an in camera review upon request by the prosecution.

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 2 § 3(c), 88 Fed. Reg. 50535 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(c) Mil. R. Evid. 507(e)(3) is amended to read as follows:

“(3) *Action by the Convening Authority or Special Trial Counsel.* If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority or the special trial counsel, as applicable, may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances.”

Rule 508. Political vote

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Rule 509. Deliberations of courts and juries

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 509 is amended to add the language “courts-martial, military judge” in light of CAAF’s holding in *United States v. Matthews*, 68 M.J. 29 (C.A.A.F. 2009).

Rule 510. Waiver of privilege by voluntary disclosure

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Rule 511. Privileged matter disclosed under compulsion or without opportunity to claim privilege

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

RULE 512. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 511 is amended to add titles to subsections of the rule for clarity and ease of use.

Rule 512. Comment upon or inference from claim of privilege; instruction

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of March 1, 2018

1. *Source of the amendment*: 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment*: January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule*: M.C.M. (2019 ed.).

4. *Text or summary of the amendment*: Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 512(b) is amended and reflects the elimination of special courts-martial without a military judge. *See* 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. Law. No. 115-91, 131 Stat. 1283 (2017).

Rule 513. Psychotherapist—patient privilege

The original version of the Military Rules of Evidence did not contain this rule. The President added the Rule in the 1999 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999), as described below.

Amendment of October 6, 1999

1. *Source of the amendment:* 1999 Amendments to the Manual for Courts-Martial, United States, § 2(a), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. *Effective date of the amendment:* “Military Rule of Evidence 513 shall only apply to communications made after 1 November 1999.” *Id.* at § 4(b).

3. *First publication of the amended rule:* M.C.M. (2000 ed.).

4. *Text of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

a. Insert the following new rule after Mil. R. Evid. 512:

“Rule 513. Psychotherapist-patient privilege

(a) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient’s mental or emotional condition.

(b) Definitions. As used in this rule of evidence:

(1) A “patient” is a person who consults with or is examined or interviewed by a psychotherapist for purposes of advice, diagnosis, or treatment of a mental or emotional condition.

(2) A “psychotherapist” is a psychiatrist, clinical psychologist, or clinical social worker who is licensed in any state, territory, possession, the District of Columbia or Puerto Rico to perform professional services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials.

(3) An “assistant to a psychotherapist” is a person directed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for such transmission of the communication.

(5) “Evidence of a patient’s records or communications” is testimony of a psychotherapist, or assistant to the same, or patient records that pertain to communications by a patient to a

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psychotherapist, or assistant to the same for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

(c) Who may claim the privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. A person who may claim the privilege may authorize trial counsel or defense counsel to claim the privilege on his or her behalf. The psychotherapist or assistant to the psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist, assistant, guardian, or conservator to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) when the patient is dead;

(2) when the communication is evidence of spouse abuse, child

abuse, or neglect or in a proceeding in which one spouse is charged with a crime against the person of the other spouse or a child of either spouse;

(3) when federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(4) when a psychotherapist or assistant to a psychotherapist believes that a patient's mental or emotional condition makes the patient a danger to any person, including the patient;

(5) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist are sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

(6) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(7) when an accused offers statements or other evidence concerning his mental condition in defense, extenuation, or mitigation, under circumstances not covered by R.C.M. 706 or Mil. R. Evid. 302. In such situations, the military judge may, upon motion, order disclosure of any statement made by the accused to a psychotherapist as may be necessary in the interests of justice; or

(8) when admission or disclosure of a communication is constitutionally required.

(e) Procedure to determine admissibility of patient records or communications.

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

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(B) serve the motion on the opposing party, the military judge and, if practical, notify the patient or the patient's guardian, conservator, or representative that the motion has been filed and that the patient has an opportunity to be heard as set forth in subparagraph (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient shall be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

(3) The military judge shall examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise."

Amendment of December 13, 2011

1. *Source of the amendment:* 2011 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,593, Annex § 1(b), 76 Fed. Reg. 78,451 (Dec. 13, 2011).

2. *Effective date of the amendment:* January 12, 2012. *See id.* § 3 (providing that the amendments "shall take effect 30 days from the date of this Order" subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2008 ed.).

4. *Text or summary of the amendment:*

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(b) M.RE. 513(d)(2) is amended--

(1) to delete "spouse abuse, child abuse, or" and insert "child abuse or of";

and

(2) to delete "the person of the other spouse or".

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

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2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 513 is amended to delete the words “spouse abuse” and “the person of the other spouse or” from subsection (d)(2), thus expanding the overall scope of the privilege.
- Mil. R. Evid. 513(e)(3) is amended to change the language to further expand the military judge’s authority and discretion to conduct in camera reviews.

Amendment of June 17, 2015

1. *Source of the amendment*: 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 2(c)-(i), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. *Effective date of the amendment*: June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2016 ed.)

4. *Text or summary of the amendment*:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) Mil. R. Evid. 513(b)(2) is amended to read as follows:

“(2) “Psychotherapist” means a psychiatrist, clinical psychologist, clinical social worker, or other mental health professional who is licensed in any State, territory, possession, the District of Columbia, or Puerto Rico to perform professional services as such, or who holds credentials to provide such services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials.”

(d) Mil. R. Evid. 513(d)(8) is deleted.

(e) Mil. R. Evid. 513(e)(2) is amended to read as follows:

“(2) Before ordering the production or admission of evidence of a patient’s records or communication, the military judge must conduct a hearing, which shall be closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient must be afforded a reasonable opportunity to attend the hearing and

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be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims' Counsel under section 1044e of title 10, United States Code. In a case before, a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members."

(f) Mil. R. Evid. 513(e)(3) is amended to read as follows:

"(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the production or admissibility of protected records or communications. Prior to conducting an in camera review, the military judge must find by a preponderance of the evidence that the moving party showed:

(A) a specific factual basis demonstrating a reasonable likelihood that the records or communications would yield evidence admissible under an exception to the privilege;

(B) that the requested information meets one of the enumerated exceptions under subsection (d) of this rule;

(C) that the information sought is not merely cumulative of other information available; and

(D) that the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources."

(g) A new Mil. R. Evid. 513(e)(4) is inserted immediately after Mil. R. Evid. 513(e)(3) and reads as follows:

"(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subsection (d) of this Rule and are included in the stated purpose for which the records or communications are sought under subsection (e)(1)(A) of this Rule."

(h) Mil. R. Evid. 513(e)(4) is renumbered as Mil. R. Evid. 513(e)(5).

(i) Mil. R. Evid. 513(e)(5) is renumbered as Mil. R. Evid. 513(e)(6).

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Annex 1, § 2(f) & Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: The amendments to M.R.E. 513(e)(6), which were made in Annex 1, § 2(f), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date). The additional amendments that were made in Annex 2, § 3, took effect on January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

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3. *First publication of the amended rule:* The version of M.R.E. 513 that existed after its amendment by Annex 1, § 2(f) and before its amendment by Annex 2, § 2, was not published in any version of the M.C.M. The version of M.R.E. 513 after its amendment by Annex 2, § 2, was first published in M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* The amendment to M.R.E. 513(e)(6), made in Annex 1, § 2(f), is as follows:

Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:

* * *

(f) Mil. R. Evid. 513(e)(6) is amended to read as follows:

“(6) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 701(g)(2) or 1103A and must remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise.”

Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the additional changes to M.R.E. 513 appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 513, as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), amends Mil. R. Evid. 513(c) and provides that a patient may authorize trial counsel or any counsel representing the patient to claim the privilege on his or her behalf.

Mil. R. Evid. 513(e)(3)(A) is amended and clarifies the required findings of a military judge prior to conducting an in-camera review of protected records or communications to determine whether the records or communications must be produced or admitted into evidence.

Mil. R. Evid. 513(e)(6) is amended and updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113).

Amendment of December 20, 2024

1. *Source of the amendment:* 2024 Amendments to the Manual for Courts-Martial, United States, Annex § 2, Exec. Order 14,310, 89 Fed. Reg. 105343 (Dec. 20, 2024).

2. *Effective date of the amendment:* December 20, 2024. *See id.* § 3 (providing that the amendment takes effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* Not yet published in any M.C.M.

4. *Text or summary of the amendment:*

Section 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

Mil. R. Evid. 513(a) is amended to read as follows:

“(a) General Rule. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication, including records of such

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communications, made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of diagnosis or treatment of the patient's mental or emotional condition.”

Rule 514. Victim advocate—victim privilege

The original version of the Military Rules of Evidence did not contain this rule. The President added the Rule in the 2011 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,593, 76 Fed. Reg. 78,451 (Dec. 13, 2011), as described below.

Amendment of December 13, 2011

1. *Source of the amendment:* 2011 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,593, Annex § 1(b), 76 Fed. Reg. 78,451 (Dec. 13, 2011).

2. *Effective date of the amendment:* January 12, 2012. *See id.* § 3 (providing that the amendments “shall take effect 30 days from the date of this Order” subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2008 ed.).

4. *Text or summary of the amendment:*

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) M.R.E. 514 is added to read as follows:

“Rule 514. Victim advocate - victim privilege

(a) General rule of privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the victim and a victim advocate, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or supportive assistance to the victim.

(b) Definitions. As used in this rule of evidence:

(1) A “victim” is any person who suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) A “victim advocate” is a person who is:

(A) designated in writing as a victim advocate;

(B) authorized to perform victim advocate duties in accordance with service regulations, and is acting in the performance of those duties; or

(C) certified as a victim advocate pursuant to Federal or State requirements.

(3) A communication is “confidential” if made to a victim advocate acting in the capacity of a victim advocate and if not intended to be disclosed to third persons other than:

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(A) those to whom disclosure is made in furtherance of the rendition of advice or assistance to the victim or

(B) an assistant to a victim advocate reasonably necessary for such transmission of the communication.

(4) An “assistant to a victim advocate” is a person directed by or assigned to assist a victim advocate in providing victim advocate services, or is reasonably believed by the victim to be such.

(5) “Evidence of a victim’s records or communications” is testimony of a victim advocate, or records that pertain to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

(c) Who may claim the privilege. The privilege may be claimed by the victim or any guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) when the victim is dead;

(2) when Federal law, State law, or service regulation imposes a duty to report information contained in a communication;

(3) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(4) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(5) when necessary to ensure the safety of any other person (including the victim) when a victim advocate believes that a victim’s mental or emotional condition makes the victim a danger; or

(6) when admission or disclosure of a communication is constitutionally required.

(e) Procedure to determine admissibility of victim records or communications.

(1) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

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(B) serve the motion on the opposing party, the military judge and, if practical, notify the victim or the victim's guardian, conservator, or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subparagraph (e)(2).

(2) Before ordering the production or admission of evidence of a victim's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim shall be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

(3) The military judge shall examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise.

Amendment of June 17, 2015

1. *Source of the amendment:* 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 2(j)-(s), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. *Effective date of the amendment:* June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2016 ed.)

4. *Text or summary of the amendment:*

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(j) The title of Mil. R. Evid. 514 is amended to read as follows:

“Victim advocate-victim and Department of Defense Safe Helpline staff-victim privilege”

(k) Mil. R. Evid. 514(a) is amended to read as follows:

“(a) General Rule. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and Department of Defense Safe Helpline staff, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim.”

(1) Mil. R. Evid. 514(b)(3)-(5) is amended to read as follows

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“(3) “Department of Defense Safe Helpline staff” are persons who are designated by competent authority in writing as Department of Defense Safe Helpline staff.

(4) A communication is “confidential” if made in the course of the victim advocate-victim relationship or Department of Defense Safe Helpline staff-victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(5) “Evidence of a victim’s records or communications” means testimony of a victim advocate or Department of Defense Safe Helpline staff, or records that pertain to communications by a victim to a victim advocate or Department of Defense Safe Helpline staff, for the purposes of advising or providing assistance to the victim.”

(m) Mil. R. Evid. 514(c) is amended to read as follows:

“(c) Who May Claim the Privilege. The privilege may be claimed by the victim or the guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a counsel representing the victim to claim the privilege on his or her behalf. The victim advocate or Department of Defense Safe Helpline staff who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate or Department of Defense Safe Helpline staff, guardian, conservator, or a counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.”

(n) Mil. R. Evid. 514(d)(2)-(4) is amended to read as follows:

“(2) When federal law, state law, Department of Defense regulation, or service regulation imposes a duty to report information contained in a communication; · (3) When a victim advocate or Department of Defense Safe Helpline staff believes that a victim’s mental or emotional condition makes the victim a danger to any person, including the victim;

(4) If the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate or Department of Defense Safe Helpline staff are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;”

(o) Mil. R. Evid. 514(e)(2) is amended to read as follows:

“(2) Before ordering the production or admission of evidence of a victim’s records or communication, the military judge must conduct a hearing, which shall be closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim must be afforded a reasonable opportunity to attend the hearing and be heard. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel, including Special Victims’ Counsel under section 1 044e of title 10, United States Code. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.”

(p) Mil. R. Evid. 514(e)(3) is amended to read as follows:

“(3) The military judge may examine the evidence, or a proffer thereof, in camera if such examination is necessary to rule on the production or admissibility of protected records or

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communications. Prior to conducting an in camera review, the military judge must find by a preponderance of the evidence that the moving party showed:

(A) a specific factual basis demonstrating a reasonable likelihood that the records or communications would yield evidence admissible under an exception to the privilege;

(B) that the requested information meets one of the enumerated exceptions under subsection (d) of this rule;

(C) that the information sought is not merely cumulative of other information available; and

(D) that the party made reasonable efforts to obtain the same or substantially similar information through non-privileged sources.”

(q) A new Mil. R. Evid. 514(e)(4) is inserted immediately after Mil. R. Evid. 514(e)(3) and reads as follows:

“(4) Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records or communications, or portions Of such records or communications, that meet the requirements for one of the enumerated exceptions to the privilege under subsection (d) above and are included in the stated purpose for which the records or communications are sought under subsection (e)(l)(A) above.”

(r) Mil. R. Evid. 514(e)(4) is renumbered as Mil. R. Evid. 514(e)(5).

(s) Mil. R. Evid. 514(e)(5) is renumbered as Mil. R. Evid. 514(e)(6).

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 1, § 2(g) & Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* The amendments to M.R.E. 514(e)(6), which were made in Annex 1, § 2(g), took effect on March 1, 2018. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date). The additional amendments that were made in Annex 2, § 3, took effect on January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* The version of M.R.E. 514 that existed after it amendment by Annex 1, § 2(g) and before its amendment by Annex 2, § 2, was not published in any version of the M.C.M. The version of M.R.E. 513 after its amendment by Annex 2, § 2, was first published in M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* The amendment to M.R.E. 514(e)(6), made in Annex 1, § 2(g), is as follows:

Section 2. Part III of the Manual for Courts-Martial, United States is amended as follows:

* * *

RULE 601. COMPETENCY TO TESTIFY IN GENERAL

(g) Mil. R. Evid. 514(e)(6) is amended to read as follows:

“(6) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 701(g)(2) or 1103A and must remain under seal unless the military judge, the Judge Advocate General, or an appellate court orders otherwise.”

Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the additional changes to M.R.E. 514 appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 514, as amended by Exec. Order No. 13,825, 83 Fed. Reg. 9889 (March 1, 2018), amends Mil. R. Evid. 514(b)(2) and clarifies the definition of a “victim advocate” in this rule as a person, other than a prosecutor, trial counsel, any victim’s counsel, law enforcement officer, or military criminal investigator in the case.

Mil. R. Evid. 514(e)(3)(A) is amended and clarifies the required findings of a military judge prior to conducting an in-camera review of protected records or communications to determine whether the records or communications must be produced or admitted into evidence.

Mil. R. Evid. 514(e)(6) is amended and updates cross-references to R.C.M. 701(g)(2) and R.C.M. 1103A (which is deleted and redesignated as R.C.M. 1113).

Rule 601. Competency to testify in general

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of July 13, 1984

1. *Source of the amendment:* 1984 Amendments to the Manual for Courts-Martial, United States, § 4(c), Exec. Order No. 12,484, 50 Fed. Reg. 28,825 (July 13, 1984).

2. *Effective date of the amendment:* Not stated.

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 1 1984).

4. *Text of the amendment:*

Sec. 4. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. Mil. R. Evid. 601 is amended by striking out “this” and inserting in lieu thereof “these”.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

RULE 602. NEED FOR PERSONAL KNOWLEDGE

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 601 is amended to change the title to “Competency to testify in general.”

Amendments to F.R.E. 601

F.R.E. 601 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 602. Need for personal knowledge

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 602 is amended to change the title to “Need for personal knowledge.”

RULE 603. OATH OR AFFIRMATION TO TESTIFY TRUTHFULLY

Amendments to F.R.E. 602

F.R.E. 602 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 603. Oath or affirmation to testify truthfully

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 603 is amended to change the title to “Oath or affirmation to testify truthfully.”

Amendments to F.R.E. 603

F.R.E. 603 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 604. Interpreter

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

RULE 605. MILITARY JUDGE’S COMPETENCY AS A WITNESS

Amendments to F.R.E. 604

F.R.E. 604 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 605. Military Judge’s competency as a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 605 is amended to change the title to “Military judge’s competency as a witness.”

Amendments to F.R.E. 605

F.R.E. 605 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 606. Member’s competency as a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

RULE 606. MEMBER'S COMPETENCY AS A WITNESS

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 606 is amended to change the title to “Member’s competency as a witness.”

In addition, the Analysis of M.R.E. 606 in Appendix 22 of the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.), explains:

2013 Amendment. The committee added subsection (c) [sic] to this rule to align it with the Federal Rules of Evidence. The committee also revised this rule for stylistic reasons but in doing so did not intend to change any result in any ruling on evidence admissibility.

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 606(a) is amended and reflects the elimination of special courts-martial without a military judge. *See* 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. Law. No. 115-91, 131 Stat. 1283 (2017).

RULE 607. WHO MAY IMPEACH A WITNESS

Amendments to F.R.E. 606

F.R.E. 606 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 607. Who may impeach a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 607 is amended to change the title to “Who may impeach a witness.”

Amendments to F.R.E. 607

F.R.E. 607 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 608. A witness’ character for truthfulness or untruthfulness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

RULE 609. IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION OR FINDING OF GUILTY BY SUMMARY COURT-MARTIAL

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 608 is amended to change the title to “A witness’s character for truthfulness or untruthfulness.”

Amendments to F.R.E. 608

F.R.E. 608 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 609. Impeachment by evidence of a criminal conviction or finding of guilty by summary court-martial

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(c), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date “with respect to all court-martial processes taken on and after that date” subject to the standard exception precluding invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (Change No. 2 1986).

4. Text of the amendment:

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

RULE 609. IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION OR FINDING OF GUILTY BY SUMMARY COURT-MARTIAL

* * *

c. Mil.R.Evid. 609(e) is amended by deleting “65(c)” and inserting in lieu thereof “64”.

Amendment of December 23, 1993

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(h), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. *Effective date of the amendment:* January 21, 1994. *Id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. 1984 (1994 ed.).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

h. Mil. R. Evid. 609(a) is amended to read as follows:

“(a) *General rule.* For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Mil. R. Evid. 403, if the crime was punishable by death, dishonorable discharge, or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the military judge determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.”.

Amendment of December 16, 2011

1. *Source of the amendment:* 2011 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,593, Annex § 1(b), 76 Fed. Reg. 78,451 (Dec. 13, 2011).

2. *Effective date of the amendment:* January 12, 2012. *See id.* § 3 (providing that the amendments “shall take effect 30 days from the date of this Order” subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2008 ed.).

4. *Text or summary of the amendment:*

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

RULE 609. IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION OR FINDING OF GUILTY BY SUMMARY COURT-MARTIAL

* * *

(d) The following amendments conform M.R.E. 609 to F.R.E 609:

(1) M.R.E. 609(a) is amended to substitute the words “character for truthfulness” for the word “credibility.”

(2) M.R.E. 609(a)(2) is amended to substitute the words “regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness” for the words “if it involved dishonesty or false statement, regardless of the punishment”.

(3) M.R.E. 609(c) is amended to substitute the words “a subsequent crime that was punishable by death, dishonorable discharge, or imprisonment in excess of one year” for the words “a subsequent crime which was punishable by death, dishonorable discharge, or imprisonment in excess of one year”.

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 609 is amended to change the title to “Impeachment by evidence of a criminal conviction.”
- Mil. R. Evid. 609 is amended to conform subsections (a), (b)(2), and (c)(1) to conform with the Federal Rules of Evidence.

Amendment of March 1, 2018

1. Source of the amendment: 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. Effective date of the amendment: January 1, 2019. *See id.* § 5.

3. First publication of the amended rule: M.C.M. (2019 ed.).

RULE 610. RELIGIOUS BELIEFS OR OPINIONS

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 609 is amended throughout and reflects changes to Article 20, UCMJ, implementing the Supreme Court's ruling in *Middendorf v. Henry*, 425 U.S. 25 (1976) (summary court-martial is not a "criminal prosecution" within the meaning of the Sixth Amendment). See Article 20, as amended by Section 5164 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114328, 130 Stat. 2000 (2016).

Amendments to F.R.E. 609

F.R.E. 609 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Jan. 26, 1990, eff. Dec. 1, 1990; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011. See "NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE" on page 10.

Rule 610. Religious beliefs or opinions

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. 1984. The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 610

F.R.E. 610 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See "NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE" on page 10.

Rule 611. Mode and order of examining witnesses and presenting evidence

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of October 6, 1999

1. *Source of the amendment:* 1999 Amendments to the Manual for Courts-Martial, United States, § 2(b), Exec. Order No. 13,140, 64 Fed. Reg. 55,115 (Oct. 12, 1999).

2. *Effective date of the amendment:* November 1, 1999. See *id.* at § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

RULE 611. MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE

3. *First publication of the amended rule:* M.C.M. (2000 ed.).

4. *Text of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

b. Mil. R. Evid. 611 is amended by inserting the following new subsection at the end:

“(d) Remote live testimony of a child.

(1) In a case involving abuse of a child or domestic violence, the military judge shall, subject to the requirements of subsection (3) of this rule, allow a child victim or witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) The term “child” means a person who is under the age of 16 at the time of his or her testimony. The term “abuse of a child” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child. The term “exploitation” means child pornography or child prostitution. The term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to endanger seriously the physical health of the child. The term “domestic violence” means an offense that has as an element the use, attempted use, or threatened use of physical force against a person and is committed by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is co-habiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

(3) Remote live testimony will be used only where the military judge makes a finding on the record that a child is unable to testify in open court in the presence of the accused, for any of the following reasons:

(A) The child is unable to testify because of fear;

(B) There is substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying;

(C) The child suffers from a mental or other infirmity; or

(D) Conduct by an accused or defense counsel causes the child to be unable to continue testifying.

(4) Remote live testimony of a child shall not be utilized where the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(c).”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

RULE 611. MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 611 is amended to change the title to “Mode and order of examining witnesses and presenting evidence.”
- Mil. R. Evid. 611(d)(3) is amended to conform with the United States Supreme Court’s holding in *Maryland v. Craig*, 497 U.S. 836 (1990) and the Court of Appeals for the Armed Forces’ holding in *United States v. Pack*, 65 M.J. 381 (C.A.A.F. 2007).

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(h)-(i), 88 Fed. Reg. 50576 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(h) Mil. R. Evid. 611(d)(l) is amended to read as follows:

“(1) In a case involving domestic violence or a case involving the abuse of a child, the military judge must, subject to the requirements of subdivision (d)(3) of this rule, allow a child victim or child witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.”

(i) Mil. R. Evid. 611(d)(2)(E) is amended to read as follows:

“(E) “Domestic violence” means conduct that may constitute an offense under Article 128b.”

Amendments to F.R.E. 611

F.R.E. 611 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 612. Writing used to refresh a witness' memory

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 612 is amended to change the title to “Writing used to refresh a witness’s memory.”

Amendments to F.R.E. 612

F.R.E. 612 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 613. Witness' prior statement

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of March 3, 1987

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(b), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

RULE 614. COURT-MARTIAL’S CALLING OR EXAMINING A WITNESS

2. *Effective date of the amendment*: March 12, 1987. *See id.* § 5 (making the amendments effective on this date subject to the standard exception precluding invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. 1984 (Change No. 3 1987).

4. *Text or summary of the amendment*:

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

b. Mil. R. Evid. 613(a) is amended by inserting “to him at that time, but on request the same shall be shown or disclosed” after “disclosed”.

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 613 is amended to change the title to “Witness’s prior statement.”

Amendments to F.R.E. 613

F.R.E. 613 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 2, 2024, eff. Dec. 1, 2024. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 614. Court-martial’s calling or examining a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

RULE 615. EXCLUDING WITNESSES

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 614 is amended to change the title to “Court-martial’s calling or examining a witness.”
- Mil. R. Evid. 614(a) is amended to substitute the word “relevant” for “appropriate.”

Amendments to F.R.E. 614

F.R.E. 614 was amended by Supreme Court order on Apr. 2, 2024, eff. Dec. 1, 2024. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 615. Excluding witnesses

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of April 11, 2002

1. *Source of the amendment:* 2002 Amendments to the Manual for Courts-Martial, United States, § 4, Exec. Order No. 13,262, 67 Fed. Reg. 18,773 (Apr. 11, 2002).

2. *Effective date of the amendment:* “The amendment made to Military Rules of Evidence 615 shall apply only in cases in which arraignment has been completed on or after May 15, 2002.” *Id.* § 6(c).

3. *First publication of the amended rule:* M.C.M. (2002 ed.).

4. *Text of the amendment:*

Sec. 4. Part III of the Manual for Courts-Martial, United States, is amended in Mil. R. Evid. 615 by striking the period at the end of the rule and adding “, or (4) a person authorized by statute to be present at courts-martial, or (5) any victim of an offense from the trial of an accused for that offense because such victim may testify or present any information in relation to the sentence or that offense during the presentencing proceedings.”

RULE 615. EXCLUDING WITNESSES

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 615 is amended to change the title to “Excluding witnesses.”

Amendment of June 17, 2015

1. *Source of the amendment:* 2015 Amendments to the Manual for Courts-Martial, United States, Annex § 2(t), Exec. Order No. 13,696, 80 Fed. Reg. 35,783 (Jun. 17, 2015).

2. *Effective date of the amendment:* June 17, 2015. *See id.* § 2 (providing that the amendments take effect on the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2016 ed.)

4. *Text or summary of the amendment:*

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

* * *

“(e) A victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.”

Amendments to F.R.E. 615

F.R.E. 615 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; by Congress in Pub. L. 100-690, Nov. 18, 1988, Title VII, § 7075(a), 102 Stat. 4405; by Supreme Court order Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 24, 2023, eff. Dec. 1, 2023. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

RULE 701. OPINION TESTIMONY BY LAY WITNESSES

Rule 701. Opinion testimony by lay witnesses

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(c), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2005 ed.).

4. *Text of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(c) Mil. R. Evid. 701 is amended to read as follows:

“If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences that are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) not based in scientific, technical, or other specialized knowledge within the scope of Rule 702.”

Amendments to F.R.E. 701

F.R.E. 701 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 702. Testimony by expert witnesses

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(d), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

RULE 702. TESTIMONY BY EXPERT WITNESSES

2. *Effective date of the amendment*: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2005 ed.).

4. *Text of the amendment*:

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(d) Mil. R. Evid. 702 is amended to read as follows:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 702 is amended to change the title to “Testimony by expert witnesses.”

Amendments to F.R.E. 702

F.R.E. 702 was amended by Supreme Court order on Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 24, 2023, eff. Dec. 1, 2023. *See* “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

RULE 703. BASES OF AN EXPERT'S OPINION TESTIMONY

Rule 703. Bases of an expert's opinion testimony

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of December 3, 2004

1. *Source of the amendment*: 2004 Amendments to the Manual for Courts-Martial, United States, § 3(e), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment*: January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: M.C.M. (2005 ed.).

4. *Text of the amendment*:

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(e) Mil. R. Evid. 703 is amended to read as follows:

“The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert, at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the members by the proponent of the opinion or inference unless the military judge determines that their probative value in assisting the members to evaluate the expert's opinion substantially outweighs their prejudicial effect.”

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

RULE 704. OPINION ON AN ULTIMATE ISSUE

- Mil. R. Evid. 703 is amended to change the title to “Basis of an expert’s opinion of testimony.”

Amendments to F.R.E. 703

F.R.E. 703 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 704. Opinion on an ultimate issue

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The President changed the title to: “Opinion on an ultimate issue.”

Amendments to F.R.E. 704

F.R.E. 704 was amended by Congress in Pub. L. 98-473, Title II, § 406, Oct. 12, 1984, 98 Stat. 2067; by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 705. Disclosing the facts or data underlying an expert’s opinion

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

RULE 706. COURT-APPOINTED EXPERT WITNESSES

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 705 is amended to change the title to “Disclosing the facts or data underlying an expert’s opinion.”

Amendments to F.R.E. 705

F.R.E. 705 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 706. Court-appointed expert witnesses

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 706 is amended to change the title to “Court-appointed expert witnesses.”

RULE 707. POLYGRAPH EXAMINATIONS

Amendments to F.R.E. 706

F.R.E. 706 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 707. Polygraph examinations

The original version of the Military Rules of Evidence did not contain this rule. The President added the rule in the 1991 Amendments to the Manual for Courts-Martial, United States, § 2, Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991), as described below. The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of June 27, 1991

1. *Source of the amendment:* 1991 Amendments to the Manual for Courts-Martial, United States, § 2, Exec. Order No. 12,767, 56 Fed. Reg. 30,284 (June 27, 1991).
2. *Effective date of the amendment:* July 6, 1991. *Id.* § 4(b) (subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).
3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 5 1991).
4. *Text of the amendment:*

Section 2. Part II of the Manual for Courts-Martial, United States, 1994 is amended by adding the following new rule at the end of Section VII thereof:

“Rule 707. Polygraph Examinations.

(a) Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence.

(b) Nothing in this section is intended to exclude from evidence statements made during a polygraph examination which are otherwise admissible.”

Rule 801. Definitions that apply to this section; exclusions from hearsay

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

RULE 801. DEFINITIONS THAT APPLY TO THIS SECTION; EXCLUSIONS FROM HEARSAY

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 801 is amended to change the title to “Definitions that apply to this section; exclusions from hearsay.”
- Mil. R. Evid. 801(2) is amended to change the title of the subsection from “Admission by party-opponent” to “An opposing party’s statement” to conform to the Federal Rules of Evidence.

Amendment of May 20, 2016

1. *Source of the amendment*: 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(h), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment*: May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule*: M.C.M. (2016).

4. *Text or summary of the amendment*:

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) Mil. R. Evid. 801(d)(1)(B) is amended to read as follows:

“(B) is consistent with the declarant’s testimony and is offered:

- (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
- (ii) to rehabilitate the declarant’s credibility as a witness when attacked on another ground; or”

Amendments to F.R.E. 801

F.R.E. 801 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 2, 2024, eff. Dec. 1, 2024. *See* “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 802. The rule against hearsay

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 802 is amended to change the title to “The rule against hearsay.”

Amendments to F.R.E. 802

F.R.E. 802 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 803. Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(f), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

RULE 803. EXCEPTIONS TO THE RULE AGAINST HEARSAY – REGARDLESS OF WHETHER THE DECLARANT IS AVAILABLE AS A WITNESS

3. *First publication of the amended rule:* M.C.M. (2005 ed.).

4. *Text of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(f) Mil. R. Evid. 803(6) is amended to read as follows:

“Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Mil. R. Evid. 902(11) or any other statute permitting certification in a criminal proceeding in a court of the United States, unless the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness. The term “business” as used in this paragraph includes the armed forces, a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Among those memoranda, reports, records, or data compilations normally admissible pursuant to this paragraph are enlistment papers, physical examination papers, outline-figure and fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 803 is amended to change the title to “Exceptions to the rule against hearsay – regardless of whether the declarant is available as a witness.”
- Mil. R. Evid. 803(24) is removed as it is unnecessary.

RULE 803. EXCEPTIONS TO THE RULE AGAINST HEARSAY – REGARDLESS OF WHETHER THE DECLARANT IS AVAILABLE AS A WITNESS

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(i)-(l), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2016).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(i) The first sentence of Mil. R. Evid. 803(6)(E) is amended to read as follows:

“(E) the opponent does not show that the source of information or the method or circumstance of preparation indicate a lack of trustworthiness.”

(j) Mil. R. Evid. 803(7)(C) is amended to read as follows

“(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.”

(k) The first sentence of Mil. R. Evid. 803(8)(B) is amended to read as follows:

“(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.”

(l) Mil. R. Evid. 803(10)(B) is amended to read as follows:

“(B) a counsel for the government who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the accused does not object in writing within 7 days of receiving the notice- unless the military judge sets a different time for the notice or the objection.”

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(j)-(k), 88 Fed. Reg. 50576 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

RULE 804. EXCEPTIONS TO THE RULE AGAINST HEARSAY—WHEN THE DECLARANT IS UNAVAILABLE AS A WITNESS

4. Text or summary of the amendment:

(j) Mil. R. Evid. 803(16) is amended to read as follows:

“(16) *Statements in Ancient Documents.* A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.”

(k) Mil. R. Evid. 803(22) is amended to read as follows:

“(22) *Judgment of a Previous Conviction.* Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death, dishonorable discharge, or imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and (D) when offered by the prosecution for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform Code of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

Amendments to F.R.E. 803

F.R.E. 803 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 13, 2013, eff. Dec. 1, 2013; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 27, 2017, eff. Dec. 1, 2017. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 804. Exceptions to the rule against hearsay—when the declarant is unavailable as a witness

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of February 19, 1986

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(d), Exec. Order No. 12,550, 51 Fed. Reg. 6497 (Feb. 25, 1986).

2. Effective date of the amendment: March 1, 1986. *See id.* § 6 (making the amendments effective on this date “with respect to all court-martial processes taken on and after that date” subject to the standard exception precluding invalidation of proceedings that began before that date).

RULE 804. EXCEPTIONS TO THE RULE AGAINST HEARSAY—WHEN THE DECLARANT IS UNAVAILABLE AS A WITNESS

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 2 1986).

4. *Text of the amendment:*

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

d. Mil. R. Evid. 804(a) is amended by striking out “claim or lack of memory” and inserting in lieu thereof “claim of lack of memory”.

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 804 is amended to change the title to “Exceptions to the rule against hearsay.”

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 13,730, Annex § 2(m), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2016).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(m) Mil. R. Evid. 804(b)(1)(B) is amended by replacing “pretrial investigation” with “preliminary hearing.”

RULE 805. HEARSAY WITHIN HEARSAY

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 804(a)(6) is amended and reflects amendments to Article 49 and deletes the cross-reference to Article 49(d)(2). *See* Article 49, as amended by Section 532, Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014).

Amendments to F.R.E. 804

F.R.E. 804 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; by Pub. L. 100-690, Title VII, § 7075(b), Nov. 18, 1988, 102 Stat. 4405; by Supreme Court order on Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 2, 2024, eff. Dec. 1, 2024. *See* “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 805. Hearsay within hearsay

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 805

F.R.E. 805 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. *See* “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 806. Attacking and supporting the declarant’s credibility

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

RULE 807. RESIDUAL EXCEPTION

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 806 is amended to change the title to “Attacking and supporting the declarant’s credibility.”

Amendments to F.R.E. 806

F.R.E. 806 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 807. Residual exception

By operation of M.R.E 1102, M.R.E. 807 was added and became effective on June 1, 1999 (see below). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(l), 88 Fed. Reg. 50577 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

RULE 901. AUTHENTICATING OR IDENTIFYING EVIDENCE

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(1) Mil. R. Evid. 807 is amended to read as follows:

“(a) *In General.* Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Mil. R. Evid. 803 or 804:

(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it is made and evidence, if any, corroborating the statement; and

(2) the statement is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(b) *Notice.* The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant’s name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.”

Amendments to F.R.E. 807

F.R.E. 807 was added by Supreme Court order on Apr. 11, 1997, eff. Dec. 1, 1997; and amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 25, 2019, eff. Dec. 1, 2019. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 901. Authenticating or identifying evidence

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface

RULE 902. EVIDENCE THAT IS SELF-AUTHENTICATING

to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 901 is amended to change the title to “Authenticating or identifying evidence.”

Amendments to F.R.E. 901

F.R.E. 807 was added by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 902. Evidence that is self-authenticating

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of March 3, 1987

1. *Source of the amendment:* Amendments to the Manual for Courts-Martial, United States, 1984, § 2(c), Exec. Order No. 12,586, 52 Fed. Reg. 7103 (Mar. 3, 1987).

2. *Effective date of the amendment:* March 12, 1987. *See id.* § 5 (making the amendments effective on this date subject to the standard exception precluding invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. 1984 (Change No. 3 1987).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

c. Mil. R. Evid. 902(1) is amended by striking out “exception” and inserting in lieu thereof “execution”.

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(g), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2005 ed.).

4. *Text of the amendment:*

RULE 902. EVIDENCE THAT IS SELF-AUTHENTICATING

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(g) The following subsection (11) is inserted after Mil. R. Evid. 902(10) to read as follows:

“(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Mil. R. Evid. 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this “Records of regularly conducted activity. A memorandum paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.”

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 902 is amended to change the title to “Evidence that is self-authenticating.”
- Mil. R. Evid. 902(11) is amended to add language permitting the military judge to admit non-noticed documents even after the trial has commenced if the offering party shows good cause to do so.

Amendment of July 28, 2023

1. *Source of the amendment:* 2023 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. 14103, Annex 1 § 2(m)-(o), 88 Fed. Reg. 50578 (Aug. 2, 2023).

2. *Effective date of the amendment:* December 27, 2023. *See id.* § 2 (“The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National

RULE 903. SUBSCRIBING WITNESS' TESTIMONY

Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81.”); NDAA FY 2022, § 539C(a), Public Law 117–81, 135 Stat. 1541, 1699 (2021) (“[T]he amendments made by this part shall take effect on the date that is two years after the date of the enactment of this Act and shall apply with respect to offenses that occur after that date.”); *id.* § 539C(b)(1) (“The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.”).

3. *First publication of the amended rule:* M.C.M. (2023 ed.).

4. *Text or summary of the amendment:*

(m) A new Mil. R. Evid. 902(12) is inserted immediately after Mil. R. Evid. 902(11) to read as follows:

“(12) Reserved.”

(n) A new Mil. R. Evid. 902(13) is inserted immediately after new Mil. R. Evid. 902(12) to read as follows:

“(13) *Certified Records Generated by an Electronic Process or System.* A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Mil. R. Evid. 902(11). The proponent also must meet the notice requirements of Mil. R. Evid. Rule 902(11).”

(o) A new Mil. R. Evid. 902(14) is inserted immediately after new Mil. R. Evid. 902(13) to read as follows:

“(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Mil. R. Evid. 902(11). The proponent also must meet the notice requirements of Mil. R. Evid. 902(11).”

Amendments to F.R.E. 902

F.R.E. 902 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 27, 2017, eff. Dec. 1, 2017. Amendments to F.R.E. 902(2) after January 2, 2005, do not amend M.R.E. 902(2). See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 903. Subscribing witness' testimony

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

RULE 1001. DEFINITIONS THAT APPLY TO THIS SECTION

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 903 is amended to change the title to “Subscribing witness’s testimony.”

Amendments to F.R.E. 903

F.R.E. 903 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1001. Definitions that apply to this section

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. *Source of the amendment:* 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment:* May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments:* Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

RULE 1002. REQUIREMENT OF THE ORIGINAL

- Mil. R. Evid. 1001 is amended to change the title to “Definitions that apply to this section.”

Amendments to F.R.E. 1001

F.R.E. 1001 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1002. Requirement of the original

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 1002

F.R.E. 1002 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1003. Admissibility of duplicates

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 1003

F.R.E. 1003 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1004. Admissibility of other evidence of content

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not amended the rule. The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

RULE 1005. COPIES OF PUBLIC RECORDS TO PROVE CONTENT

Amendments to F.R.E. 1004

F.R.E. 1003 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1005. Copies of public records to prove content

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 1005 is amended to change the title to “Copies of public records to prove content.”

Amendments to F.R.E. 1005

F.R.E. 1005 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1006. Summaries to prove content

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

RULE 1007. TESTIMONY OR STATEMENT OF A PARTY TO PROVE CONTENT

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

- Mil. R. Evid. 1006 is amended to change the title to “Summaries to prove content.”

Amendments to F.R.E. 1006

F.R.E. 1006 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 2, 2024, eff. Dec. 1, 2024. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1007. Testimony or statement of a party to prove content

The President promulgated this rule in the Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text, before subsequent amendment, first appeared in M.C.M. (1984).

Amendment of May 15, 2013

1. Source of the amendment: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. Effective date of the amendment: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. Text or summary of the amendments: Section 1 of the Annex to Executive Order 13,643 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. The following summary of the changes to this rule appears in the Preface to the Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.):

RULE 1007. TESTIMONY OR STATEMENT OF A PARTY TO PROVE CONTENT

- Mil. R. Evid. 1007 is amended to change the title to “Testimony or statement of a party to provide content.”

RULE 1008. FUNCTIONS OF THE MILITARY JUDGE AND THE MEMBERS

Amendments to F.R.E. 1007

F.R.E. 1007 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1008. Functions of the military judge and the members

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not amended the rule. The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 1008

F.R.E. 1008 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rules 1101. Applicability of these rules

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President may have made stylistic changes to the rule, not indicated below, when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendment of December 23, 1993

1. Source of the amendment: Amendments to the Manual for Courts-Martial, United States, 1984, § 2(i), Exec. Order No. 12,888, 58 Fed. Reg. 69,153 (Dec. 23, 1993).

2. Effective date of the amendment: January 21, 1994. *Id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. First publication of the amended rule: M.C.M. 1984 (1994 ed.).

4. Text or summary of the amendment:

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

* * *

i. Mil. R. Evid. 1101(d) is amended to read as follows:

RULES 1101. APPLICABILITY OF THESE RULES

“(d) Rules inapplicable. These rules (other than with respect to privileges and Mil. R. Evid. 412) do not apply in investigative hearings pursuant to Article 32; proceedings for vacation of suspension of sentence pursuant to Article 72; proceedings for search authorizations; proceedings involving pretrial restraint; and in other proceedings authorized under the code or this Manual and not listed in subdivision (a).”.

Amendment of May 20, 2016

1. *Source of the amendment:* 2016 Amendments to the Manual for Courts-Martial, United States, Exec. Order No. , Annex § 2(n), 81 Fed. Reg. 33,331 (May 20, 2016).

2. *Effective date of the amendment:* May 20, 2016. *See id.* § 2 (“These amendments shall take effect as of the date of this order.”).

3. *First publication of the amended rule:* M.C.M. (2016).

4. *Text or summary of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(n) Mil. R. Evid. 1101(d)(2) is amended by replacing “pretrial investigations” with “preliminary hearings.”

Amendment of March 1, 2018

1. *Source of the amendment:* 2018 Amendments to the Manual for Courts-Martial, United States, Annex 2, § 3, Exec. Order 13,825, 83 Fed. Reg. 9889 (Mar. 8, 2018).

2. *Effective date of the amendment:* January 1, 2019. *See id.* § 5 (providing that the amendments take effect as of this date subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (2019 ed.).

4. *Text or summary of the amendment:* Annex 2, § 3 of Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating the changes made. The following summary of the changes to this rule appears in Appendix 16 of the M.C.M. (2019 ed.):

Mil. R. Evid. 1101(a) is amended and reflects that the Military Rules of Evidence also apply to pre-referral proceedings under Article 30a. *See* 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).

Amendments to F.R.E. 1101

F.R.E. 1101 was amended by Supreme Court order on Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; by Pub. L. 100-690, Title VII, § 7075(c), Nov. 18, 1988, 102 Stat. 4405;

RULE 1102. AMENDMENTS

by Supreme Court order Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1102. Amendments

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not amended the rule.

Amendment of May 27, 1998

1. *Source of the amendment:* 1998 Amendments to the Manual for Courts-Martial, United States, § 2(d), Exec. Order No. 13,086 of May 27, 1998, 63 Fed. Reg. 30,065 (June 2, 1998).

2. *Effective date of the amendment:* May 27, 1998. *See id.* § 4 (providing that the amendments take effect on this date, subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before this date).

3. *First publication of the amended rule:* M.C.M. (1998 ed.).

4. *Text of the amendment:*

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

d. M.R.E. 1102 is amended to read as follows:

“Amendments to the Federal Rules of Evidence shall apply to the Military Rules of Evidence 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.”

Amendment of December 3, 2004

1. *Source of the amendment:* 2004 Amendments to the Manual for Courts-Martial, United States, § 3(h), Exec. Order No. 13,365, 69 Fed. Reg. 71,333 (Dec. 3, 2004).

2. *Effective date of the amendment:* January 2, 2005. *See id.* § 5 (providing that the amendments take effect 30 days from the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule:* M.C.M. (2005 ed.).

4. *Text of the amendment:*

Sec. 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

* * *

(h) Mil. R. Evid. 1102 is amended to read as follows:

RULE 1103. TITLE

“(a) Amendments to the Federal Rules of Evidence shall apply to the Military Rules of Evidence 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

“(b) Rules Determined Not To Apply. The President has determined that the following Federal Rules of Evidence do not apply to the Military Rules of Evidence: Rules 301, 302, 415, and 902(12).”

Amendment of May 15, 2013

1. *Source of the amendment*: 2013 Amendments to the Manual for Courts-Martial, United States, Annex § 1, Exec. Order No. 13,643, 78 Fed. Reg. 29559 (May 15, 2013).

2. *Effective date of the amendment*: May 15, 2013. *See id.* § 2 (providing that the amendments take effect as of the date of the order subject to standard exceptions precluding ex post facto punishments or invalidation of proceedings that began before that date).

3. *First publication of the amended rule*: Supplement to Manual for Court-Martial, United States, Military Rules of Evidence (2012 ed.).

4. *Text or summary of the amendments*: Section 1 of the Annex to Executive Order 13,825 replaced the entire text of the Military Rules of Evidence without indicating which rules were amended or how they were amended. Rule 1102(a) was amended to include express exceptions for amendments to Articles III and V of the Federal Rules of Evidence.

Amendments to F.R.E. 1102

F.R.E. 1101 was amended by Supreme Court order on Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.

Rule 1103. Title

The President promulgated this rule in Manual for Courts-Martial, 1984, Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (Apr. 13, 1984). Its text first appeared in M.C.M. (1984). The President has not made substantive amendments to this rule, but he may have made stylistic changes to the rule when he reissued the entire Military Rules of Evidence in Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

Amendments to F.R.E. 1103

F.R.E. 1101 was amended by Supreme Court order on Apr. 26, 2011, eff. Dec. 1, 2011. See “NOTE ON AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE” on page 10.