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Legal Services

Military Justice

By Order of the Secretary of the Army:

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Chief of Staff

Official:

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History. This publication is an administrative revision. The portions affected by this administrative revision are listed in the summary of change.

Authorities. This regulation implements changes directed by the Deputy Secretary of Defense.

Applicability. This revision applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to Department of the Army Civilians who are involved in any matter that falls under the responsibility and authority of The Judge Advocate General, regardless of whether such person is a member of the Judge Advocate Legal Service. This publication is applicable during mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General of the Army. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific requirements.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix M).

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Office of The Judge Advocate General at usarmy.pentagon.hqda-otjag.mbx.cl@army.mil.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

*This regulation supersedes AR 27–10, dated 20 March 2024.

Summary of Change

AR 27–10
Military Justice

This administrative revision, dated 22 July 2025—

- Changes “gender” to “sex” in accordance with Executive Order 14168 (throughout).

This administrative revision, dated 8 May 2025—

- Updates installation names changes (throughout).

This mandated revision, dated 8 January 2025—

- Clarifies a Soldier’s right to consult with counsel as part of a proceeding under Uniform Code of Military Justice, Article 15 (paras 3–18*c* and C–4).

- Prohibits appointment of an officer in the accused’s chain of command as a summary court-martial officer (para 5–3).

- Establishes an accused Soldier’s right to representation and clarifies government counsel representation at a summary court-martial (paras 5–34*c* through 5–34*e*).

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Glossary of Terms

Chapter 1
Introduction

1–1. Purpose
This regulation prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2024, and the rules for courts-martial (RCMs) contained in the MCM.

1–2. References, forms, and explanation of abbreviations
See appendix A. The abbreviations, brevity codes, and acronyms (ABCAs) used in this electronic publication are defined when you hover over them. All ABCAs are listed in the ABCA directory located at https://armypubs.army.mil/.

1–3. Associated publications
This section contains no entries.

1–4. Responsibilities
a. In accordance with 10 USC 7013(d), and the authorities granted by the Uniform Code of Military Justice (UCMJ) and its implementing regulations, the Secretary of the Army is responsible for establishing military justice policy as delegated by the President and the Secretary of Defense.

b. The Judge Advocate General (TJAG) is responsible for the overall supervision and administration of military justice within the Army.

c. The Chief Trial Judge, U.S. Army Trial Judiciary, as designee of TJAG, is responsible for the supervision and administration of the U.S. Army Trial Judiciary and the Military Magistrate Program.

d. The Chief, U.S. Army Trial Defense Service (USATDS), as a designee of TJAG, is responsible for the detail, supervision, and control of trial defense services within the Army.

e. The Lead Special Trial Counsel (LSTC), U.S. Army Office of Special Trial Counsel (OSTC), is responsible for the overall supervision and oversight of U.S. Army special trial counsel and reports directly to the Secretary of the Army without intervening authority.

1–5. Records management (recordkeeping) requirements
The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in the Army Records Information Management System (ARIMS)/RRS–A at https://www.arims.army.mil. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

Chapter 2
Investigation and Prosecution of Crimes with Concurrent Jurisdiction

2–1. Implementing authority
This chapter implements a memorandum of understanding (MOU) between the Department of Defense (DoD) and the Department of Justice (DOJ), delineating the areas of responsibility for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. The MOU is available in appendix 3, MCM, 2024, and is implemented by Department of Defense Instruction (DoDI) 5525.07.

2–2. Local application
Decisions with respect to the provisions of the MOU will, whenever possible, be made at the local level between the responsible U.S. Attorney's office or DOJ investigative agency and the local military commander (see para D.1. of the MOU). If an agreement is not reached at the local level, the local commander will (if they do not exercise general court-martial (GCM) jurisdiction) promptly advise the commander exercising GCM jurisdiction over their command. If the commander exercising GCM jurisdiction, acting through their staff judge advocate (SJA), cannot effect an agreement. In that case, the matter will

be reported by the SJA to the Office of The Judge Advocate General (OTJAG), Criminal Law Division (DAJA–CL), usarmy.pentagon.hqda-otjag.mbx.cl@army.mil.

2–3. Action by convening authority

Before taking any action with a view toward court-martial, courts-martial convening authorities will ensure that Federal civilian authorities are consulted in accordance with the MOU in cases likely to be prosecuted in the U.S. district courts.

2–4. Grants of immunity

a. General. Only the LSTC or GCM convening authorities (GCMCAs), or their designees, may issue grants of immunity pursuant to the UCMJ, RCM 704, and directives issued by the Secretary of the Army, subject to the guidance set forth in this paragraph.

b. Persons subject to the Uniform Code of Military Justice.

(1) The authority of the LSTC or GCMCAs extends only to grants of immunity from action pursuant to the UCMJ. However, even if it is determined that a witness is subject to the UCMJ, the LSTC or GCMCA should not grant immunity before determining in accordance with the MOU that the DOJ has no interest in the case.

(2) To encourage the reporting of serious offenses, the LSTC and GCMCAs should consider issuing grants of immunity to witnesses in cases in which the witness is subject to the UCMJ and is suspected of having committed minor collateral misconduct.

c. Persons not subject to the Uniform Code of Military Justice. If a prospective witness is not subject to the UCMJ or if DOJ has an interest in the case, the grant of immunity must be issued pursuant to Sections 6001 through 6005, Title 18, United States Code (18 USC 6001–6005). In those instances, the following procedures are applicable:

(1) Draft a proposed order to testify for the signature of the LSTC or GCMCA. Include in the requisite findings that the witness is likely to refuse to testify on Fifth Amendment grounds and that the testimony of the witness is necessary to the public interest. Forward the unsigned draft to the Office of the Judge Advocate General, Criminal Law Division (OTJAG–CLD) for coordination with the DoD and the DOJ and approval by the U.S. Attorney General.

(2) Include the following information in the request, if available:

(a) Name, citation, or other identifying information of the proceeding in which the order is to be used.

(b) Name and social security number (SSN) of the individual for whom the immunity order is requested.

(c) Name of the employer or company with which the witness is associated.

(d) Date and place of birth of the witness.

(e) Federal Bureau of Investigation or local police case file number and contact information, if applicable.

(f) Whether any state or Federal charges are pending against the prospective witness, the nature of the charges, and whether the state or Federal prosecutor in the case concurs or objects to the proposed grant of immunity.

(g) Whether the witness is currently incarcerated, and if so, under what conditions and for what length of time.

(h) Military status and organization.

(i) Whether the witness would be likely to testify under a grant of immunity, thus precluding the use of the testimony against them.

(j) Factual basis supporting the finding that the witness is likely to refuse to testify on Fifth Amendment grounds.

(k) General nature of the charges to be tried in the proceeding at which the witness' testimony is desired.

(l) Offenses, if known, to which the witness' testimony might tend to incriminate the witness.

(m) The anticipated date on which the order will be issued.

(n) A summary of the witness's expected testimony concerning the particular case in issue.

(3) If the U.S. Attorney General has authorized a grant of immunity, furnish the following information through OTJAG–CLD to the DOJ, Witness Immunity Unit, Criminal Division, 1301 New York Ave., 10th Floor, Washington, DC 20530, after the witness has testified, refused to testify, or the proceedings have been terminated without the witness being called to testify:

(a) Name, citation, or other identifying information of the proceeding in which the order was requested.

(b) Date of the examination of the witness.
(c) Name and address of the witness.
(d) Whether the witness invoked the privilege against self-incrimination.
(e) Whether the immunity order was issued.
(f) Whether the witness testified pursuant to the order.
(g) If the witness refused to comply with the order, whether contempt proceedings were instituted or are contemplated, and the result of the contempt proceeding if concluded.

d. Cases involving threats to national security. Forward proposed grants of immunity to OTJAG–CLD. After coordination with the Office of the Deputy Chief of Staff (DCS), G–2, the proposed grant will be forwarded through the Army's general counsel, to the DoD general counsel, for consultation with the DOJ in cases involving—

(1) Espionage.
(2) Subversion.
(3) Aiding the enemy.
(4) Sabotage.
(5) Spying.
(6) Violation of rules or statutes concerning classified information or the foreign relations of the United States.

2–5. Administrative action

Prior to initiating an investigation in support of administrative action into a matter subject to a pending DOJ criminal investigation or prosecution, the investigative agency will coordinate with and obtain concurrence from the appropriate DOJ prosecutor or investigative agency and notify the servicing Judge Advocate (JA).

2–6. Threats against the President

In cases involving persons subject to the UCMJ who have allegedly made threats against the President or successors to the Presidency, in violation of 18 USC 871, the U.S. Secret Service has primary investigative responsibility. All investigative agencies will cooperate fully with the Secret Service when called on to do so. After the investigation is completed, the SJA (representing the commander who exercises GCM jurisdiction over the military suspect) and special trial counsel, if applicable, will meet with representatives of the DOJ and the Secret Service to determine whether military authorities or the DOJ will exercise further jurisdiction in the case.

2–7. Reporting requirements for cases that have national security implications or involve classified information

Prior to the preferral of charges, SJAs, or special trial counsel, as applicable, will provide an unclassified executive summary by email to OTJAG–CLD regarding potential court-martial proceedings in cases that have national security implications or involve classified information. This is in addition to the reporting requirements set forth for cases involving a threat to U.S. national security in which a grant of immunity is being proposed in accordance with paragraph 2–4*d*. SJAs or special trial counsel, as applicable, will also provide a copy of the unclassified executive summary by email to OTJAG, National Security Law Division (DAJA–NSL), usarmy.pentagon.hqda-otjag.mbx.international-and-ops-law@army.mil. These cases involve offenses such as—

a. Sedition (UCMJ, Article 82(b) and UCMJ, Article 94) in cases involving a threat to national security.
b. Aiding the enemy by giving intelligence to the enemy (UCMJ, Article 103b).
c. Spying (UCMJ, Article 103).
d. Espionage (UCMJ, Article 103a).
e. Suspected or actual unauthorized acquisition of military technology, research, and development information, or Army acquisition program information by, or on behalf of a foreign power.
f. Violation of rules or statutes concerning classified information or the foreign relations of the United States.
g. Sabotage conducted by or on behalf of a foreign power.
h. Subversion, treason, domestic terrorism, and known or suspected unauthorized disclosure of classified information or material.

i. Attempts (UCMJ, Article 80), solicitations (UCMJ, Article 82), or conspiracies (UCMJ, Article 81) to commit offenses listed in paragraphs 2–7*a* through 2–7*h*.

j. Any case that may involve discovery or disclosure of classified information.

Chapter 3
Nonjudicial Punishment

Section I

Applicable Policies

3–1. General

a. General. This chapter implements and amplifies UCMJ, Article 15, and Part V, MCM, 2024. All actions taken pursuant to the authority of UCMJ, Article 15, must comply with the MCM and this chapter. This chapter prescribes requirements, policies, limitations, and procedures for—

(1) Commanders at all levels imposing nonjudicial punishment (NJP).

(2) Members on whom this punishment is to be imposed.

(3) Other persons who may take some action with respect to the proceedings.

b. Relationship between covered offenses and nonjudicial punishment. Commanders cannot impose NJP until after deferral by special trial counsel for offenses over which a special trial counsel has exercised authority. If, after deferral, a commander imposes NJP and a Soldier exercises their right to demand trial by court-martial, the commander must consult with special trial counsel before proceeding. A special trial counsel will then decide whether to initiate court-martial proceedings against the Soldier. Only a special trial counsel may refer charges and specifications alleging a covered offense to trial by SPCM or GCM (see UCMJ, Article 24a(c)(5) and RCM 601(b)(2)). However, nothing in this paragraph prohibits a commander or convening authority from initiating court-martial proceedings, where the charges and specifications do not allege a covered offense if the special trial counsel decides not to initiate court-martial proceedings.

3–2. Use of nonjudicial punishment

A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to NJP (see MCM, 2024). Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. If it is clear that NJP will not be sufficient to meet the interests of good order and discipline, more stringent measures should be taken. Prompt action is essential for NJP to have the proper corrective effect. NJP may be imposed to—

a. Correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures.

b. Preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction.

c. Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

3–3. Relationship of nonjudicial punishment to nonpunitive measures

a. General. NJP is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies may warrant NJP in cases where nonpunitive measures are insufficient. Nonpunitive measures are the primary tools for teaching proper standards of conduct and performance and do not constitute punishment, nor are they required as a first step toward NJP. Included among nonpunitive measures are denial of a pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training (see AR 600–20), bar to continued service, and military occupational specialty (MOS) reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons (see AR 600–8–19). This authority exists apart from any authority to punish misconduct pursuant to UCMJ, Article 15. These two separate and distinct kinds of authority should not be confused but may be used simultaneously when appropriate.

b. Relationship between covered offenses and administrative action. For offenses over which a special trial counsel has exercised authority and has not deferred, commanders will obtain special trial counsel concurrence prior to initiating administrative action, including administrative action that would dispose of an offense or cause a loss of personal jurisdiction over a Soldier under UCMJ, Article 2(a).

c. Reprimands and admonitions.

(1) Commanding officers have the authority to give admonitions or reprimands either as an administrative measure or as NJP. If imposed as a punitive measure pursuant to UCMJ, Article 15, the procedures set forth in MCM, 2024, and in section III of this chapter must be followed.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment pursuant to UCMJ, Article 15 (see AR 600–37). Admonitions and reprimands imposed as punishment pursuant to UCMJ, Article 15, whether administered orally or in writing (see MCM, 2024), should state clearly that they were imposed as punishment pursuant to that article.

(3) Any punitive or administrative action for a sex-related offense (as defined in para 3–6*b*), including reprimands, must be filed in the Soldier's disciplinary folder in the Army Military Human Resource Record (AMHRR) (see AR 600–37).

d. Extra training or instruction. Extra training or instruction is one of the most effective nonpunitive measures available to a commander (see AR 600–20). It is used when a Soldier's duty performance has been substandard or deficient. For example, a Soldier who fails to maintain proper attire may be required to attend classes on the wearing of the uniform and stand inspection until the deficiency is corrected. The training or instruction must be appropriately tailored to curing the deficiency, and oriented to improving the Soldier's performance in a problem area. Brief physical exercises are an acceptable form of corrective training for minor acts of indiscipline (for example, requiring the Soldier to do 10 push-ups for arriving late to formation), so long as it does not violate the Army's policies prohibiting hazing, bullying, and unlawful punishment. Extra training or instruction may be conducted after duty hours. Normally, commanders should not impose NJP for an offense for which a Soldier previously received corrective training or extra military instruction and successfully completed the training or instruction.

3–4. Personal exercise of discretion

a. A commander will personally exercise discretion in the NJP process by—

(1) Evaluating the case to determine whether proceedings pursuant to UCMJ, Article 15 should be initiated.

(2) Determining whether the Soldier committed the offense(s) where UCMJ, Article 15 proceedings are initiated, and the Soldier does not demand trial by court-martial.

(3) Determining the amount and nature of any punishment, if punishment is appropriate.

b. No superior may direct that a subordinate authority impose punishment pursuant to UCMJ, Article 15 or issue regulations, orders, or so-called "guides" that either directly or indirectly suggest to subordinate commanders that—

(1) Certain categories of offenders or offenses should be disposed of by punishment pursuant to UCMJ, Article 15.

(2) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses.

c. A superior commander may send or return a case to a subordinate for appropriate disposition if necessary and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander's delegate, the right to exercise UCMJ, Article 15 authority over a particular case or over certain categories of offenders or offenses (see para 3–7*d*).

3–5. Referral to superior

a. See RCMs 306(b) and 306A. Except for offenses over which a special trial counsel has exercised authority and has not deferred, NJP should be administered at the lowest level of command commensurate with the needs of discipline after thoroughly considering—

(1) The nature and circumstances of the offense.

(2) The character and experience of the offender.

b. If a commander determines that the commander's authority pursuant to UCMJ, Article 15 is insufficient to impose a proper punishment, the case may be referred to an appropriate superior. The same procedure will be followed if the authority of the commander to exercise UCMJ, Article 15 powers has been

withheld or limited (see paras 3–4 and 3–7*d*). In transmitting a case for action by a superior, no recommendation of the nature or extent of the punishment to be imposed will be made. Transmittal should normally be accomplished by written correspondence using DA Form 5109 (Request to Superior to Exercise Article 15, UCMJ, Jurisdiction).

3–6. Filing determination

a. A commander's decision on whether to file a record of NJP in the performance portion of a Soldier's AMHRR is as important as the decision of whether to impose NJP itself. In making a filing determination for a record of NJP which does not include a finding of guilty to a sex-related offense, as set forth in paragraph 3–6*b*, the imposing commander must weigh carefully the interests of the Soldier's career against those of the Army to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the Soldier's age, grade, total service (with particular attention to the Soldier's recent performance and past misconduct), and whether the Soldier has more than one record of NJP directed for filing in the restricted portion (see para 3–6*c*). However, the interests of the Army are compelling when the record of NJP reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, evidence of serious character deficiency, or a substantial breach of military discipline. In such cases, the record should be filed in the performance portion of the Soldier's AMHRR.

b. Any record of NJP that includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance portion of the Soldier's AMHRR. This requirement applies to Soldiers in all components, regardless of grade. For sex-related offenses, imposing commanders do not have the option to use summarized proceedings or to designate that NJP documents be filed locally or in the restricted portion of the Soldier's AMHRR. All guilty findings for sex-related offenses resulting in NJP will receive an assignment consideration code (ASCO) of L3. In accordance with AR 600–37, paragraph 3–4, the servicing JA is responsible for coordinating with commanders for the processing of actions involving sex-related offenses for eventual filing in the AMHRR with the appropriate ASCO. For the purpose of this subparagraph, sex-related offenses include a violation of the following sections of the UCMJ:

(1) Article 120: Rape and sexual assault. This includes rape, sexual assault, aggravated sexual contact, and abusive sexual contact.

(2) Article 130: Stalking. (If committed prior to 1 January 2019, Article 120a—see appendix 22, MCM, 2024).

(3) Article 120b: Rape and sexual assault of a child. This includes rape of a child, sexual assault of a child, and sexual abuse of a child.

(4) Article 120c: Other sexual misconduct. This includes indecent viewing, visual recording, or broadcasting.

(5) Article 125: Forcible sodomy; bestiality, if committed prior to 1 January 2019 (see appendices 21 and 22, MCM, 2024).

(6) Article 80: Attempt (any attempt to commit these offenses).

c. If a record of NJP has been designated for filing in a Soldier's restricted portion, the Soldier's AMHRR will be reviewed by the Official Records Custodian (as defined in AR 600–8–104) to determine if the restricted portion contains a previous record of NJP. In those cases, in which a previous DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) that has not been wholly set aside has been filed in the restricted portion, and in which prior to that punishment, the Soldier was in the grade of sergeant (SGT) or higher, the present DA Form 2627 will be filed in the performance portion. The Official Records Custodian will prepare a memorandum for record and place the memorandum and DA Form 2627 in the performance portion of the AMHRR. The Soldier concerned and the imposing commander will be informed of the filing of the DA Form 2627 in the performance portion.

d. The filing of a record of NJP imposed upon a member of another armed Service will be done in a manner consistent with the governing regulations of that member's Service.

Section II

Authority

3–7. Who may impose nonjudicial punishment

a. Commanders. Unless otherwise specified in this regulation or if authority to impose NJP has been limited or withheld by a superior commander (see para 3–7*d*), any commander is authorized to exercise the disciplinary powers conferred by UCMJ, Article 15. At installations managed by Installation Management Command (IMCOM), the exclusive authority of commanders, as defined by this regulation, to impose NJP is unaffected. For offenses over which a special trial counsel has exercised authority, commanders will not impose NJP until after deferral by special trial counsel (see RCM 103(10), RCM 306A(a)(2), and RCM 401A(c)(3)).

(1) The term commander, as used in this chapter, means a commissioned officer who, by virtue of that officer's grade and assignment, exercises primary command authority over a military organization or prescribed territorial area that, under pertinent official directives, is recognized as a command.

(2) The term "imposing commander" refers to the commander or other officer who actually imposes the NJP. Imposition of NJP begins with the imposing commander signing DA Form 2627 or DA Form 2627–1 (Summarized Record of Proceedings Under Article 15, UCMJ) and ends when the punishment is announced, or the proceedings are terminated. Except as authorized pursuant to paragraph 3–8*b*, the imposing commander must be the same person throughout this process.

(3) Commands include the following:

(a) Companies, troops, and batteries.

(b) Numbered units and detachments.

(c) Missions.

(d) Army elements of unified commands, subordinate unified commands (sub-unified), and joint task forces.

(e) Service schools.

(f) Area commands.

(4) Commands also include, in general, any other organization of the kind mentioned in paragraph 3–7*a*(1) (for example, a provisional unit designated pursuant to AR 220–5), the commander of which is the individual chiefly responsible for maintaining discipline in that organization. Thus, an infantry company, including while "separate or detached" (RCM 504(b)(2)(A)), is considered to be a command. However, an infantry platoon that is part of a company and is not "separate or detached" is not considered to be a command. Although a commissioned officer exercising command is usually designated as the commander, this position may be designated by various other titles having the same official connotation—for example, commandant, chief of mission, or superintendent. Whether an officer is, a commander is determined by the duties performed, not necessarily by the title of the position occupied.

b. Joint commanders and officers in charge. A joint commander or officer in charge, to whose command the members of the Army are assigned or attached, may impose NJP upon such Soldiers. A joint commander or officer in charge, alternatively, may designate one or more Army units and will, for each such Army unit, designate an Army commissioned officer as commanding officer for the administration of discipline pursuant to the UCMJ, Article 15. A copy of such designation will be furnished to OTJAG–CLD. When imposing NJP upon a Soldier in their command, a joint commander or officer in charge will apply the provisions of this regulation (see para 3–8*c*).

c. Delegation. The authority given to a commander pursuant to UCMJ, Article 15 is an attribute of command and may not be delegated except as provided in this paragraph. Pursuant to the authority of the Secretary of the Army provided in UCMJ, Article 15(a), the following rules with respect to the delegation of powers are declared:

(1) Any commander authorized to exercise GCM jurisdiction, or any commanding general (CG), may delegate that commander's or CG's powers, pursuant to UCMJ, Article 15, to one commissioned officer actually exercising the function of deputy or assistant commander. Instead of delegating powers pursuant to UCMJ, Article 15 to a deputy or assistant commander, a commander may delegate such powers to the command chief of staff, provided the chief of staff is a general officer or frocked to a general officer grade. An officer in command who is frocked to the grade of brigadier general is not a general officer in command as defined in MCM, 2024, and lacks the authority to impose some punishments, including

forfeitures and arrest upon commissioned officers (see MCM, 2024, table 3–1 of this regulation, and AR 600–8–29 for limitations on frocked officers).

(2) Authority delegated pursuant to paragraph 3–7*c*(1) may be exercised only when the delegate is senior in grade to the person punished. When acting as a superior authority on an appeal, a delegate need not be senior in grade to the imposing commander.

(3) Delegations of authority to exercise UCMJ, Article 15 powers will be made in writing; for example, by memorandum. Delegations will designate the officer on whom the powers are conferred by name and position. Unless limited by the terms of such delegation or by paragraph 3–7*c*(2), an officer to whom this authority is granted may exercise any power that is possessed by the officer who delegated the authority. Unless otherwise specified in the written authorization, a delegation of UCMJ, Article 15 authority will remain effective until—

(a) The officer who delegated the officer's powers ceases to occupy that position other than because of temporary absence;

(b) The officer to whom these powers have been delegated ceases to occupy the position wherein the officer was delegated such powers, other than because of temporary absence; or

(c) Notification that the delegation has been terminated is made in writing. A delegation does not divest the delegating officer of the right to personally exercise the delegating officer's UCMJ, Article 15 powers in any case in which the delegating officer desires to act. Although an appeal from the punishment imposed pursuant to a delegation of UCMJ, Article 15 powers will be acted on by the authority next superior to the delegating officer (see para 3–30), the latter may take action described in paragraph 3–32 (see MCM, 2024, and para 3–38 of this regulation).

d. Limitation of exercise of disciplinary authority by subordinates. Any commander having authority pursuant to UCMJ, Article 15 may limit or withhold the exercise of such authority by subordinate commanders. For example, the powers of subordinate commanders to exercise UCMJ, Article 15 authority over certain categories of military personnel, offenses, or individual cases may be reserved by a superior commander. A superior authority may limit or withhold any power that a subordinate might otherwise have pursuant to this paragraph.

3–8. Persons on whom nonjudicial punishment may be imposed

a. Military personnel of a commander's command. Unless such authority is limited or withheld by a superior competent authority, a commander may impose punishment pursuant to UCMJ, Article 15, on commissioned officers and other military personnel of a commander's command.

(1) For the purpose of UCMJ, Article 15, military personnel are considered to be "of the command" of a commander if they are—

(a) Assigned to an organization commanded by that commander.

(b) Affiliated with the command (by attachment, detail, or otherwise) pursuant to conditions, either expressed or implied, that indicate that the commander of the unit to which affiliated and the commander of the unit to which they are assigned are to exercise administrative or disciplinary authority over them.

(2) Under similar circumstances, a commander may be assigned territorial command responsibility so that all or certain military personnel in the area will be considered to be of the command for the purpose of UCMJ, Article 15.

(3) To determine if an individual is under the command of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer NJP to the commander of the unit with which the Soldier is affiliated or present (as when, for example, they contain no provision attaching the Soldier "for disciplinary purposes"), consider all attendant circumstances, such as—

(a) The phraseology used in the orders.

(b) When and where the Soldier slept, ate, performed duty, or received services or entitlements.

(c) The duration of the status and other similar factors.

(4) If orders or directives include such terms as "attached for the administration of military justice" or simply "attached for administration," the individual so attached will be considered to be of the command, of the commander, of the unit of attachment for the purpose of UCMJ, Article 15.

b. Termination of status. Once a member ceases to be part of the command, as outlined in paragraph 3–8*a*, the authority of the losing commander to impose NJP over that member terminates. However, if UCMJ, Article 15 proceedings have been initiated and punishment has not been imposed prior to the time of the change of the member's assignment, the commander who instituted the proceedings may transmit

the record of proceedings to the gaining commander for appropriate disposition. This only applies when the member changes command. Proceedings initiated prior to a change in the individual exercising command, whether temporary (under an acting commander) or permanent (change of command), the punishment may be imposed by a lawful successor-in-command.

c. Personnel of other armed services. An Army commander is not prohibited from imposing NJP on a military member of their command solely because the member is a member of another armed service. Other provisions of this regulation notwithstanding, an Army commander may impose punishment upon a member of another Service only under the circumstances and according to the procedures prescribed by the member's Service.

d. Persons serving with or accompanying an armed force in the field in time of declared war or contingency operation. Authority to impose punishment pursuant to UCMJ, Article 15 on persons subject to jurisdiction pursuant to UCMJ, Article 2(a)(10) is limited to those commanders described in chapter 27 of this regulation and as described in guidance provided in a Secretary of Defense Memorandum dated March 10, 2008, Subject: UCMJ Jurisdiction over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.

3–9. Minor offenses

Whether an offense is "minor" is a matter within the discretion of the commander imposing NJP. NJP for an offense other than a minor offense (even when thought by the commander to be minor) is not a bar to subsequent trial by court-martial for the same offense (see RCM 907(b)(2)(D)(iii)). However, the accused may show at trial that NJP was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence (see UCMJ, Article 15(f) and RCM 1001(d)(1)(B)).

3–10. Double punishment prohibited

When NJP has been imposed for an offense, punishment may not again be imposed for the same offense pursuant to UCMJ, Article 15. Once NJP has been imposed, it may not be increased, upon appeal or otherwise. When a commander determines that NJP is appropriate for a particular Servicemember, all known offenses determined to be appropriate for disposition by NJP and ready to be considered at that time, including all offenses arising from a single incident or course of conduct, except for offenses over which a special trial counsel has exercised authority and has not deferred, will ordinarily be considered together and not made the basis for multiple punishments. This provision does not restrict the right of the commander or special trial counsel, as applicable, to prefer court-martial charges for a non-minor offense previously punished pursuant to the provisions of UCMJ, Article 15.

3–11. Limitation on punishment after exercise of jurisdiction by civilian authorities

Commanders will, when contemplating NJP in cases where a civilian authority has exercised jurisdiction, comply with the provisions of chapter 4.

3–12. Statute of limitations

NJP may not be imposed for offenses that were committed more than two years before the date of imposition unless knowingly and voluntarily waived by the Soldier. Computation of this two-year limitation is in accordance with the UCMJ, Article 43. The statute of limitations does not run when the Soldier concerned is absent without authority, fleeing from justice, outside the territory where the United States has authority to apprehend, in the custody of civil authorities, or in the hands of the enemy.

Section III

Procedure

3–13. General

Commanders must impose NJP in an absolutely fair and judicious manner (see MCM, 2024).

3–14. Preliminary inquiry

a. Inquiry. Upon receipt of information that a Servicemember has committed an offense triable by court-martial, the Servicemember's immediate commander will, pursuant to RCM 303, cause, or conduct a

preliminary inquiry sufficient to make an appropriate initial disposition. Any allegations of sexual assault must be immediately referred to the U.S. Army Criminal Investigation Command (CID) for investigation. Any allegations of covered offenses must be immediately referred to special trial counsel. The requirements of AR 15–6 do not apply to preliminary inquiries conducted for the purpose of making an initial disposition. Interviews of suspected Servicemembers by the command are generally discouraged at this stage, and all such interviews must comply with the requirements of UCMJ, Article 31 and AR 15–6. A preliminary inquiry for disposition will be conducted expeditiously and may be accomplished through formal or informal witness interviews and a cursory review of available evidence, including police reports and other documents. Such a preliminary inquiry will, at a minimum, determine—

(1) Whether it is likely that an offense was committed.

(2) Whether it is likely that the Servicemember was involved.

(3) The character and military record of the Servicemember.

(4) Whether a referral to an appropriate investigative agency or special trial counsel is required.

b. Disposition. Upon completion of the preliminary inquiry and except for offenses over which a special trial counsel has exercised authority and has not deferred, the commander will make an initial disposition of the offense(s) in accordance with RCMs 306 and 306A. Commanders are encouraged to consult their legal advisor prior to disposing of any matter. Possible dispositions include—

(1) Closing the case without action.

(2) Referring the case to an appropriate investigative agency or special trial counsel.

(3) Ordering further investigation pursuant to AR 15–6.

(4) Referring the case to a superior commander.

(5) Taking appropriate punitive or administrative action.

3–15. Commander's guide for notification and imposition

In all cases, other than summarized proceedings, commanders should use appendix C of this regulation as a guide in conducting the proceedings.

3–16. Summarized proceedings

a. Preliminary inquiry.

(1) A commander, after a preliminary inquiry into an alleged offense, other than sex-related offenses and other than an offense over which a special trial counsel has exercised authority and has not deferred, by an enlisted Soldier, may use summarized proceedings if it is determined that, should the punishment be found to be appropriate, it should not exceed—

(a) Extra duties for 14 days.

(b) Restriction for 14 days.

(c) Oral reprimand or admonition.

(d) Any combination of the above.

(2) The DA Form 2627–1 will be used to record the proceedings. The rules and limitations concerning punishments in section IV and provisions regarding clemency in section V are applicable.

b. Notification and explanation of rights. If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or noncommissioned officer (NCO) (see para 3–18) or the commander personally will notify the Soldier of the following:

(1) The imposing commander's intention to initiate proceedings pursuant to UCMJ, Article 15.

(2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments that can be imposed pursuant to these proceedings.

(3) The right to remain silent.

(4) Offenses that the Soldier allegedly has committed and the articles of the UCMJ allegedly violated.

(5) The right to demand trial (see MCM, 2024). Soldiers will be advised that the Soldier has a right to demand trial and that the demand for trial must be made at the start of the hearing prior to any consideration, examination, or presentation of evidence. The Soldier's decision not to demand trial is irrevocable. The Soldier will be told that such a trial could be by summary court-martial (SCM), special court-martial (SPCM), or GCM. The Soldier will also be told that the Soldier may object to trial by SCM or, in certain situations, SPCM convened pursuant to UCMJ, Article 16(c)(2)(A). The Soldier will also be informed that at SPCM or GCM, the Soldier would be entitled to be represented by qualified military counsel or by civilian counsel obtained at no expense to the government.

(6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.

(7) The right to appeal.

c. Decision period. The Soldier will be given the opportunity to—

(1) Accept the UCMJ, Article 15 NJP.

(2) Request a reasonable time, normally 24 hours, to decide whether to demand a trial by court-martial and to gather matters in defense, extenuation, and/or mitigation. Because of the limited nature of the possible punishment, the Soldier has no right to consult with legally qualified counsel.

d. Hearing. Unless the Soldier demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing (see para 3–18*g*(1)). The hearing will consist of the following:

(1) Consideration of evidence, written, or oral, against the Soldier.

(2) Examination of available evidence by the Soldier.

(3) Presentation by the Soldier of the testimony of available witnesses or other matters in defense, extenuation, and/or mitigation.

(4) Determination of guilt or innocence by the imposing commander. Before finding a Soldier guilty, the commander must be convinced by a preponderance of the evidence that the Soldier committed the offense(s).

(5) Imposition of punishment or termination of the proceedings.

(6) Explanation of right to appeal if found guilty of any offense(s).

e. Appeal. The decision to appeal will be recorded in block 4, DA Form 2627–1. This will be done according to the procedures set forth in paragraph 3–31. The Soldier will be given a reasonable time (normally no more than five calendar days) within which to submit an appeal (see para 3–29). The Soldier may, pending submission and decision on the appeal, be required to undergo the punishment imposed, but once submitted, such appeal will be promptly decided. If the appeal is not decided within three calendar days, excluding the day of submission, and if the Soldier so requests, the further performance of any punishments involving deprivation of liberty will be interrupted pending the decision on the appeal.

f. Recording and filing of DA Form 2627–1. The proceedings will be summarized on DA Form 2627–1. These forms will be maintained locally in NJP files. They will be destroyed at the end of two years from the date of imposition of punishment or on the Soldier's transfer from the unit, whichever occurs first. A copy will be provided to the Soldier if a request is submitted during the filing period.

3–17. Formal proceedings

A commander, after a preliminary inquiry into an alleged offense by an enlisted Soldier, other than an offense over which a special trial counsel has exercised authority, or after deferral of an offense over which a special trial counsel has exercised authority, determines—

a. That the Soldier alleged to have committed an offense is an officer, or

b. That punishment, if it should prove to be appropriate, might exceed extra duties for 14 days, restriction for 14 days, oral reprimand or admonition, or any combination thereof, will proceed as set forth in paragraphs 3–18 and 3–19. All entries will be recorded on DA Form 2627.

3–18. Notification and explanation of rights

a. General. The imposing commander will ensure that the Soldier is notified of the commander's intention to dispose of the matter pursuant to the provisions of UCMJ, Article 15. The Soldier will also be notified of the maximum punishment that the commander could impose pursuant to UCMJ, Article 15. The Soldier will be provided a copy of DA Form 2627 with items 1 and 2 completed, including the date and signature of the imposing commander. The imposing commander may authorize a commissioned officer or NCO (sergeant first class or above), provided such person is senior to the Soldier being notified, to deliver (but not sign) the DA Form 2627 and inform the Soldier of the Soldier's rights. The NCO performing the notification should ordinarily be the unit first sergeant or the senior NCO of the command concerned. If it is not possible or practical for an officer or NCO senior to the Soldier to deliver the DA Form 2627 and inform the Soldier of their rights, any JA may complete the notification process. In such cases, the notifier should follow the steps in appendix C. The Soldier will be provided with a copy of DA Form 2627 and supporting documents and statements for use during the proceedings. The Soldier will return the copy to the commander for annotation. It will be given to the Soldier for retention when all proceedings are completed.

b. Right to remain silent. The Soldier will be informed that—

(1) The Soldier is not required to make any statement regarding the offense(s) the Soldier is alleged to have committed, and

(2) Any statement made may be used against the Soldier in the UCMJ, Article 15 proceedings, or in any other proceedings, including a trial by court-martial.

c. Right to counsel. The Soldier will be informed of the right to consult with counsel and the location of counsel. The right to consult with counsel includes consultation in deciding whether or not to demand a trial and consultation regarding an appeal. The right to consult with counsel will not unreasonably delay the proceedings. For the purpose of this chapter, counsel means the following: a JA, a Department of Army Civilian attorney, or an officer who is a member of the bar of a Federal court or of the highest court of a state, provided that counsel within the last two categories are acting under the supervision of either USATDS or a staff or command JA.

d. Right to demand a trial. Any other Soldier will be advised that the Soldier has a right to demand a trial. The demand for trial may be made at any time prior to any consideration, examination, or presentation of evidence. The Soldier will be told that if the Soldier demands a trial, a trial could be by SCM, SPCM, or GCM. The Soldier will also be told that the Soldier may object to trial by SCM or, in certain situations, SPCM convened pursuant to UCMJ, Article 16(c)(2)(A). The Soldier will also be informed that at SPCM or GCM, the Soldier would be entitled to be represented by qualified military counsel or by civilian counsel obtained at no government expense.

e. Other rights. The Soldier will be informed of the right to—

(1) Fully present the Soldier's case in the presence, except in rare circumstances, of the imposing commander (see para 3–18*g*).

(2) Call witnesses (see MCM, 2024).

(3) Present evidence.

(4) Request that the Soldier be accompanied by a spokesperson (see para 3–18*h*).

(5) Request an open hearing (see para 3–18*g*).

(6) Examine available evidence.

f. Decision period.

(1) If the Soldier requests a decision period, the Soldier will be given a reasonable time to consult with counsel, including time off from duty, if necessary, to decide whether or not to demand a trial. The decision period will not begin until the Soldier has received actual notice and explanation of rights pursuant to UCMJ, Article 15 and has been provided a copy of DA Form 2627 with items 1 and 2 completed as well as the supporting evidence (see para 3–18*a*). The Soldier will be advised that if the Soldier demands a trial, block 3a of DA Form 2627 must be initialed, and item 3 must be signed and dated within the decision period; otherwise, the commander will proceed pursuant to UCMJ, Article 15. The decision period should be determined after considering factors such as the complexity of the case and the availability of counsel. Normally, 48 hours is a reasonable decision period. If the Soldier does not request a delay, the commander may continue with the proceedings immediately. If the Soldier requests a delay, the Soldier may, but only for a good reason, be allowed an additional period, to be determined by the imposing commander, to decide whether to demand a trial. If a new imposing commander takes command after a Soldier has been notified of the original imposing commander's intent to impose punishment, the Soldier will be notified of the change. The Soldier will again be given a reasonable decision period in which to consult with counsel. In either case, item 10 of DA Form 2627 will contain the following: "Para 3–18f(1), AR 27–10 complied with."

(2) Before deciding whether to demand a trial, the Soldier is not entitled to be informed of the type or amount of punishment the Soldier will receive if NJP is ultimately imposed. The Soldier will be informed of the maximum punishment that may be imposed pursuant to UCMJ, Article 15, and, on the Soldier's request, of the maximum punishment that can be adjudicated by court-martial on conviction of the offense(s).

(3) If the Soldier demands trial by court-martial on any offense, no further action will be taken to impose NJP for that offense unless the Soldier's demand is voluntarily withdrawn. Whether court-martial charges will be preferred against the Soldier for the remaining offense(s) and the level of court-martial selected will be resolved by the appropriate commander or special trial counsel, as applicable. A Soldier's demand for trial by court-martial will not bar the disposition of minor offenses by nonpunitive measures by the appropriate commander, except for offenses over which a special trial counsel has exercised authority and has not deferred.

(4) If the Soldier does not demand trial by court-martial prior to the expiration of the decision period, including any extension of time, the imposing commander may continue the proceedings. The imposing commander also may continue the proceedings if the Soldier, even though demanding trial, refuses to complete or sign item 3, DA Form 2627, within the prescribed time. In such instances, the Soldier will be informed that failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the Soldier persists in the Soldier's refusal, and punishment is imposed, in addition to recording the punishment, the following entry will be made on DA Form 2627: "Advised of their rights, the Soldier (did not demand trial during the decision period) (refused to (complete) (sign) item 3)."

g. Hearing.

(1) The Soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander, except when appearance is prevented by the unavailability of the commander or by extraordinary circumstances (for example, the Soldier is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander). When a personal appearance is requested but is not granted, the imposing commander will appoint a commissioned officer to conduct the hearing and make a written summary and recommendations. The Soldier will be entitled to appear before the officer designated to conduct the hearing (see MCM, 2024). Within the limitations of AR 27–26, JAs may attend Article 15 proceedings and provide advice to clients. Advice should be provided during a recess in the proceedings. When defense counsel, military, or civilian, act as spokespersons, they speak on behalf of the accused and do not serve in a representative capacity.

(2) Ordinarily, hearings are open. The UCMJ, Article 15 proceedings are not adversarial in nature. However, a Soldier may request an open or closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed (see MCM, 2024). An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business—that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that Soldier requests and is granted a closed hearing does not preclude the announcement of punishment as provided in paragraph 3–22. The fact that a closed hearing has been granted does not preclude the appearance of witnesses. The commander may grant a request for a closed hearing yet allow the attendance of certain members of the chain of command or others deemed appropriate to the conduct of the proceedings.

(3) SJAs or their representatives who attend UCMJ, Article 15 proceedings in their official capacity will strictly comply with AR 27–26.

h. Spokesperson. The person who may accompany the Soldier to the Article 15 proceedings and who speaks on the Soldier's behalf need not be a lawyer. An offender has no right to legal counsel during the nonjudicial proceedings. The Soldier may retain civilian counsel to act as the Soldier's spokesperson at no cost to the government. However, the commander need not grant a delay for the appearance of any spokesperson to include civilian counsel so retained. No travel fees or any other costs may be incurred at government expense for the presence of the spokesperson. The spokesperson's presence is voluntary. Because the proceedings are not adversarial in nature, neither the Soldier nor the spokesperson (including any attorney present on behalf of the Soldier) may examine or cross-examine witnesses unless permitted by the imposing commander. However, the Soldier or spokesperson may indicate relevant issues or questions they wish to explore or ask the imposing commander.

i. Witnesses. The Soldier's request for witnesses in defense, extenuation, or mitigation will be restricted to those witnesses reasonably available, as determined by the imposing commander. To determine whether a witness is reasonably available, the imposing commander will consider the fact that neither witness nor transportation fees are authorized. Reasonably available witnesses will ordinarily include only personnel at the installation concerned and others whose attendance will not unnecessarily delay the proceedings.

j. Evidence. The imposing commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the offense.

k. Action terminating proceedings. If, after evaluation of all pertinent matters, the imposing commander determines that NJP is not warranted, the Soldier will be notified that the proceedings have been terminated, and all copies of DA Form 2627 will be destroyed.

l. Imposition of punishment. Punishment will not be imposed unless a preponderance convinces the commander of the evidence that the Soldier committed the offense(s). If the imposing commander decides to impose punishment, ordinarily, the commander will announce the punishment to the Soldier. If the commander desires to do so, the commander may explain to the Soldier why a particular punishment was imposed.

m. Right to appeal. The appellate rights and procedures that are available to the Soldier will be explained.

Section IV

Punishment

3–19. Rules and limitations

a. Whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. However, commanders are encouraged to consult their NCOs on the appropriate type, duration, and limits of punishment to be imposed. Additionally, as NCOs are often in the best position to observe a Soldier undergoing punishment and evaluate daily performance and attitude, their views on clemency should be given careful consideration.

b. Pursuant to the authority of the Secretary of the Army, as set forth in MCM, 2024, the following additional rules and limitations concerning the kinds and amounts of punishment authorized pursuant to the UCMJ, Article 15 apply (see also table 3–1 of this regulation):

(1) *Correctional custody.* Any commander may impose correctional custody unless the authority to impose has been withheld or limited by a superior authority. Before imposing correctional custody, the commander will ensure adequate facilities exist, as AR 190–47 describes, to carry out the punishment. The responsibilities, policies, and procedures concerning the operation of correctional custody facilities are contained in AR 190–47. Soldiers in the rank of specialist (SPC), corporal (CPL), or above may not be placed in correctional custody. However, if an unsuspended reduction to the rank of private first class or below is imposed pursuant to the UCMJ, Article 15, correctional custody may also be imposed. Time spent in correctional custody does not constitute lost time (see 10 USC 972).

(2) *Restriction.* Restriction may be imposed with or without suspension from duties. Normally, the restriction's limits should be announced when punishment is imposed. However, the imposing commander, a successor-in-command, and any superior authority may change the specified limits of restriction; for example, if a Soldier is transferred or assigned duties at another location after imposition and before the term of restriction is completed. The limits of restriction, as changed, will generally be no more restrictive (unless required by military exigencies) than the limits originally imposed.

(3) *Arrest in quarters.* A commissioned officer undergoing this punishment may be required to perform any military duty not involving the exercise of command. During field exercises, an officer’s quarters are those normally occupied by officers of a similar grade and duty position. If a commissioned officer in arrest in quarters is placed on duty involving the exercise of command by an authority with knowledge of the arrest status in quarters, that status is thereby terminated.

(4) *Extra duties.* Extra duties may be required to be performed at any time and, within the duration of the punishment, for any length of time. No extra duty may be imposed that—

(a) Constitutes cruel or unusual punishment or punishment not sanctioned by the customs of the Service; for example, using the offender as a personal servant.

(b) Is a duty normally intended as an honor, such as assignment to a guard of honor.

(c) Is required to be performed in a ridiculous or unnecessarily degrading manner; for example, an order to clean a barracks floor with a toothbrush.

(d) Constitutes a safety or health hazard to the offender.

(e) Would demean the Soldier’s position as an NCO or SPC (see AR 600–20).

(5) *Reduction in grade.*

(a) Promotion authority. The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has “promotion authority” within the meaning of UCMJ, Article 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade (see AR 600–8–19).

(b) Date of rank. When a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If the

reduction is suspended either on or after the punishment was imposed or is set aside or mitigated to forfeiture, the offender's date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of the reduction is vacated, the offender's date of rank in the grade to which reduced as a result of the vacation action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated.

(c) Entitlement to pay. When a Soldier is restored to a higher pay grade because of a suspension or when a reduction is mitigated to a forfeiture, entitlement to pay at the higher grade is effective on the date of the suspension or mitigation. This is true even though an earlier date of rank is assigned. If a reduction is set aside and all rights, privileges, and property are restored, the Soldier concerned will be entitled to pay as though the reduction had never been imposed.

(d) Void reduction. Any portion of a reduction pursuant to UCMJ, Article 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where a commander reduces a Soldier below a grade to which the commander is authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at least one grade, a one grade reduction may be executed. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

(e) Removal from standing promotion lists. See AR 600–8–19.

(6) *Forfeiture of pay.*

(a) Limitations. The amount of forfeiture of pay will be rounded to the next lower whole dollar. Forfeitures imposed by a company grade commander may not be applied for more than one month, while those imposed by a field grade commander may not be applied for more than two months. For example, a company grade commander may impose a forfeiture of 7 days' pay for one month but may not impose a forfeiture of 3 days' pay per month for two months (see table 3–1). If forfeiture of pay has been imposed in addition to a suspended or unsuspended reduction in grade, the amount forfeited will be limited to the amount authorized for the reduced grade. The maximum forfeiture of pay to which a Soldier is subject during a given month because of one or more actions pursuant to UCMJ, Article 15, is one-half of the Soldier's pay per month. The UCMJ, Article 15 forfeitures will not (in conjunction with partial forfeitures adjudged by court-martial) deprive a Soldier of more than two-thirds of the Soldier's monthly pay (see DoD 7000.14–R).

(b) Retired Soldiers. Forfeitures imposed pursuant to UCMJ, Article 15 may be applied against a Soldier's retirement pay.

(7) *Combination and apportionment.* With the following exception, punishment authorized pursuant to UCMJ, Article 15(b) may be combined: No two or more punishments involving deprivation of liberty may be combined, in the same NJP proceedings, to run either consecutively or concurrently, except that restriction and extra duty may be combined in any manner to run for a period not exceeding the maximum duration that can be imposed for extra duty, by the imposing commander. Once commenced, deprivation of liberty punishments will run continuously, except where temporarily interrupted due to the fault of the Soldier, or if the Soldier is physically incapacitated, or where an appeal is not acted on as prescribed in paragraph 3–21*b* (see para 3–21*c* regarding the circumstances when deprivation of liberty punishments, imposed in separate NJP proceedings may run consecutively).

(8) *Format for punishments.* The formats shown below should be used when entering punishments in item 6 of DA Form 2627. When more than one punishment is imposed during any single UCMJ, Article 15 proceeding, punishments should be listed in the following order, as appropriate, reduction, forfeiture of pay, deprivation of liberty, and admonition/reprimand.

(a) Reduction. The reduction should be entered on DA Form 2627 as follows: Reduction to (rank) (pay grade), for example, "Reduction to Specialist (E–4)."

(b) Forfeitures. Forfeiture of pay should be entered on DA Form 2627 (see MCM, 2024). For example, when the forfeiture is to be applied for not more than one month: "Forfeiture of $" or when the forfeiture is to be applied for more than one month: "Forfeiture of $ per month for 2 months."

(c) Deprivation of liberty. Specific duties to be performed during extra duty are not normally specified on either DA Form 2627 or DA Form 2627–1. Limits on restriction may be listed on either DA Form 2627 or DA Form 2627–1 but are not required. For example, "Extra duty for (number) days, restriction for (number) days," or "Extra duty for (number) days, restriction to the limits of _____for (number) days."

(d) Admonition and reprimand. Admonitions or reprimands imposed on commissioned officers must be in writing (see MCM, 2024). Admonitions or reprimands imposed on enlisted Soldiers pursuant to formal

proceedings may be administered orally or in writing. Written admonitions and reprimands imposed as a punitive measure pursuant to UCMJ, Article 15 will be in memorandum format (see AR 25 –50) and will be listed as an attachment in item 10, DA Form 2627. Oral admonitions and reprimands will be identified as such in either item 6 on DA Form 2627 or item 2 on DA Form 2627–1.

Table 3–1
Maximum punishments for enlisted members and commissioned officers—Continued

Maximum punishment	Imposed by company grade officers	Imposed by field grade officers and general officers (not in command)	Imposed by general officers in command or GCMCAs[1]
For enlisted members[2]-- Admonition/reprimand	Yes	Yes	Yes
AND Extra Duties	14 days	45 days	45 days
AND Restriction	14 days	60 days	60 days
OR Correctional custody[3] (E–1 through E–3)	7 days	30 days	30 days
AND Reduction (E–1 through E–4) Reduction (E–5 through E–6)	one grade not applicable	one or more grades one grade in peace time[4]	one or more grades one grade in peace time[4]
AND Forfeiture	7 days' pay	1/2 month's pay for 2 months	1/2 month's pay for 2 months
For commissioned officers— Admonition/reprimand[5]	Yes	Yes	Yes
AND Arrest in quarters	No	No	30 days
OR Restriction	30 days	30 days	60 days
AND Forfeiture	No	No	1/2 month's pay for 2 months
Computing monthly authorized forfeitures of pay pursuant to UCMJ, Art 15			
For forfeiture on enlisted persons—	When forfeiture is imposed by an O–4 or above--	Use the formula—-	(Monthly basic pay[6, 7]) divided by 2 = the maximum forfeiture per month. The amount will be rounded to the next lower whole dollar.
	When forfeiture is imposed by an O–3 or below--	Use the formula—	(Monthly basic pay[6, 7]) x 7 divided by 30 = the maximum forfeiture per month. The amount will be rounded to the next lower whole dollar.
For forfeiture on commissioned officers—	When forfeiture is imposed by an officer with GCM jurisdiction or by a general officer in command—	Use the formula—	(Monthly basic pay) divided by 2 = the maximum forfeiture per month. The amount will be rounded to the next lower whole dollar.

Notes:

[1] CG s and GCMCAs may delegate Article 15 authority to a commissioned officer actually exercising the function of deputy or assistant commander. A commander may instead delegate powers pursuant to UCMJ, Article 15, to the chief of staff of the command, provided the chief of staff is a general officer.

[2] The maximum punishment that can be imposed by any commander pursuant to summarized procedures will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand, or any combination thereof. Combinations of extra duty and restriction cannot exceed the maximum allowed for extra duty.

[3] Subject to limitation imposed by superior authority and presence of adequate facilities pursuant to AR 190–47. If punishment includes a reduction to E–3 or below, the reduction must be unsuspended.

[4] Only if imposed by a field grade commander of a unit authorized a commander in the grade of O–5 or higher. In the Reserve Component, reduction is only authorized from grade E–5. For RC Soldiers of grade E–6 and higher, a reduction is only authorized if the grade from which the Soldier is reduced is within the promotion authority of the officer imposing the reduction.

[5] In the case of commissioned officers and warrant officers, admonitions, and reprimands given as NJP must be administered in writing (see Part V, paragraph 5c(1), MCM, 2024).

[6] Amount of forfeiture is computed at the reduced grade, even if suspended if a reduction is part of the punishment imposed. RC Soldiers use monthly basic pay for the grade and time in service of a Regular Army (RA) Soldier (see para 20–9).

[7] At the time punishment is imposed.

3–20. Effect on promotable status

See AR 600–8–19 and AR 600–8–2.

3–21. Effective date and execution of punishments

a. General. The date of imposition of NJP is the date items 4 and 5 on DA Form 2627, or items 1 through 3 on DA Form 2627–1, as appropriate, are signed by the imposing commander. This action normally will be accomplished on the day punishment is imposed.

b. Unsuspended punishments. Unsuspended punishments of reduction and forfeiture of pay take effect on the date imposed. Other unsuspended punishments take effect on the date they are imposed unless the imposing commander prescribes otherwise. In those cases where the execution of the punishment legitimately must be delayed (for example, the Soldier is hospitalized, placed on quarters, authorized emergency leave, while on a brief period of temporary duty (TDY) or a brief field problem, or in the case of U.S. Army Reserve (USAR) Soldiers any periods that may intervene from times when they are in a Title 10 duty status), the execution of the punishment should begin immediately thereafter. Except as provided in paragraph 3–21*c*, the delay in executed punishment should not exceed 30 days, or in the case of USAR Soldiers, should not exceed the period that would include the next 30 days (however interrupted) in which that USAR Soldier is in a Title 10 duty status. Once the Soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within five calendar days, if practicable (3 days for summarized proceedings), or in the case of USAR Soldiers, that period which will encompass the next five days of Title 10 duty status for the appellate commander concerned, excluding the submission date. If the appeal is not decided within this period and if the Soldier so requests, the performance of those punishments involving deprivation of liberty will be interrupted pending the decision on the appeal. Punishments involving deprivation of liberty include restriction, extra duty, arrest in quarters, and correctional custody. Pursuant to the provisions of AR 190–47, correctional custody may be imposed only when a suitable correctional facility is available.

c. Additional punishment. If a Soldier to be punished is currently undergoing punishment or deprivation of liberty pursuant to a prior UCMJ, Article 15 or court-martial, an imposing commander may prescribe additional punishment involving deprivation of liberty to begin after completion of the earlier punishment.

d. Vacated suspended reduction. A suspended reduction, later vacated, is effective on the date the vacation is directed (see para 3–19*b*(5)(*b*)) for determination of the date of rank).

e. Execution of punishment. Any commanding officer of the person to be punished may, subject to paragraph 3–19 and any other limitations imposed by a superior authority, order the punishment to be executed in such a manner and pursuant to such supervision as the commander may direct.

3–22. Announcement of punishment

The imposition of NJP may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. Commanders may also elect to post NJP results on the unit bulletin board. In every case, the SSN of the punished Soldier and all other relevant privacy information about any individual will be deleted before NJP results are announced or posted. The purpose of announcing the results of punishments is to preclude perceptions of punishment's unfairness and deter similar misconduct by other Soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. Where punishment has been imposed for sexual harassment or a sex-related offense, commanders will publish the results of the NJP, regardless of the rank of the Soldier. For all other offenses, in deciding whether to announce punishment of Soldiers in the grade of SGT or above, the following should be considered:

a. The nature of the offense.

b. The individual’s military record and duty position.

c. The deterrent effect.
d. The impact on unit morale or mission.
e. The impact on the victim.
f. The impact on the leadership effectiveness of the individual concerned.

Section V

Suspension, Vacation, Mitigation, Remission, and Setting Aside

3–23. Clemency

a. General. The imposing commander, a successor-in-command, or the next superior authority may, within the time prescribed in the MCM, 2024—

(1) Remit or mitigate any part or amount of the unexecuted portion of the punishment imposed.

(2) Mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay.

(3) At any time, suspend probationally any part or amount of the unexecuted portion of the punishment imposed.

(4) Suspend probationally a reduction in grade or forfeiture, whether, or not executed. An uncollected forfeiture of pay will be considered unexecuted.

b. Meaning of "successor-in-command." As used in MCM, 2024, a successor-in-command is the officer who has the authority to impose the same kind and amount of punishment on a Soldier concerned that was initially imposed or was the result of a modification and who—

(1) Commands the unit to which the punished Soldier is currently assigned or attached (see para 3–8);

(2) Is the commander succeeding to the command occupied by the imposing commander, provided the Soldier still is of that command; or

(3) Is the successor to the delegate who imposed the punishment, provided the same authority has been delegated pursuant to paragraph 3–7*c*, to that successor and the Soldier is still of that command.

c. Installation Management Command garrison units. Clemency for Soldiers assigned to IMCOM garrison units will be processed through the installation senior commander's Army command (ACOM), Army service component command (ASCC), or direct reporting unit (DRU) chains of command, as necessary and appropriate.

d. Recording of action. Any action of suspension, mitigation, remission, or setting aside (see para 3–28) taken by an authority will be recorded in item 8 on DA Form 2627 and in item 5 on DA Form 2627–1 or DA Form 2627–2 (Record of Supplementary Action Under Article 15, UCMJ), (see para 3–38b).

3–24. Suspension

Ordinarily, punishment is suspended to allow a period during which a Soldier may show that the Soldier deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date imposed. Suspension of punishment may not be for a period longer than six months from the suspension date. In the case of a summarized proceeding pursuant to paragraph 3–16, suspensions of punishment may not be for a period longer than three months from the date of suspension. Further misconduct by the Soldier within the period of the suspension may be grounds for vacation of the suspended portion of the punishment (see para 3–25). Unless otherwise stated, an action suspending a punishment automatically includes a condition that the Soldier does not violate any punitive article of the UCMJ.

3–25. Vacation of suspension

a. Vacation is the act of removing a punishment's suspension, allowing the previously suspended punishment to go into effect.

(1) A commander may vacate any suspension (see MCM, 2024), provided the suspended punishment is of the type and amount the commander could impose and where the commander has determined the Soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period.

(2) The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the misconduct.

(3) There is no appeal from a decision to vacate a suspension.

(4) The suspended punishment will be automatically remitted without further action at the expiration of the stated period of suspension unless the commander initiates a new adverse action flag prior to the end of the suspension date. The imposing commander then has ten duty days from the imposition of the adverse action flag to vacate the suspension, even if the suspension period would have otherwise expired.

(5) The death, discharge, or separation from service of the Soldier punished prior to the expiration of the suspension automatically remits the suspension.

(6) Misconduct resulting in a vacation of a punishment's suspension may also form the basis for the imposition of separate NJP.

b. Commanders will observe the following procedures in determining whether to vacate a punishment's suspension:

(1) If the suspended punishment is of the kind set forth in UCMJ, Article 15(e)(1) through (7), the Soldier should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut the information on which the proposed vacation is based. If appearance is impracticable, the Soldier should nevertheless ordinarily be given notice of the proposed vacation and an opportunity to respond.

(2) In cases involving punishments not set forth in UCMJ, Article 15(e)(1) through (7), the Soldier will be informed of the basis of the proposed vacation and should be given an opportunity to respond, either orally or in writing.

(3) If the Soldier is absent without leave at the time the commander proposes vacation and remains so, the commander, after 14 days from the date the Soldier departed absent without leave or on the last day of the suspension period, whichever is earlier, may, at the commander's discretion, vacate the suspension without providing notice or any opportunity to respond.

(4) The following will be recorded on DA Form 2627–1 or DA Form 2627–2 (see para 3–38b):

(a) Action vacating a suspension, to include the basis for vacation.

(b) Whether or not the Soldier appeared or was otherwise provided an opportunity to respond.

(c) An explanation, if the Soldier did not appear, in a case involving vacation of a punishment's suspension listed in UCMJ, Article 15(e)(1) through (7) or, in other cases, if the Soldier was not provided an opportunity to respond.

(d) Failure to provide notification and an opportunity to appear or to otherwise respond to the basis of a proposed vacation may result in the record of punishment being inadmissible in a subsequent court-martial. Still, it will not, by itself, render a vacation action void.

3–26. Mitigation

a. General.

(1) Mitigation is a reduction in either the quantity or quality of punishment. For example, a punishment of correctional custody for 20 days could be reduced to correctional custody of ten days or to restriction for 20 days. The general nature of the punishment remains the same. The first action lessens the quantity, and the second lessens the quality, with both mitigated punishments remaining of the same general nature as correctional custody, that is, deprivation of liberty. However, mitigation of ten days of correctional custody to 14 days of restriction would not be permitted because the quantity of punishment is increased.

(2) A forfeiture of pay may be mitigated to a lesser forfeiture of pay. A reduction may be mitigated to forfeiture of pay (but see para 3–19*b*(6)(*a*)). When mitigating reduction to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed initially, based on the restored grade, by the officer who imposed the mitigated punishment.

b. Appropriateness. Mitigation is appropriate when—

(1) The recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of the punishment.

(2) The punishment imposed was disproportionate to the offense or the offender.

c. Limitation on mitigation.

(1) With the exception of a reduction in grade, the power to mitigate exists only with respect to a punishment or portion thereof that is unexecuted. A reduction in grade may be mitigated to forfeiture of pay even though it has been executed. When correctional custody or other punishments (in the nature of deprivation of liberty) are mitigated to lesser punishments of this kind, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was initially

imposed. For example, when a person is given 15 days of correctional custody and has served five days of this punishment and correctional custody is mitigated to extra duties or restriction, or both, the mitigated punishment may not exceed a period of 10 days.

(2) Although a suspended punishment may be mitigated to a punishment of a lesser quantity or quality (which is also suspended for a period not greater than the remainder of the period for which the punishment was suspended), it may not, unless the suspension is vacated, be mitigated to an unsuspended punishment (see para 3–26*a*(2) for the time period within which reduction ordinarily may be mitigated, if appropriate, to a forfeiture of pay).

3–27. Remission

Remission is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on the imposition and thus cannot be remitted but may be mitigated (see para 3–26) or set aside (see para 3–28). The death, discharge, or separation from the Service of the Soldier remits any unexecuted punishment. A Soldier punished pursuant to UCMJ, Article 15 will not be held beyond the Soldier's expiration of term of service to complete any unexecuted punishment.

3–28. Setting aside and restoration

a. Setting aside and restoration is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside, and any rights, privileges, or property affected by the portion of the punishment set aside are restored. NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual pursuant to UCMJ, Article 15. In addition, the imposing commander or successor-in-command may set aside some or all of the findings in a particular case. If all findings are set aside, then the UCMJ, Article 15 itself, is set aside and removed from the Soldier's records. The basis for any set aside action is a determination that, under all the circumstances of the case, the imposition of the UCMJ, Article 15, or punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. For example, the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include exemplary performance of service subsequent to the punishment or a future adverse effect the punishment may have on the retention or promotion potential of the Soldier.

b. Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

c. In cases where administrative error results in incorrect entries on DA Form 2627 or DA Form 2627–1, the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

d. The power to set aside an executed punishment and mitigate a grade reduction to forfeiture of pay, absent unusual circumstances, will be exercised only within four months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action on DA Form 2627–2 (see para 3–38b). When a commander sets aside any portion of the punishment after four months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set aside action.

Section VI

Appeals

3–29. General

a. Only one appeal is permissible pursuant to UCMJ, Article 15 proceedings. Provisions for other administrative relief measures are contained in paragraph 3–43. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than five calendar days after the punishment is imposed will be presumed untimely unless the superior commander, in the superior commander's sound discretion for good cause shown, determines it to be timely.

b. If, at the time of imposition of punishment, the Soldier indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5-day period.

Although a suspended punishment may be appealed, no appeal is authorized from the vacation of suspended punishment.

3–30. Who may act on an appeal

a. The next superior authority to the commanding officer who imposed NJP will act on an appeal if the Soldier punished is still under the command of that officer at the time of appeal. If the commander acted pursuant to a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the Soldier is no longer of the imposing commander's command, the authority next superior to the commander of the imposing command (who can impose the same kind and amount of punishment as that imposed or resulting from subsequent modifications) will act on the appeal.

b. The authority "next superior" to an imposing commander is normally the next superior in the chain of command or such other authority as may be designated by competent authority as the next superior for the purposes of UCMJ, Article 15. Appeals pursued by Soldiers from punishments imposed by commanders on installations managed by IMCOM will be processed through ACOM, ASCC, or DRU chains of command as necessary and appropriate. A superior authority who exercises GCM jurisdiction, or is a general officer in command, may delegate superior authority pursuant to UCMJ, Article 15(e), to a commissioned officer of the superior authority's command subject to the limitations in paragraph 3–7*c*. Regardless of the grade of the imposing commander, TJAG is delegated the authority next superior for acting on appeals when no intermediate superior authority is reasonably available. Such appeals will be forwarded to OTJAG–CLD.

c. When forwarding a UCMJ, Article 15 record of punishment to TJAG for action on appeal, the imposing commander or successor-in-command will review the appeal to determine if action pursuant to paragraph 3–32, is warranted. If the imposing commander determines that no additional action is appropriate, the record of punishment will be forwarded directly. Included with the UCMJ, Article 15 report should be any evidence considered by the imposing commander. If the appeal raises any new matters, they should be addressed by the commander in the forwarding documentation.

d. When an Army commander imposes NJP on a member of another Service, the authority next superior will be the authority prescribed by the member's Service. Other provisions of this regulation notwithstanding, an appeal by such a member will be processed according to procedures contained in the governing regulation of the member's Service.

e. When a commander of another Service imposes NJP upon a Soldier, the authority's next superior need not be an Army officer. However, the next superior commander, for purposes of appeals processed pursuant to this regulation, must have an Army JA assigned to the commander's staff or the staff of the commander's supporting headquarters (HQ). When acting on the Soldier's appeal, the Army JA will advise the commander on the appellate procedures prescribed by this regulation and will advise the other than Army commander to ensure compliance with paragraph 3–34.

3–31. Procedure for submitting an appeal

All appeal notifications will be made on DA Form 2627 or DA Form 2627–1 and forwarded through the imposing commander or successor-in-command, when applicable, to the superior authority. The superior authority will act on the appeal unless otherwise directed by a competent authority. The Soldier may attach documents to the appeal for consideration. A Soldier is not required to state reasons for the Soldier's appeal; however, the Soldier may do so. For example, the person may state the following in the appeal:

a. Based on the evidence, the Soldier does not believe the Soldier is guilty.

b. The punishment imposed is excessive, or a certain punishment should be mitigated or suspended.

3–32. Action by the imposing commander or the successor-in-command

The imposing commander or the successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see para 3–33 and MCM, 2024). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded on item 8 of DA Form 2627 or item 5 of DA Form 2627–1. The appellant will be advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal may attach any matter in rebuttal of assertions made by the Soldier. When the Soldier desires to appeal, the imposing commander, or the successor-in-command, will

make available to the Soldier reasonable assistance in preparing the appeal and will promptly forward the appeal to the appropriate superior authority.

3–33. Action by the superior authority

Action by the superior authority on appeal will be entered in item 8 on DA Form 2627 or item 5 on DA Form 2627–1. A superior authority will act on the appeal expeditiously. Once the Soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within five calendar days, if practicable (3 days for summarized proceedings). The superior authority may conduct an independent inquiry into the case. The superior authority may refer an appeal in any case to a JA for consideration and advice before taking action; however, the superior authority must refer an appeal from certain punishments to a JA, whether, or not suspended. In acting on an appeal, the superior authority may exercise the same powers as may be exercised by the imposing commander or the imposing commander's successor-in-command. A timely appeal does not terminate merely because a Soldier is discharged from the Service. It will be processed to completion by the superior authority.

3–34. Action by a judge advocate

a. When an appeal is referred to a JA, the superior authority will be advised either orally or in writing of the JA's opinion on—

(1) The appropriateness of the punishment.

(2) Whether the proceedings were conducted pursuant to law and regulations.

b. If the advice is given orally, that fact and the name of the JA who rendered the advice will be recorded in item 7 of DA Form 2627.

c. The JA is not limited to an examination of written matters of the record of proceedings and may make any necessary inquiries.

d. The JA rendering the advice should be the JA providing legal advice to the officer taking action on the appeal.

3–35. Action by superior authority regardless of appeal

Any superior authority may exercise the same powers as may be exercised by the imposing commander or the imposing commander's successor-in-command, whether or not an appeal has been made from the punishment (see MCM, 2024). "Any superior authority" has the same meaning as that given to the term "authority next superior" in paragraph 3–30, except that it also includes any authority superior to that authority. A Soldier has no right to petition for relief pursuant to this paragraph, and any petition so made may be summarily denied by the superior authority to whom it is addressed.

Section VII

Records of Punishment, DA Form 2627

3–36. Records of punishment

All actions taken pursuant to UCMJ, Article 15, including notification, acknowledgment, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings, will be recorded on DA Form 2627. The DA Form 2627 is a record of completed actions, and either the DA Form 2627 or a duplicate as defined in Military Rule of Evidence (MRE) 1001(e) may be considered for use at courts-martial or administrative proceedings independently of any written statements or other documentary evidence considered by an imposing commander, a successor, or a superior authority.

3–37. Distribution and filing of DA Form 2627 and allied documents

a. General. The original DA Form 2627 will include as allied documents all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal (see para 3–37*g*). The servicing legal office will transmit copies of the DA Form 2627 to the Soldier's military personnel division (MPD) or the unit personnel office and to the servicing Defense Military Pay Office (DMPO). The DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) will be submitted per AR 600–8–2. Standard instructions for distributing and filing forms for commissioned officers and enlisted Soldiers serving on active duty (AD) are below.

b. Original of DA Form 2627.

(1) *Place of filing.* For Soldiers who are at the rank of SPC or CPL and below (prior to punishment), the original will be filed locally in unit NJP or unit personnel files. Local unit NJP or unit personnel files are separate from (Military Justice Online) MJO and do not include the unit paralegal specialist copy described in paragraph 3–37*h*. If the Soldier has been found guilty of a sex-related offense, as set forth in paragraph 3–6, the document must be filed in the performance portion in the Soldier's AMHRR. Locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the Soldier's permanent change of station or permanent reassignment to another GCMCA, whichever occurs first. For these Soldiers, the imposing commander should annotate item 4b of DA Form 2627 as "not applicable (N/A)." When the transfer of a Soldier to a new GCM jurisdiction is a temporary change of station for the purpose of receiving medical treatment, education, or training, or deployment, a copy of the Article 15 UCMJ form will accompany the Soldier to the new GCM jurisdiction. The imposing commander will maintain the original. If a Soldier is on TDY and receives NJP while assigned or attached to a command away from the Soldier's home GCM jurisdiction, the original record of proceedings will accompany the Soldier when the Soldier returns to their home GCM jurisdiction and will maintain the record for two years from the date of imposition of punishment or the Soldier's permanent change of station to another GCMCA, whichever occurs first. Regardless of the Soldier's location (temporary or permanent assignment), no locally filed record will be maintained longer than two years from the imposition of punishment.

(a) For all other Soldiers, the original will be sent to the appropriate custodian listed in paragraph 3–37*b*(2) for filing in the AMHRR. The imposing commander will decide to file the original DA Form 2627 in the performance portion or the restricted portion in the AMHRR when punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that a UCMJ, Article 15 report be filed in the performance portion that the imposing commander directed to be filed in the restricted portion. The imposing commander's filing decision will be indicated in item 4b of DA Form 2627. A change in the filing decision should be recorded in block 8 of DA Form 2627.

(b) Any record of NJP which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance portion of the Soldier's AMHRR. This requirement applies to all Soldiers in all components, regardless of grade. Commanders do not have the option to designate these documents to be filed locally or in the restricted portion of the Soldier's AMHRR. Documents will be archived on the interactive personnel electronic records management system (iPERMS) (see para 3–6).

(c) The performance portion is that portion of the AMHRR that career managers and selection boards routinely use for the purpose of assignment, promotion, and schooling selection.

(d) The restricted portion of the AMHRR contains information not normally viewed by career managers or selection boards except as provided in AR 600–8–104 or specified in the Secretary of the Army's written instructions to the selection board.

(e) The Official Records Custodian will redirect records directed for filing in the restricted portion to the performance portion if the Soldier has other records of NJP reflecting misconduct in the grade of SGT or higher that have not been wholly set aside and recorded in the restricted portion (see para 3–6).

(2) *Method of filing.* The servicing legal office will transmit the original DA Form 2627 and all allied documents through MJO to U.S. Army Human Resources Command (HRC). If that option is not available, the original DA Form 2627 and all allied documents will be web-uploaded to iPERMS and must include the words "adverse action" in the comments field of the iPERMS batch.

c. Unit copy.

(1) For those UCMJ, Article 15 forms directed for filing in the performance portion of the AMHRR, the file should be submitted to HRC/iPERMS and filed under the "Performance Record" unless the original record of NJP is transferred from the performance to the restricted portion of the AMHRR. In this case, this case should be submitted to HRC/iPERMS and identified as a "Restricted Record."

(2) For those UCMJ, Article 15 reports directed for filing in the restricted portion of the AMHRR, a copy will be filed in the unit NJP files and destroyed at the expiration of 2 years from the date of punishment or on the Soldier's transfer, whichever occurs first.

d. Finance copy. A copy of the completed DA Form 2627 will be forwarded to the Soldier's servicing DMPO if the punishment includes an unsuspended reduction and/or forfeiture of pay.

e. Personnel service copy. If the punishment includes a reduction, a copy will be forwarded to the Soldier's MPD or unit personnel office.

f. Soldier's copy. Give a copy of the completed action with allied documents to the Soldier who was punished.

g. Allied documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing in the restricted portion of the AMHRR (see para 3–44). The servicing legal office will redact the personally identifiable information (PII) of all parties, except the Soldier being punished and any co-conspirator(s), from all allied documents transmitted for filing in a Soldier's AMHRR and uploaded into the MJO enterprise case management system (see paragraph 5–56*h* for redaction requirements).

h. Unit paralegal specialist copy. The paralegal specialist will indefinitely maintain a copy of the completed DA Form 2627 with all allied documents in MJO. These records are used for statistical purposes only.

3–38. Supplementary action

a. Supplementary action. Any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed pursuant to summarized proceedings, para 3–16) after an action has been taken on an appeal or DA Form 2627 has been distributed according to para 3–37 of this regulation.

b. Recording. Supplementary action will be recorded on DA Form 2627–2.

c. Distribution and filing.

(1) *Original.* If the DA 2627 that initially imposed punishment was forwarded to the appropriate custodian of the AMHRR, then the original of the supplementary action will also be forwarded to the appropriate custodian of the AMHRR (see para 3–37*b*(2)). This copy will be filed in the same AMHRR section location as the DA Form 2627 that initially imposed the punishment. The imposing commander's filing determination on the initial DA Form 2627 will be annotated on the DA Form 2627–2.

(2) *Unit copy.* A copy will be filed in the unit NJP files when the imposing commander directs filing on the performance section of the AMHRR. This copy will be destroyed in accordance with paragraph 3–37*c*(1), along with a copy of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted section. In cases of filing in the restricted section of the AMHRR, a copy will be filed in the unit NJP files per paragraph 3–37*c*(2).

(3) *The personnel and finance copies.* If the action affects a reduction, a copy of the supplementary action and a copy of the initial DA Form 2627, if maintained by the unit (see para 3–37*c*), will be forwarded to the MPD or unit personnel office. If the action affects a forfeiture, a copy will be forwarded to the servicing DMPO.

(4) *Unit paralegal specialist's copy.* The paralegal specialist who prepared the DA Form 2627–2 will maintain a copy for a period of 2 years.

(5) *Soldier's copy.* Give a copy of the completed action with allied documents to the Soldier who is being punished.

3–39. Reconciliation log

Imposing commanders, assisted by their supporting paralegal specialist, will ensure that punishments imposed pursuant to the provisions of UCMJ, Article 15, are executed. Execution of punishments of reduction and forfeiture of pay will be verified and documented by the mandatory use of the Reconciliation Log, DA Form 5110 (Article 15-Reconciliation Log), showing the punishment, dates verified, and initials of verifying paralegal specialist. To properly use DA Form 5110, all UCMJ, Article 15 records (DA Form 2627) made by the unit paralegal specialist must be sequentially numbered, and the required data must be entered in the DA Form 5110. Unit paralegal specialists will use the unit commander's financial report, the Soldier's leave and earnings statement, or the daily record of financial transactions to verify the execution of forfeitures and reductions. For RA Soldiers, the chief paralegal NCO for the GCMCA or a designee will inspect, at least annually, the execution of UCMJ, Article 15 forfeitures and reductions by review of DA Form 5110, including random verification using finance records. For RC Soldiers, the chief paralegal, NCO of the Major Subordinate Commands (MSCs), reporting to the U.S. Army Reserve Command (USARC) is required to conduct this inspection at least every two years. On a quarterly basis, the chief legal NCO or designee at the GCM level will transmit to the custodian of the AMHRR the name, SSN, and the date the NJP was imposed. For USAR Soldiers, the Chief Paralegal NCO of MSCs reporting to USARC will transmit this information to the custodian of the AMHRR twice yearly. The Chief Paralegal or their designee will also utilize Integrated Personnel and Pay System–Army to verify the proper filing of

NJP in the performance or restricted portion of the AMHRR. After the information is verified on the DA Form 5110, supporting finance documentation showing execution of the reduction or forfeitures and the verification of AMHRR filings by the AMHRR custodian will be retained for two years after the date the punishment was imposed.

3–40. Time for distribution of initial DA Form 2627

According to paragraph 3–37, distribution will be made after the recipient indicates in item 5 that the recipient does not appeal. If the recipient appeals, the DA Form 2627 will be forwarded to the superior authority and copied after completion of item 9. Completion of this item shows that the recipient acknowledges notification of action on the recipient's appeal. If item 9 cannot be completed because the recipient is not reasonably available or due to military exigencies, a statement signed by the imposing commander stating that the recipient was informed in writing of the disposition of the appeal and why it was not possible to complete item 9 will be placed in item 10 before copies are distributed. If the recipient fails to complete or sign item 5, an explanation of the failure will be provided by the imposing commander in item 10, and distribution of the copies will be made according to paragraph 3–37 or this paragraph, whichever is applicable (a recipient's refusal to indicate whether or not the recipient desires to appeal may be presumed to indicate an intention not to appeal).

3–41. Filing of records of punishment imposed prior to 1 November 1982

Records of NJP presently filed in either the performance or restricted section of the AMHRR will remain so filed, subject to other applicable regulations. Records of NJP imposed prior to 1 November 1982 and forwarded on or after 20 May 1980 for inclusion in the AMHRR will be filed in the performance section.

3–42. Transfers of punishments wholly set aside, or changes of status

a. Change in status. On approval of a change in status from enlisted to commissioned officer, DA Form 2627s—recording NJP received while in an enlisted status and filed in the AMHRR will be transferred to the restricted section of the AMHRR. Copies of such records in the career management individual file and unit NJP or personnel files will be destroyed.

b. Wholly set aside. All DA Forms 2627 of commissioned officers and enlisted Soldiers filed in the AMHRR reflecting that punishments have been wholly set aside (see para 3–28) will be removed from the Soldier's record. The DA Form 2627, reflecting the original imposition of punishment, will be destroyed if filed in the AMHRR, unit NJP file, or unit personnel files.

3–43. Transfer or removal of records of nonjudicial punishment

a. General. This paragraph covers policies and procedures for enlisted Soldiers (SGT and above) and commissioned officers to petition the Department of the Army Suitability Evaluation Board (DASEB) for the transfer of records of NJP from the performance to the restricted portion of the AMHRR (see table 3–2).

b. Policies.

(1) Enlisted Soldiers (SGT and above) and commissioned officers may request the transfer of a record of NJP from the performance section of their AMHRR to the restricted section pursuant to the provisions of this regulation. To support the request, the person must submit substantive evidence that the intended purpose of UCMJ, Article 15 has been served and that transfer of the record is in the Army's best interest.

(2) Requests normally will not be considered until a minimum of 1 year has elapsed, and the Soldier has received at least one nonacademic evaluation report since the imposition of the punishment.

(3) The request must be in writing and should include the Soldier's current unit mailing address and duty telephone number. Requests by enlisted Soldiers (SGT and above) should also include a true copy of their Enlisted Record Brief or Soldier Record Brief (SRB), certified by the custodian of the record. No person is authorized to appear in-person before the DASEB.

(4) The officer who directed the filing of the record in the AMHRR may provide a statement to the Soldier in support of a request for transfer of the record from the performance to the restricted section. Other evidence submitted in support of a request should not include copies of documents already recorded in the Soldier's AMHRR.

(5) The DASEB will review and evaluate the evidence submitted and obtained and will take final action where this authority has not been specifically withheld to the DCS, G–1, or the DCS, G–1's delegate. Requesters will be notified in writing of the determination. Letters of denial will be placed in the performance

section of the Soldier's AMHRR. Other related documentation and evidence will be placed in the restricted section of the Soldier's AMHRR.

(6) The DASEB has access to unfavorable information that might be recorded on DoD investigative records. If such information is used, in part or in whole, as the basis for denying a request, the Soldier will be notified of this by correspondence (which will not be filed in the AMHRR) and given an opportunity to review and explain the unfavorable information in a subsequent petition.

(7) The determination of the DASEB to transfer such records will not alone be a basis for review by a special selection board or its equivalent. The DCS, G–1 or the DCS, G–1's delegate, has the final authority in cases where circumstances exist that warrant referral to one of the above boards.

(8) The DASEB will consider subsequent requests only upon presentation of substantive evidence not previously considered by the DASEB in a prior request.

Table 3–2
Removal of records of nonjudicial punishment from military personnel files—Continued

Rule	If the–	On the basis that–	Then the record of NJP (DA Form 2627) is–
1	Commander who imposed the punishment, successor-in-command, or superior authority wholly sets aside the punishment.	eexists which demonstrates that the punishment resulted in a "clear injustice" (see).	Removed from the Soldier's record.
2	Member in the grade of E–5 or above applies to the DASEB for transfer.	The NJP has served its purpose and that transfer is in the best interest of the Army.	Upon approval of the member's application, transferred to the restricted portion of the AMHRR, and the copy in the unit NJP file is removed.
3	Member applies to Army Board for Correction of Military Record for transfer of records of NJP from the performance portion of the AMHRR.	Evidence exists which demonstrates error or injustice to a degree justifying removal.	of the member's application, processed in accordance with the instructions of the ABCMR. Providing that if the member is in the grade of E–5 or above and applies for the reasons described in , the member has already applied to DASEB, and the request was denied.

c. Processing requests.

(1) Requests submitted by officers and enlisted Soldiers serving on AD (all components) and USAR personnel in Troop Program Units should be prepared in military letter format and sent directly to the DASEB (DAPE–MPC–E), 251 18th Street South, Suite 385, Arlington, VA 22202–3531.

(2) Requests submitted by Army National Guard (ARNG) officers and enlisted Soldiers not on AD will be processed through the proper state adjutant general and the Director, Army National Guard (on behalf of the Chief, National Guard Bureau (NGB)) to DASEB (DAPE–MPC–E) for proper action.

d. Amendment rights. These procedures do not limit or restrict the right of Soldiers to request amendments of their records pursuant to the Privacy Act and AR 25–22. They also do not limit or restrict the authority of the DASEB to act as the denial authority pursuant to AR 25–22.

e. Correction of military records. AR 15–185 contains policy and procedures for applying to the Army Board for Correction of Military Records (ABCMR) and for the correction of military records by the Secretary of the Army. Requests should be sent to the ABCMR to correct an error or remove an injustice only after other available means of administrative appeal have been exhausted. This includes requests pursuant to this paragraph.

3–44. Use of records

a. Records of proceedings and supplementary action pursuant to UCMJ, Article 15 recorded on DA Form 2627 and DA Form 2627–2, previously, or hereafter administered, may be used as directed by a competent authority. Allied documentation transmitted with the original or copies of DA Form 2627 and DA Form 2627–2, where filed with any of these forms, will be considered to be maintained separately for the purpose of determining the admissibility of the original or copies of DA Form 2627 or DA Form 2627–2 at courts-martial or administrative proceedings.

b. A record of NJP, or a duplicate as defined in MRE 1001(e), not otherwise inadmissible, may be admitted at a court-martial or administrative proceeding from any file in which it is properly maintained by

regulation. A record of NJP, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file. However, this paragraph does not apply to records of NJP maintained in MJO; these records are used for statistical purposes only.

3–45. Delegation of authority to modify procedures and test new nonjudicial punishment forms
Notwithstanding any other provision in this regulation, TJAG has the authority to issue directions by policy memoranda, technical instructions, or other means to change the procedures for preparing, copying, serving, certifying, or distributing records of NJP. Such direction may be promulgated by issuing policy memoranda, technical instructions, or other means deemed appropriate by TJAG.

Chapter 4
Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities

4–1. General
This chapter covers policies on disciplinary proceedings pursuant to the UCMJ in cases where a civilian authority has exercised or is in the process of exercising, criminal jurisdiction over the same offense or act. Civilian authorities include any court deriving its authority from a state of the United States or a foreign country. No UCMJ action will be taken for the same criminal offense or act where a Federal court of the United States has exercised criminal jurisdiction.

4–2. Policy
State or foreign civilian authorities' exercise of criminal jurisdiction does not preclude UCMJ action for the same criminal offense or act. However, a person subject to the UCMJ who has been tried in a civilian court may, but ordinarily will not, be tried by court-martial or punished pursuant to UCMJ, Article 15, for the same criminal offense or act over which the civilian court has exercised jurisdiction. Any UCMJ action against a Soldier who has been tried by a civilian court or is facing criminal prosecution by a civilian authority will follow this chapter's procedures.

4–3. Procedure
a. General. Upon learning that a member of the command is facing prosecution by civilian authority or has been tried in a civilian court, the immediate commander will notify the GCMCA, SJA, and special trial counsel, as applicable. A GCMCA or special trial counsel, as applicable, may, on a case-by-case basis, authorize disposition pursuant to the UCMJ, and any applicable international agreements on U.S. forces stationed in foreign countries, despite the exercise of civilian authority. No UCMJ action in such cases will be initiated without GCMCA or special trial counsel approval, as applicable. Subject to the limitations of paragraphs 3–3*b* and 5–1*b*, this paragraph is not intended to limit or preclude appropriate administrative action, including suspension of favorable personnel actions (see AR 600–8–2), filing of adverse information (see AR 600–37), revocation or review of promotable status, bar to reenlistment, or initiation of separation or elimination. Such a case will be processed as follows:

b. Nonjudicial punishment.

(1) When a commander authorized to impose NJP believes that imposing NJP pursuant to UCMJ, Article 15 is appropriate, in a case where civilian authorities exercised or plan to exercise criminal jurisdiction over the same matter, that officer will cause a full written report to be forwarded to the GCMCA, SJA, and special trial counsel, as applicable.

(2) Except for offenses over which a special trial counsel has exercised authority and has not deferred, the GCMCA, after consulting with the supporting SJA, must personally determine that any normally authorized administrative action alone is inadequate, and the imposition of NJP is essential to maintain discipline in the command.

(3) Upon making such a determination, the GCMCA may dispose of the matter directly or may authorize proceedings pursuant to UCMJ, Article 15 by a subordinate commander.

c. Court-martial.

(1) When the officer exercising SCM jurisdiction over the offender believes that trial by court-martial is appropriate, in a case where civilian authorities exercised or plan to exercise criminal jurisdiction over the same matter, that officer will cause a full written report to be forwarded to the GCMCA, SJA, and special trial counsel, as applicable. In cases where civilian criminal prosecution is pending, the supporting trial

counsel or special trial counsel will contact the civilian prosecutor's office and will attach to the report an analysis of the expected civilian case and any military-specific offenses that may arise from the alleged misconduct at issue.

(2) The GCMCA (after consulting with the supporting SJA) or special trial counsel, as applicable, may dispose of such charges or, by endorsement, authorize a subordinate to take such action.

Chapter 5
Procedures for Courts-Martial

Section I

General

5–1. Scope

a. General. This chapter implements certain provisions of the RCM and the UCMJ and provides other procedures related to courts-martial. For procedures related to courts-martial of foreign nationals subject to the UCMJ, see AR 27–52.

b. Relationship between covered offenses and administrative action. For offenses over which a special trial counsel has exercised authority and has not deferred, commanders will obtain special trial counsel concurrence prior to initiating administrative action, including administrative action that would dispose of an offense or cause a loss of personal jurisdiction over a Soldier under UCMJ, Article 2(a).

5–2. Secretarial designation of convening authorities

a. In general. This paragraph discusses the Secretary of the Army's authority to designate convening authorities. The statutory authority to convene courts-martial is stated in UCMJ, Article 22 (general courts-martial), Article 23 (special courts-martial), and Article 24 (summary courts-martial).

b. Procedures to request secretarial designation as convening authority.

(1) Commanders desiring authority to convene courts-martial pursuant to UCMJ, Articles 22(a)(8), 23(a)(7), and 24(a)(4) will forward a request, through the SJA of the ACOM, to OTJAG–CLD.

(a) Requests for designation as a court-martial convening authority solely for purposes of taking administrative actions associated with a particular level of convening authority will not be approved.

(b) Requests for designation as a convening authority must include the unit's official name and unit identification code, as established by the U.S. Army Center for Military History, and must include the SJA paragraph(s) of the table of organization and equipment or the table of distribution and allowances as appropriate, that has been approved by the DCS, G–3.

(2) In deciding whether to grant a request, the Secretary of the Army will consider the following factors: grade of commander to exercise convening authority; the size of the command; the mission of the command; chain of command and organizational structure of requesting command; and location of requesting command with respect to other commands having convening authority.

(3) The Chief, OTJAG–CLD will send a copy of the designation directive or orders to the Clerk of Court, U.S. Army Court of Criminal Appeals (USACCA), Judge Advocate Legal Service (JALS)–CCZ, U.S. Army Legal Services Agency (USALSA), Headquarters Department of the Army (HQDA), usarmy.pentagon.hqda-otjag.list.usalsa-acca@army.mil.

c. Withdrawal or expiration of secretarial designation. Secretarial designation as a convening authority continues until the Secretary of the Army withdraws the designation or the command ceases to exist. A unit may cease to exist because of actions that "consolidate," "disband," "discontinue," or "inactivate" the unit (see AR 220–5). "Reorganization" or "redesignation" of units does not cancel secretarial designation.

d. Contingency commands. Commanders exercising GCM authority may establish deployment contingency plans that, when ordered into execution, designate provisional units pursuant to AR 220–5.

5–3. Authority to convene summary courts-martial

Unless otherwise withheld by a superior competent authority, a field grade officer in command of a battalion or squadron may convene an SCM pursuant to UCMJ, Article 24(a)(4). However, the officer convening a SCM is prohibited from serving as the SCM officer and no commander in the accused's chain of command may be appointed as the SCM officer.

5–4. Courts-martial personal jurisdiction

a. Attachment. When appropriate, Army units, activities, or personnel may be attached to a unit, installation, or activity for courts-martial and the general administration of military justice. This includes related administrative actions and NJP. The GCMCA of the parent unit, as well as the unit to which attached, should concur in the attachment, except that the parent unit need not concur when military necessity renders it impractical to obtain a concurrence from the parent unit. The commander who will exercise jurisdiction is authorized to publish necessary orders announcing attachment to the commander's command. While attachment orders assist in resolving the appropriate chain of command through which charges may best be processed pursuant to RCM 401 and 401A, they are neither determinative of nor a prerequisite to court-martial jurisdiction.

b. Members of Reserve Components. Reserve Components (RCs) members must be on AD, in a Title 10 duty status, prior to arraignment (see chapter 20 for procedures to involuntarily activate RC Soldiers for courts-martial).

(1) When any charged offense occurred prior to 1 January 2019, RC Soldiers are subject to court-martial jurisdiction while on AD and during periods of inactive duty training (IDT) (see UCMJ, Article 2 (2016)).

(2) When all charged offenses occurred on or after 1 January 2019, RC Soldiers are subject to court-martial jurisdiction while on AD, and during periods of travel to and from IDT, intervals between consecutive periods of IDT on the same day, and on consecutive days (see UCMJ, Article 2 (2019)).

c. Retired Soldiers. Retired members of a regular component of the Armed Forces who are entitled to pay are subject to the provisions of the UCMJ (see UCMJ, Article 2(a)(4)). Retired Soldiers are subject to the UCMJ and may be tried by court-martial for violations of the UCMJ that occurred while they were on AD or while in a retired status. Allegations of violations of the UCMJ against retired Soldiers will ordinarily be transmitted to the location specified in appendix K with the area of support responsibility or to the location where the retired member performed duty when the offense occurred. Retired Soldiers subject to the UCMJ will not be tried for any offense by any court-martial unless extraordinary circumstances are present. In all cases, coordination with OTJAG–CLD is required prior to the preferral of court-martial charges against a retired Soldier. If the alleged offense includes a covered, known, or related offense, coordination with the OSTC is also required prior to the preferral of court-martial charges against a retired Soldier. Retired Soldiers may be ordered to AD if necessary to facilitate courts-martial action. Requests for orders to AD will be forwarded by electronic message through OTJAG–CLD to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) for approval.

d. Civilians. Although UCMJ, Article 2(a)(10) extends jurisdiction to individuals accompanying or serving with an armed force in the field during times of declared war or contingency operations, DoD policy limits the exercise of this jurisdiction. All actions involving civilians accused of misconduct will comply with chapter 27 of this regulation, and no charge will be preferred against any civilian without prior coordination with the Chief, OTJAG–CLD. If the alleged offense includes a covered, known, or related offense, coordination with the OSTC is also required prior to the preferral of court-martial charges.

Section II

Court-Martial Personnel

5–5. Detailing of counsel and reporters

a. Detail of trial counsel.

(1) For offenses over which a special trial counsel does not exercise authority, the SJA will, in accordance with UCMJ, Article 27, select certified persons to serve as trial counsel and will detail trial counsel to each SPCM and GCM. The detail of trial counsel is a ministerial function and may be delegated. A special trial counsel will be detailed to each SPCM and GCM for which a special trial counsel referred charges and specifications. In coordination with the Office of the Staff Judge Advocate (OSJA), the special trial counsel may detail other trial counsel as assistant trial counsel to provide an opportunity for trial counsel to gain experience (see UCMJ, Article 27(e)).

(2) The SJA will notify the Chief, Trial Counsel Assistance Program (TCAP) of all officers performing trial counsel functions within their jurisdiction in order to facilitate future training and OTJAG tracking of individuals performing trial counsel duties.

(3) The trial counsel will state on the record who has detailed the trial counsel to the court-martial. The announcement will be submitted to the court in writing if not announced orally.

(4) Pursuant to RCM 503(c)(3), TJAG delegates to SJAs the authority to make counsel available to serve in a court-martial in a different armed force, combatant command (CCMD), or joint command.

b. Detail of defense counsel.

(1) The Chief, USATDS, or that officer's delegate will detail USATDS officers as defense counsel, assistant, or associate defense counsel (see para 6–9).

(2) Pursuant to RCM 503(c)(3), TJAG delegates to the Chief, USATDS the authority to make counsel available to serve as counsel in a court-martial in a different armed force, CCMD, or a joint command.

c. Detail of reporters. Court reporters will be detailed as follows:

(1) Reporters will be detailed to all SPCMs and GCMs.

(2) Reporters will not be detailed to SCMs. A convening authority will, when necessary, furnish clerical personnel to assist SCMs in maintaining and preparing a record of the proceedings.

5–6. Certification and detail of commissioned officers who are not judge advocates

a. Certification by The Judge Advocate General. Commissioned officers who are not members of the Army Judge Advocate General's Corps (JAGC) but who possess legal qualifications stated in UCMJ, Article 27(b)(1) may be certified for duty as counsel by TJAG. The certified officer's commander must concur with the detail of the non-JAGC-certified counsel. The SJAs of GCM jurisdictions will submit the following to the Personnel, Plans, and Training Office (PPTO) (DAJA–PT), usarmy.pentagon.hqda-otjag.mbx.ppto@army.mil:

(1) Résumés of legal qualifications of officers recommended by them for certification.

(2) An affidavit or certificate attesting to admission to practice to the same standard as required by UCMJ, Article 27(b) and experience.

b. Detailing. The detail of certified non-JAGC officers as trial and assistant trial counsel is a ministerial function performed by the SJA for the GCM jurisdiction where counsel are assigned or attached.

5–7. Qualified counsel from other services at courts-martial

In all SPCMs and GCMs, the accused must be afforded the opportunity to be represented by counsel qualified pursuant to UCMJ, Article 27(b). When needed, the Chief, USATDS may enter into arrangements with Navy, Marine, or Air Force counterparts for certified, qualified counsel. The Chief, USATDS, will notify the Chief, OTJAG–CLD, of any such arrangements.

5–8. Proof of qualifications for individual civilian counsel at courts-martial

When a civilian counsel is to represent an accused at any court-martial, evidence may be requested that the civilian counsel is a member in good standing of the bar (of which they claim to be a member) by—

a. The military judge.

b. The SJA.

5–9. Requests for individual military counsel

a. General. This paragraph explains the procedures and applicable definitions for addressing an accused's request for individual military counsel (IMC). The accused has the right to be represented in their defense before an SPCM or GCM or at a preliminary hearing pursuant to UCMJ, Article 32 by military counsel of the accused's own selection, if reasonably available, and approved in accordance with paragraph 5–9*f*. (see RCM 405(e)(3) and 506(b)). Requests for IMC should be handled expeditiously, and the convening authority or military judge may, at their discretion, determine the time needed to process the IMC request is excludable delay pursuant to RCM 707(c).

b. "Reasonably available counsel" defined. All JAs certified pursuant to UCMJ, Article 27(b) are considered reasonably available to act as IMC unless excluded by UCMJ, Article 38b; RCM 506(b); or this regulation.

c. Persons not reasonably available. RCM 506(b)(1) designates persons who are not reasonably available to serve as IMC because of the nature of their duties or positions. Pursuant to the authority set forth in UCMJ, Article 38, and in RCM 506(b)(1), the following persons are also deemed not reasonably available to serve as IMC because of the nature or responsibilities of their assignments:

(1) "Trial counsel" as used in RCM 506(b)(1)(C) includes those JAs whose primary duties involve the law enforcement and prosecuting functions (for example, chiefs of military justice, persons assigned to a criminal law section including military justice advisors, persons assigned to TCAP, and equivalent

positions). It includes the LSTC, personnel serving as special trial counsel, and other JAs assigned to the OSTC.

(2) USATDS counsel assigned to and with duty at the Office of the Chief, USATDS, including Defense Counsel Assistance Program (DCAP) personnel and Chief and Deputy, Army National Guard Trial Defense Service (ARNG TDS), are unavailable to serve as IMC. Nothing in this provision limits the authority of the Chief, USATDS, to detail attorneys assigned to USATDS and DCAP.

(3) Special victim counsel (SVC).

(4) JAs serving as ACCA Commissioners.

(5) RC JAs, not on AD, unless—

(a) The command making the JA's availability determination (see para 5–9*d)* commits or coordinates for funding of all costs associated with activation.

(b) The convening authority commits or coordinates for funding of all costs associated with activation.

d. Reasonable availability determinations. In determining the availability of counsel not governed by the provisions of paragraph 5–9*c*, the responsible authority pursuant to RCM 506(b)(2) may consider all relevant factors, including, but not limited to, the following:

(1) The requested counsel's duty position, responsibilities, and workload.

(2) Any ethical considerations that might prohibit or limit the participation of the requested counsel.

(3) Time and distance factors include travel to and from the sites, the anticipated date, and the length of the trial or hearing.

(4) The effect of the requested counsel's absence on the proper representation of the requested counsel's other clients.

(5) The number of government counsel assigned to the UCMJ, Article 32 preliminary hearing or trial.

(6) The nature and complexity of the charges and legal issues involved in the case.

(7) The detailed military defense counsel's experience level, duties, and caseload.

(8) Overall impact of the requested counsel's absence on the ability of the requested counsel's office to perform its required mission; for example, personnel strength, scheduled departures or leaves, and unit training and mission requirements.

e. Existing attorney-client relationship. Notwithstanding the provisions of 5–9*c* and *d,* if an attorney-client relationship exists between the accused and the requested counsel regarding matters that relate to the charges in question, the requested counsel will ordinarily be considered available to act as IMC. The Chief, USATDS, will review all claims asserting the existence of an attorney-client relationship; however, the forgoing exception will not apply in cases where the existing attorney-client relationship—

(1) Arose solely because the counsel represented the accused on appeal or review pursuant to UCMJ, Article 70.

(2) Existed with a civilian counsel who is also an attorney in the RC.

f. Procedure.

(1) *Form of request.* Requests for IMC will be processed pursuant to RCM 506(b)(2) provisions and this regulation. Requests will contain, at a minimum, the following information:

(a) Name, grade, and station of the requested counsel.

(b) Name, grade, and station of the accused and the accused's detailed defense counsel.

(c) The UCMJ article(s) alleged to have been violated and a summary of the alleged offense(s).

(d) Date charges were preferred and status of a case, for example, referred for a preliminary hearing pursuant to UCMJ, Article 32, or referred to SPCM or GCM.

(e) Date and nature of pretrial restraint, if any.

(f) Anticipated date and length of trial or hearing.

(g) Existence of an attorney-client relationship between the requested counsel and the accused in this or any prior case.

(h) Special circumstances or other factors relevant to determine availability.

(2) *Routing of Request.* Request for an IMC should be made by the accused or the detailed defense counsel and forwarded as follows:

(a) Requests for counsel currently assigned to the Trial Defense Service–Regular and Reserve Components. Request for USATDS counsel to serve as IMC will be processed through the SJA to the GCMCA. The request will contain the same information as required by paragraph 5–9*f*. The convening authority will forward the request directly to the Chief, USATDS, by email, for a determination of availability. The USATDS field office at which the requested counsel is stationed will be included as an information addressee. An adverse determination pursuant to this subparagraph may be reviewed upon request of the

accused through the Chief, USATDS to the CG, The Judge Advocate General's Legal Center and School (TJAGLCS), or other designated higher commander or level of supervision. However, no administrative review that requires action at the Department of the Army (DA) or higher level may be done. In circumstances when the accused and a requested IMC assigned or detailed to USATDS are located within the same USATDS geographical circuit, the Chief, USATDS, may delegate the authority to determine the eligibility of IMC to the regional defense counsel (RDC). In such delegation cases, the Chief, USATDS, will act on appeals from adverse determinations made by the RDC.

(b) Requests for counsel currently assigned to the Trial Defense Service–Army National Guard. Requests for IMC when the accused or the requested counsel are in a Title 32 status will be routed through both Chief, USATDS, and Chief, ARNG TDS, email: ng.ncr.ngb-arng.mbx.ngb-ig@army.mil.

(c) Requests for counsel involving a claim of an existing attorney-client relationship. Requests for counsel involving an existing attorney-client relationship claim and where the requested counsel is no longer assigned to the USATDS, USAR TDS, or ARNG TDS will be submitted through the SJA to the GCMCA. The convening authority will forward the request to both the Chief, USATDS in the case of regular and USAR counsel or the Chief, ARNG TDS in the case of ARNG counsel, and the commander or head of the organization, activity, or agency to which the requested counsel is currently assigned. The Chief, USATDS, or the Chief, ARNG TDS, will make an administrative determination as to whether an attorney-client relationship exists. If it is determined that such a relationship exists, there will be a presumption that the requested person is reasonably available. An adverse determination by the Chief, USATDS, or the Chief, ARNG TDS may be reviewed upon request of the accused through the Chief, USATDS to the CG, TJAGLCS. The commander or head of the organization, activity, or agency to which the requested counsel is assigned, however, will make the final determination as to whether the requested counsel is reasonably available in accordance with this regulation. This determination is a matter within the sole discretion of this authority. An adverse determination by a commander or head of the organization, activity, or agency to which the requested counsel is assigned may be reviewed upon request of the accused through the commander or head of the organization, activity, or agency to which the requested counsel is assigned to that commander's higher commander or level of supervision. However, no administrative review that requires action at the DA or higher level may be made.

(d) All other requests. A request for IMC that does not involve a claim of a pre-existing attorney-client relationship and is not a request for counsel currently assigned to USATDS, USAR TDS, or ARNG TDS will be submitted through the SJA to the GCMCA. If the requested counsel is among those not reasonably available pursuant to RCM 506(b)(1) or pursuant to this regulation, the convening authority will deny the request and notify the accused unless the accused asserts that the person requested will not, at the time of the trial or preliminary hearing for which requested, be among those so listed as not reasonably available. In all other cases, the convening authority will forward the request to the commander or head of the organization, activity, or agency to which the requested counsel is assigned. That authority will make the administrative determination as to whether the requested counsel is reasonably available in accordance with the procedure prescribed by RCM 506(b) and this regulation. The availability determination is a matter within the sole discretion of this authority. An adverse determination by the commander or head of the organization, activity, or agency to which the requested counsel is assigned may be reviewed upon request of the accused through that authority to the next higher commander or level of supervision, but no administrative review may be made that requires action at the DA or higher level.

(e) Requests involving military judges. Requests for military judges to serve as IMC will be submitted to the Chief Trial Judge. The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available (see RCM 506(b)(1)(B)). This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, USACCA, but no further review is authorized. Requests for appellate military judges to act as IMC will be submitted to the Chief Judge, USACCA. The Chief Judge will make an administrative determination whether the requested judge is reasonably available (see RCM 506(b)(1)(B)). This determination is a matter within the sole discretion of the Chief Judge, USACCA. An adverse determination is not reviewable.

(3) *Standard of review for denials of individual military counsel requests.* In cases where an adverse determination of a request for IMC is reviewable, and the accused requests that an adverse determination be reviewed, the reviewing authority will use an abuse of discretion standard to review the request and notify the accused of the results of the review as soon as the review is complete.

g. Control and support of individual military counsel.

(1) Control and support of all USATDS counsel are governed by chapter 6 of this regulation.

(2) The Chief, USATDS, will exercise operational control over non-USATDS IMC when counsel are to perform required defense duties. The USATDS will provide non-USATDS IMC with all support normally given to USATDS counsel. The USATDS will also provide letters of input to the counsel's rater when appropriate.

(3) On appointment as IMC, non-USATDS counsel will notify the RDC for the area where the court-martial proceedings will take place.

5–10. Professional standards

a. The Army "Rules of Professional Conduct for Lawyers" are applicable to lawyers involved in court-martial proceedings in the Army (see AR 27–26, Rule 8.5).

b. The "Code of Judicial Conduct for Army Trial and Appellate Judges," dated 16 May 2008 (available on the Judge Advocate General's Corps Network (JAGCNet)), is applicable to all trial judges, appellate judges, and military magistrates.

5–11. Rating of court members, counsel, and military judges

a. Court members. An individual's performance of duty as a member of a court-martial may not be considered or referenced other than to note selection for duty as a court member in the preparation of any effectiveness, fitness, or evaluation reports on that individual (see UCMJ, Article 37(a) and RCM 104 regarding the prohibition of unlawful command influence (UCI)).

b. Counsel. A less favorable rating or evaluation of any individual assigned as counsel will not be given because of the zeal with which such member, as counsel, represented any accused or victim. Counsel assigned to the USATDS will be rated as provided by the Chief, USATDS. Counsel assigned to the OSTC will be rated as provided by the LSTC.

c. Military judges. All RA and reserve members of the U.S. Army Trial Judiciary will be rated within judicial channels in accordance with rating schemes promulgated by the Chief Trial Judge. All RA and reserve appellate judges will be rated in accordance with rating schemes promulgated by the Chief Judge, USACCA.

5–12. Preparation of members of a special or general court-martial

Court members detailed to an SPCM or GCM may never be oriented or instructed on their immediate responsibilities in court-martial proceedings except by the military judge. However, detailing as a court member does not prohibit the member from receiving the general instructional or informational courses in military justice specified in chapter 18. Such instruction is permitted pursuant to UCMJ, Article 37(a) and RCM 104(a)(3)(A). No other instruction related to the performance of court-martial duties is authorized.

5–13. Preparation of summary court-martial officer

To be properly prepared for duty as an SCM officer, persons so detailed must read and understand publications about their duties. Before the trial of the first case by a SCM officer, the SJA will ensure, through counsel who are not involved with the prosecution, that the SCM officer is familiar with DA Pam 27–7.

Section III

Reports, Investigations, and Subpoenas

5–14. Reports of offenses

a. Reports of covered and serious offenses to special trial counsel and trial counsel.

(1) *Reports of covered offenses.* Any military authority, including a military law enforcement agency, that receives a report of a covered offense will advise the special trial counsel at the initiation and critical stages of the investigation. The term covered offense has the meaning provided in UCMJ, Article 1(17). If a special trial counsel exercises authority over a covered offense, the special trial counsel may also exercise authority over any offense or charge alleged to have been committed by the suspect of the covered offense (see RCM 303A(d)). If a special trial counsel exercises authority over a covered offense, the special trial counsel may also exercise authority over any reported offense or charge related to a covered offense, whether alleged to have been committed by the suspect of the covered offense or by anyone else subject to the UCMJ (see RCM 303A(c)). Special trial counsel have exclusive authority to make the initial

determination whether a reported offense is a covered, known, or related offense (see UCMJ, Article 24a(c)(2)). Trial counsel will be advised of all other reports of serious offenses, not including covered, known, and related offenses, at the initiation of, and critical stages in, the investigation.

(2) *Reports of serious offenses.* Any military authority, including a military law enforcement agency that receives a report of a serious offense, not including covered, known, or related offenses, will advise the trial counsel at the initiation of, and critical stages in, the investigation. The Director, CID, may approve exceptions to this requirement on a case-by-case basis. A serious offense under this paragraph is an offense that is punishable by more than one year in prison or a punitive discharge.

b. Reports of command-directed inquiries to law enforcement. This provision implements DoDI 5505.11. If command-directed inquiry results in the preferral of charges, trial counsel or special trial counsel will forward a copy of the charge sheet and the investigation to a military law enforcement agency and notify the command of the accused to present the accused to that military law enforcement agency for the collection of criminal history record information.

c. Reports of serious offenses involving a Reserve Component Soldier. Any military authority, including a military law enforcement agency, that receives a report of a serious offense involving a USAR Soldier or ARNG Soldier will notify the Chief, Military Law Division, USARC, or NGB as appropriate. If the reported offense is a covered offense, the military authority will also notify the OSTC. The Director, CID, may approve exceptions to this requirement on a case-by-case basis, but only under circumstances where the report does not involve a covered offense. This notification is to ensure that the appropriate RC is aware of any serious allegations of misconduct involving USAR or ARNG personnel. A serious offense under this paragraph is an offense that is punishable by more than one year in prison or a punitive discharge.

d. Reports by SJAs to OTJAG–CLD and Executive Officer to The Judge Advocate General.

(1) *In general.* SJAs must be sensitive to reporting requirements in this chapter and make complete and timely reports. Such reports are designed to improve situational awareness and communication within the DoD while at the same time protecting the accused's right to a fair trial free from UCI. None of the reporting requirements are intended to preclude a commander's or the special trial counsel's complete evaluation of a case and the exercise of independent discretion before deciding what action to take, if any. Information forwarded under this paragraph does not constitute a protected attorney work product.

(2) *Types of reports.* SJAs must report to the Chief, OTJAG–CLD, and the Executive Officer to TJAG by email or telephone and to the LSTC if the allegation involves a covered, known, or related offense in the following circumstances:

(a) All allegations of offenses committed by JAGC personnel assigned within their GCMCA. If the alleged offense was committed by JAGC personnel assigned to the OSTC, the LSTC will report the allegation.

(b) All significant alleged misconduct by Soldiers assigned to their respective GCMCAs that their CG is reporting to the Chief of Staff of the Army. Significant misconduct under this subparagraph includes: any offense punishable by death pursuant to the UCMJ and that at least one of the aggravating factors listed in RCM 1004(c) is present; any offense in violation of UCMJ, Article 118; any offense involving significant potential or actual media coverage or high visibility interest to Army leadership or to the DoD; or any grave breaches of, or serious crimes under, the law of armed conflict.

(3) *Timing of initial and subsequent reports.* Reports of significant alleged misconduct will be submitted within 48 hours of discovery or notification of the offense when there is a credible allegation that a Soldier has committed a serious offense.

(4) *Contents of report.* Contents of the initial report are exempt pursuant to AR 25–98 from management information control. Initial reports will include that information normally contained in a serious incident report as described in AR 190–45. The initial report will also contain the investigating agency, counsel (if known), and confinement status of the subject. If available, the SRB of the subject(s) should accompany the initial report. Updates will provide the date of all significant events and a brief description of the outcome of that event. Copies of the preferred charges referred charges and the result of the trial will be provided within 24 hours of their completion.

(5) *Offenses punishable by death.* SJAs should review the reporting requirements in chapter 28 for all offenses for which death is an authorized punishment.

5–15. Coordination between trial counsel, special trial counsel, and law enforcement

a. Special trial counsel. Special trial counsel has exclusive authority to make the initial determination whether a reported offense is a covered, known, or related offense. Special trial counsel will exercise

authority over covered offenses and may exercise authority over known or related offenses (see UCMJ, Article 24a(c)(2)). For offenses over which a special trial counsel has exercised authority and has not deferred, the special trial counsel will confer regularly with the local CID and military police (MP). Special trial counsel will work closely with, and provide legal advice to, investigative agencies throughout the investigation of covered, known, and related offenses. For these offenses, special trial counsel will advise military law enforcement about probable cause determinations and assist them in obtaining search and seizure authorizations, subpoenas, warrants, and orders pursuant to the UCMJ.

b. Trial counsel. Trial counsel will confer regularly about all developing cases involving offenses over which special trial counsel do not exercise authority or involving offenses deferred by special trial counsel with the local CID and MPs. Trial counsel will work closely with and provide legal advice to investigative entities throughout the investigative process for these offenses. For these offenses, trial counsel will advise military law enforcement about probable cause determinations and assist them in obtaining search and seizure authorizations, subpoenas, warrants, and orders pursuant to the UCMJ.

c. Law enforcement. Military law enforcement will work closely with trial and special trial counsel to investigate a case. Requests for investigative subpoenas pursuant to RCM 703(g)(C)(3) and warrants or court orders pursuant to RCM 703A will be submitted through the trial counsel or special trial counsel, as applicable. When a case that was investigated by CID or MP personnel is referred to an SPCM or GCM, law enforcement personnel will continue to assist in investigating the case consistent with their regulations.

5–16. Investigative subpoenas

a. In general. Pursuant to UCMJ, Article 46(d)(1)(C) and RCM 703(g)(3)(E)(vi), the parties specified below in this rule may issue an investigative subpoena *duces tecum* at any time from the inception of a military criminal investigation or the initiation of commander's preliminary inquiry pursuant to RCM 303, with a view towards court-martial, until the case is referred. DD Form 453 (Subpoena to Testify and/or Produce or Permit Inspection of Items in a Court Martial) will be used for this purpose. A military criminal investigation is any investigation of an alleged violation of the UCMJ conducted by MP investigators or investigators or agents from CID, DA Civilian detectives or investigators, or any counterpart from the investigative agency of another military Service.

b. When permitted. An investigative subpoena may be issued pursuant to UCMJ, Article 46, and RCM 703 to obtain matter for a military criminal investigation. Preferral of charges or the identification of a suspect is not required. This chapter does not permit the issuance of subpoenas for non-criminal investigations but may be permitted by other authorities. A subpoena may not be unreasonable or oppressive. Counsel for the Government will not use an investigative subpoena to require a provider of electronic communication service (ECS) (as defined in 18 USC 2510(15)) or remote computing service (RCS) (as defined in 18 USC 2711(2)) to disclose a record or other information pertaining to a subscriber to or customer of such service (see para 5–17).

c. Who may issue. Subpoenas may be issued by either a military judge, trial counsel, or special trial counsel. If charges have not been referred to trial, the trial counsel or special trial counsel may only issue a subpoena after obtaining authorization from the GCMCA. A GCMCA may authorize a trial counsel or special trial counsel to issue an individual subpoena or may authorize the issuance of subpoenas in the course of a specific criminal investigation.

d. Defense requests for subpoenas. Any defense request for a subpoena will be prepared such that it is ready for signature by the issuing authority. The defense is not required to explain the basis of the request for a subpoena but must demonstrate why the requested evidence is relevant and necessary. After referral, trial counsel or special trial counsel must issue a subpoena that the defense has properly requested. There are two types of defense requests for a subpoena:

(1) *UCMJ, Article 32 preliminary hearings.* A defense request for a subpoena in relation to a preliminary hearing pursuant to UCMJ, Article 32, will be processed in accordance with RCM 405(i).

(2) *Other requests.* All other defense requests for a subpoena will be submitted to the trial counsel or special trial counsel. If a defense subpoena request is received before the referral of charges to a court-martial, the trial counsel or special trial counsel may defer considering the request until after a referral decision has been made. If the request involves a subpoena for perishable matter (that is, matter for which there is reason to believe may be destroyed in the event of a delay), the defense request will clearly so state to include the basis of such a belief. When presented with a properly formatted lawful subpoena after referral, the trial counsel or special trial counsel will issue the subpoena on behalf of the defense.

Upon receipt of matter pursuant to a defense-requested subpoena, the trial counsel or special trial counsel will allow the defense to inspect the matter as soon as practicable.

e. Procedure for issuance by military judge. When seeking a subpoena from a military judge, the trial counsel or special trial counsel will submit to the military judge a completed subpoena ready for signature. Submission may be made personally or electronically to the military judge with docketing responsibility over the unit to which the trial counsel is assigned or installation for which the special trial counsel has responsibility, at the military judge's discretion. The trial counsel or special trial counsel will provide the military judge with such information regarding the nature of the investigation as the military judge may require.

f. Issuance by trial counsel or special trial counsel.

(1) *Prior to referral.* Each SJA will identify local procedures for routing investigative subpoena requests to the GCMCA. The trial counsel will coordinate with the supporting law enforcement agency to complete the subpoena request, supporting affidavit, if any, and all other matter supporting the request.

(2) *After referral.* A subpoena issued by the trial counsel or special trial counsel after the referral of charges will comply with RCM 703.

g. Subpoenas for confidential or personal information about a victim. After preferral, the trial counsel or special trial counsel will provide a victim notice of intent to issue a subpoena for confidential or personal information about that victim prior to issuance (see RCM 703(g)(3)(C)(ii)). The trial counsel or special trial counsel will maintain a record of such written notice to the victim in the case file.

5–17. Warrants and orders under the Stored Communications Act

a. In general. This rule establishes Army-specific requirements for obtaining warrants or orders for electronic information. Warrants or orders for electronic information will only be requested from a military judge in cases with a view toward court-martial. A military judge will not issue a warrant or order under the Stored Communications Act in any case referred prior to 1 January 2019. This rule is in addition to the requirements contained in UCMJ, Article 46, RCM 703A, and RCM 309.

b. Responsibilities. Federal law enforcement officers (as defined in RCM 703A(g)) requesting either a warrant to obtain electronic communications from an ECS or RCS or requesting a court order to obtain records or other information pertaining to a subscriber or customer of such service will process all such requests through the servicing trial counsel or special trial counsel.

c. Requirement for warrant. A trial counsel, special trial counsel, or Federal law enforcement officer seeking to compel the contents (as defined in 18 USC 2510(8)) of electronic communications (as defined in 18 USC 2510(12)) from an ECS or RCS provider will secure a warrant, not a court order.

d. Procedure for requesting a warrant or order. When seeking a warrant or court order from a military judge to compel the production of content or non-content evidence from an ECS or RCS, the trial counsel or special trial counsel will submit to the military judge a completed warrant or court order ready for signature. Submission may be made personally or electronically to the military judge with docketing responsibility over the unit to which the trial counsel is assigned or installation for which the special trial counsel has responsibility. The trial counsel or special trial counsel will provide the military judge with such information regarding the nature of the investigation as the military judge may require, including a written affidavit and/or presentation of additional evidence supporting the requested process. As appropriate, counsel may include in the request for warrant or court order a request for a non-disclosure order, which, if granted, commands the provider of ECS or RCS to whom the warrant or order is directed, for such period as the military judge deems appropriate, not to notify any other person of the existence of the warrant or order. For warrant applications, the trial counsel, special trial counsel, and Federal law enforcement officer will use DD Form 3057 (Application for Search and Seizure Warrant Pursuant to 18 USC 2703) and DD Form 3056 (Search and Seizure Warrant Pursuant to 18 USC 2703). Practitioners should also use the court order and affidavit templates provided at https://www.milsuite.mil/book/groups/jagconnect-mja16-mtt under "SCA templates."

e. Sealing of pre-prereferral warrant or order and application. Trial counsel or special trial counsel may, pursuant to RCM 309(a), request that the military judge detailed to the Article 30a proceeding seal the issued warrant or order, the warrant or order application, or both the issued warrant or order and application.

f. Executing the warrant or court order. A Federal law enforcement officer (as defined in RCM 703A(g)) will serve an approved warrant or court order on the recipient. The warrant or order must contain contact

information for questions about the warrant or order, including how to request relief. The following attachments must be included with the warrant or court order when served:

(1) *18 USC 2703(d) court order.* Include Attachment A, which lists the specific records and information to be disclosed.

(2) *Warrant.* Include the following attachments with a warrant:

(a) Attachment A. Lists the specific property (such as an email account) authorized to be searched by the warrant; and

(b) Attachment B. Lists the particular things the warrant recipient must disclose and identifies the information to be seized by the government.

g. Documenting warrant compliance. After receipt of relevant information based on the service of the warrant, the trial counsel or special trial counsel will provide the military judge an inventory of items received without describing specific content.

5–18. Article 30a proceedings

a. In general. See RCM 309 for the conduct of pre-referral judicial proceedings. The Chief Trial Judge will establish and publish procedures for the conduct of pre-referral proceedings.

b. Preparing, maintaining, and distributing copies of proceedings.

(1) *Court reporter.* If a hearing is held as a part of the proceeding, the court reporter will maintain a copy of the recording for the later of two years from the date of the proceeding or until final disposition of the charges related to the proceeding. Records of UCMJ, Article 30a proceedings are not required to be transcribed before referral. After the referral of charges, such record will be transcribed to the same extent as required for post-referral proceedings. If charges related to the pre-referral proceeding are referred to trial, the court reporter will ensure that the record of the pre-referral proceeding is included in the record of trial (ROT). If the record of any pre-referral proceeding or part of any such proceeding is ordered sealed by the military judge, the court reporter is responsible for complying with the order pursuant to RCM 1113.

(2) *Trial counsel and special trial counsel.* The record of the proceeding will be forwarded to the convening authority, the commander with authority to dispose of the charges or offenses in the case, or special trial counsel, as applicable (see RCM 309). The trial counsel or special trial counsel will maintain a copy of the record of a pre-referral proceeding, if any, as part of the case file for eventual filing in the ROT.

5–19. Requests for relief from a subpoena or other process

a. In general. All compulsory processes issued under the UCMJ's authority will contain contact information for questions related to the compulsory process, including how to comply and how to request relief.

b. Procedures for requesting relief. The Chief Trial Judge will establish procedures and guidelines for the format, response, and filing of motions under this paragraph.

c. Appeals. Relief may be sought from an adverse ruling by petitioning USACCA in accordance with the rules of that court, which are available at https://www.jagcnet.army.mil/sites/acca.nsf/home.xsp#.

d. Failure to comply. Failure to comply with a military judge’s order may subject the offender to a warrant of attachment or contempt proceedings.

5–20. Vienna Convention requirements in courts-martial of foreign nationals

This paragraph provides the notification requirements of the Vienna Convention on Consular Relations and bilateral agreements between the United States and other nations regarding consular notification applicable to foreign nationals serving in the U.S. Army who are apprehended or detained to face court-martial within the territory of the United States.

a. The SJA must determine whether an agreement exists between the United States and the foreign national’s country that requires mandatory notification of the foreign country’s nearest embassy or consulate when its national is arrested or detained by the United States. A list of mandatory notification countries and jurisdictions is available at the State Department’s webpage: https://travel.state.gov/content/travel/en/consularnotification.html. For assistance with determining the existence of applicable agreements, contact OTJAG–NSLD.

b. If a mandatory notification agreement exists—

(1) Notify that country’s nearest embassy or consulate, without delay, of the arrest or detention of its national (embassy and consulate contact information is available at https://www.travel.state.gov).

(2) Without delay, inform the foreign national that notification is being made to their embassy or consulate and that they may communicate with their consular officers.

(3) Forward any communication from the foreign national to their consular officers without delay.

c. If there is no mandatory notification agreement—

(1) Inform the foreign national, without delay, that they may have their consular officers notified of their apprehension or detention and that they may communicate with them.

(2) If the foreign national requests consular notification, notify the nearest embassy or consulate without delay (embassy and consulate contact information is available at https://www.travel.state.gov).

(3) Forward any communication from the foreign national to their consular officers without delay.

d. A copy of any notice to the foreign embassy or consular office will be incorporated as part of the allied papers of the court-martial ROT, if any.

Section IV

Pretrial

5–21. Pretrial confinement

a. General. An accused pending charges should ordinarily continue the performance of normal duties within the accused's organization while awaiting trial. In any case of pretrial confinement, the SJA concerned, or that officer's designee, will be notified prior to the accused's entry into confinement or as soon as practicable afterward.

b. Appointment of counsel. The SJA concerned will request, from the senior defense counsel (SDC) of the supporting USATDS field office, an appointed counsel to consult with a Soldier placed in pretrial confinement. The request will include a copy of the pretrial confinement checklist and the commander's report. If USATDS counsel is not available to consult with the accused prior to or within 72 hours from the time the accused enters pretrial confinement, the SJA will appoint other legally qualified counsel. In such cases, that counsel will ensure that the accused understands that they will not ordinarily represent the accused at any later proceeding or court-martial. When practicable, consultation between the accused and counsel preferably will be accomplished before the accused's entry into confinement. If the accused does not consult with counsel prior to confinement, every effort will be made to ensure that the accused consults with counsel within 72 hours of entry into pretrial confinement.

c. Entry into pretrial confinement. An accused who is to be confined will be placed under guard and taken to the confinement facility. The authority ordering confinement will, whenever possible, ensure that a properly completed DD Form 2707 (Confinement Order) accompanies the accused. Prior to review of confinement by a military magistrate, the commander of the person confined will provide a written statement pursuant to paragraph 8–5*b*(2) to the military magistrate (see RCM 305(h)(2)(c)).

d. Review by military magistrate. See chapter 8 of this regulation for requirements concerning review of pretrial confinement by military magistrates.

e. Notification to special trial counsel. If a person who is alleged to have committed an offense over which special trial counsel has exercised authority and has not deferred is placed under, or released from, restraint as defined in RCM 304(a) or is ordered into pretrial confinement, or released from pretrial confinement, in accordance with RCM 305, the individual ordering restraint or confinement, or authorizing release, will notify a special trial counsel within 24 hours of the imposition of restraint, the order to confinement, or the decision to authorize release, as applicable.

5–22. Preparation of charge sheet and effect of preferral of charges

a. Preparation. RCM 307 and DD Form 458 (Charge Sheet) provide instructions in the preparation of charges and specifications. Available data as to service, SSN, and similar items required to complete the first page of the charge sheet will be included. The original will be forwarded (see para 5–23) and signed. If several accused are charged on one charge sheet with the commission of a joint offense (see RCM 307(c)(5)), the complete personal data for each accused will appear on the first page of the charge sheet or on an attached copy. An extra signed copy of the charge sheet will be prepared for each additional accused.

b. Effect of preferral on favorable actions and discharges. After any charge is preferred, DD Form 458 will automatically act to suspend all favorable personnel actions, including discharge, promotion, and reenlistment, and will automatically serve as a basis for extending a Soldier's term of service, if required.

Filing of a DA Form 268 and other related personnel actions are still required. Failure to file DA Form 268 does not affect the suspension accomplished by the DD Form 458 or give rise to any rights to the Soldier (see AR 600–8–2). After preferral of a charge, regardless of any action purporting to discharge or separate a Soldier, any issuance of a discharge certificate is void, and the Soldier's term of service will be extended, if required, until entry of judgment (EOJ) or, if the entry of judgement includes a punitive discharge, until final disposition of the charge(s), including completion of appellate review. Moreover, if a court-martial has adjudged an unsuspended punitive discharge, any issuance of a nonpunitive discharge certificate is void unless the GCMCA or an appellate court has disapproved the adjudged punitive discharge. The ASA (M&RA), the Assistant Secretary's delegate, or the officer exercising GCMCA over the Soldier at the time of the Soldier's request for exception may approve an exception to this subparagraph.

5–23. Forwarding of charges and requests for pretrial delay

a. Transmittal by summary court-martial convening authority. For offenses over which a special trial counsel does not exercise authority, when trial by an SPCM or GCM is appropriate, and the officer exercising SCM jurisdiction is not empowered to convene such a court (pursuant to RCM 504(b)), the officer exercising SCM jurisdiction will personally decide whether to forward the charges and allied papers (see RCMs 401 through 403). For offenses over which a special trial counsel exercises authority and has not deferred, special trial counsel will dispose of charges in accordance with RCM 401A. When trial by an SPCM or GCM is appropriate, the special trial counsel will first transmit the sworn charges to the officer exercising SCM jurisdiction. After recording receipt of charges over which a special trial counsel has exercised authority and has not deferred, the officer exercising SCM jurisdiction will return the charges to the special trial counsel (see RCM 403(a)).

b. Routing. Charges and allied papers ordinarily will be forwarded through the chain of command to the appropriate court-martial convening authority. The charges will be forwarded by endorsement or memorandum of transmittal signed by the SCM authority or authenticated with that officer's command line recommending disposition of the charges (see RCM 401(c)(2)(A), Discussion).

c. Requests for pretrial delay. Before referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority before whom the charge(s) is/are pending for resolution. Pretrial delay should not be granted *ex parte*; when practicable, the decision granting delay, together with supporting reasons and the dates covering the delay, should be reduced to writing. Before referral, the convening authority who has the charges may delegate the authority to grant delays to a UCMJ, Article 32 preliminary hearing officer. This delegation should be made in writing. After referral, all requests for pretrial delay will be submitted to the military judge for resolution.

5–24. Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before UCMJ, Article 32 preliminary hearings

a. A civilian witness whose testimony is determined to be relevant, not cumulative, and necessary pursuant to RCM 405(i) will be invited by counsel for the government to provide testimony before a UCMJ, Article 32 preliminary hearing. If the individual agrees, counsel for the government will make arrangements for that witness' testimony. If expense to the government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, will determine whether the witness testifies in-person, by video teleconference, by telephone, or by similar means of remote testimony.

b. If the convening authority, or the convening authority's delegate, determines that in-person testimony is appropriate, the civilian witness is authorized transportation expenses and allowances.

c. Subject to available funding, ARNG Soldiers who are not on AD and whose physical presence as a witness during a UCMJ, Article 32 hearing is determined to be necessary will be afforded the opportunity to volunteer for activation pursuant to AD operational support (ADOS). If a Soldier declines to volunteer or the funding for ADOS orders is determined to be unavailable, an invitational travel order to travel in civilian status may be provided. The OSJA requesting the presence of the witness will coordinate with OTJAG, PPTO–RC for ADOS orders 30 days prior to the preliminary hearing and will include the NGB's Office of General Counsel in such coordination.

5–25. Submission of request for discharge in lieu of trial by court-martial

a. In general. Where a Soldier has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad-conduct or dishonorable discharge, the Soldier may submit a request for

discharge in lieu of trial by court-martial in accordance with procedures established in AR 635–200, chapter 10.

b. Relationship between covered offenses and request for discharge in lieu of trial by court-martial. Where an accused submits a request for discharge in lieu of trial by court-martial, and the court-martial charges and specifications involve offenses over which a special trial counsel has exercised authority and has not deferred, the GCMCA will obtain a recommendation from the special trial counsel prior to action on the request for discharge in lieu of trial by court-martial. For offenses over which a special trial counsel has exercised authority and has not deferred, the GCMCA may not approve the request for discharge in lieu of trial by court-martial unless a special trial counsel agrees to withdraw and dismiss the charges and specifications.

c. Action by convening authority or special trial counsel when discharge in lieu of trial by court-martial is approved before entry of judgment. The GCMCA may approve a Soldier's request for discharge in lieu of trial by court-martial any time prior to EOJ, subject to the limitations of UCMJ Article 60a and with special trial counsel concurrence, if applicable. Where the GCMCA, with special trial counsel concurrence if applicable, approves an accused's request for discharge in lieu of trial by court-martial before EOJ, the GCMCA or special trial counsel will—

(1) Withdraw and dismiss the charges and specifications.

(2) If applicable, immediately order the release of the accused from pretrial confinement.

5–26. Submission of resignation for the good of the Service in lieu of general court-martial

a. In general. When submitted, resignation for the good of the Service (RFGOS) in lieu of court-martial pursuant to AR 600–8–24 will be processed simultaneously with any court-martial proceedings. The submission of an RFGOS will not, ordinarily, be cause for delaying a court-martial. If an RFGOS is approved before findings are announced, the approved RFGOS will act to end the court-martial. If an RFGOS is approved after findings are announced, the approved RFGOS will be considered as an exercise of the Secretary's UCMJ, Article 74 clemency authority.

b. Submission of resignation for the good of the Service. An accused who has made a decision to submit an RFGOS should submit the RFGOS as soon as practicable to allow the Secretary sufficient time to consider and act on the RFGOS. An accused may include in the RFGOS submission any docketing information about the court-martial. Failure to submit an RFGOS in time for it to be acted on before the findings are announced will result in the findings being entered by the military judge. The convening authority (pursuant to UCMJ, Article 60a & Article 60b) and the Secretary (pursuant to UCMJ, Article 74) have limited or no authority to set aside the findings of a court-martial. For an RFGOS that is not approved until after the findings and sentence have been announced, the finding of guilty cannot be modified (except in the small number of cases not described by RCM 1109(a)), and only the unexecuted portion of the sentence to confinement can be set aside (see para 5–26*e*).

c. Relationship between covered offenses and resignation for the good of the Service. Where an accused has made a decision to submit an RFGOS and the court-martial charges and specifications involve offenses over which a special trial counsel has exercised authority and has not deferred, the GCMCA will obtain a recommendation from the special trial counsel prior to transmitting the RFGOS to the Commander, U.S. Army HRC. Additionally, prior to action on the RFGOS by the Secretary or the Secretary's designee, the LSTC will provide a recommendation as to action.

d. Transmittal. The command in receipt of an RFGOS will expeditiously process the RFGOS to Commander, U.S. Army HRC, and not hold the RFGOS in abeyance for any reason (see AR 600–8–24).

e. Action by convening authority or special trial counsel when resignation for the good of the Service is approved before the announcement of findings. Upon notification that the Secretary has approved an accused's RFGOS, if findings have not been announced, the convening authority or special trial counsel, as applicable, will—

(1) Withdraw and dismiss the charges and specifications.

(2) If applicable, immediately order the release of the accused from pretrial confinement.

f. Action by military judge if resignation for the good of the Service approved after the announcement of findings. The approval of an RFGOS after findings have been announced will be treated as an exercise of the Secretary's UCMJ, Article 74 clemency authority, and the military judge will cause the EOJ to reflect the Secretary's decision.

(1) If the military judge receives notice that the Secretary has approved an accused's RFGOS after findings have been announced but before judgment has been entered into the record, the military judge will—

(a) Order the release of the accused from confinement, if applicable.

(b) Enter into judgment the findings of the court-martial.

(c) Except as provided in paragraph 5–26*f*(1)(*d*), enter into judgment a sentence of no punishment.

(d) If the sentence includes a punishment of life without the possibility of parole, enter into judgment only that part of the sentence that includes confinement for life without the possibility of parole.

(2) If the Secretary has approved an accused's RFGOS after judgment has been entered into the record, the approved RFGOS and a copy of the EOJ will be forwarded to USACCA for action consistent with the approved RFGOS.

5–27. Pretrial agreements/plea agreements with charged offenses occurring prior to 1 January 2019

a. Pretrial agreement and plea agreements in general.

(1) Pretrial agreements are based on a convening authority's ability to modify the findings or sentence imposed by a court-martial. See UCMJ, Article 60(c)(4)(C) and RCM 705, MCM, 2012, or 2016.

(2) Plea agreements are based on the convening authority's ability to limit the findings or sentence that a court-martial may impose. See UCMJ, Article 53a and RCM 705, MCM, 2019 or 2024.

(3) For any case referred on or after 1 January 2019, the power to grant clemency, and therefore perform in accordance with a pretrial agreement, is based on the version of the UCMJ, Article 60 (or 60a or 60b) in effect on the date of the earliest offense of which the accused was found guilty.

b. Cases in which all charged offenses occurred prior to 1 January 2019. Any pretrial agreement in such cases will be in accordance with RCM 705, MCM, 2016. The convening authority may not enter into an agreement specifying a minimum or specific sentence.

c. Cases in which charged offenses straddle the effective date of the Military Justice Act of 2016. In a case where at least one charged offense occurred before 1 January 2019 and at least one charged offense occurred on or after 1 January 2019, the plea agreement will contain a term stating whether or not the accused agrees to elect to have the Military Justice Act of 2016 (MJA 16) sentencing rules apply. Compare RCM 705(d)(2), MCM, 2019 with RCM 705, MCM, 2016; see also RCM 902A, MCM, 2019, and RCM 925, MCM, 2024.

(1) If the accused does not affirmatively elect to have the MJA 16 sentencing rules apply, any agreement to plead guilty will be in accordance with RCM 705, MCM, 2016. The convening authority may only enter into such an agreement if the accused agrees to plead guilty to at least one offense occurring prior to 1 January 2019. If the accused does not elect the MJA 16 sentencing procedures and does not agree to plead guilty to at least one offense occurring prior to 1 January 2019, the convening authority does not have the authority to enter into an agreement with the accused that contains a limitation on the findings or the sentence (see para 5–27*a*).

(2) If the accused agrees to elect to be sentenced under MJA 16 procedures pursuant to RCM 902A, MCM, 2019, follow the plea agreement procedures in paragraph 5–28. If such election is a term of the plea agreement made prior to referral, the convening authority or special trial counsel, as appliable, may refer the case to an SPCM convened pursuant to UCMJ, Article 16(c)(2)(A), provided that the referral includes at least one offense occurring on or after 1 January 2019.

5–28. Plea agreements in cases with all charged offenses occurring on or after 1 January 2019

a. Plea agreements in general. For cases with all charged offenses occurring on or after 1 January 2019 and involving offenses over which a special trial counsel has not exercised authority, an accused and the convening authority may enter into a plea agreement in accordance with RCM 705. For cases with all charged offenses occurring on or after 1 January 2019 and where special trial counsel has exercised authority and has not deferred, a plea agreement may only be entered into between special trial counsel and an accused and such agreement will bind convening authorities and other commanders in accordance with RCM 705(a).

b. Restitution. Prior to signing any plea agreement in any case in which a person has suffered personal injury or property loss or damage as a result of an offense, the convening authority or special trial counsel, as applicable, will consider the appropriateness of requiring victim restitution as a term of the plea agreement.

c. Agreements for a specific sentence. A plea agreement pursuant to RCM 705(d)(2) may include an agreement for a specific sentence provided that the agreement complies with para 5–28*c*.

d. Complete presentencing proceedings. A plea agreement cannot deprive an accused of complete presentencing proceedings. Agreements to deprive the court of relevant information stand on a different ground than agreements to admit evidence that otherwise would have been prohibited (see *United States v. Mezzanatto*, 513 U.S. 196 (1995)).

(1) *Restrictions on information are prohibited.* In compliance with RCM 705, no term of a plea agreement will prohibit an accused from introducing admissible evidence pursuant to RCM 1001(d) to the court-martial during presentencing.

(2) *Restrictions on the manner information is presented are permitted.* By agreement of the parties, a plea agreement may limit the manner or form in which presentencing evidence will be admitted to the court-martial, including—

(a) An agreement that witness testimony will be introduced by affidavit, by stipulation, or by means other than in-person testimony.

(b) An agreement to waive objections to the admissibility of evidence pursuant to the MREs. Such an agreement does not include the waiver of a privilege unless the privilege holder is a signatory to the agreement and the agreement specifically addresses the waiver of the privilege.

5–29. Referral of charges

a. Personal determination. For offenses over which a special trial counsel does not exercise authority, the convening authority will personally determine whether to refer the charges to trial by court-martial and the level of court-martial to which the charges will be referred. For offenses over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may refer charges to trial by court-martial (see RCM 601(b)(2)). A referral will be by the personal order of the convening authority or special trial counsel. This function may not be delegated (see RCM 601(e)).

b. Capital referrals. SJAs and special trial counsel will submit reports of a capital referral in accordance with paragraph 28–2.

c. Review of decisions by a convening authority not to refer charges of certain sex-related offenses to trial by court-martial.

(1) *General.* This paragraph implements Section 1744, NDAA Fiscal Year 2014, and Section 541, NDAA Fiscal Year 2015, regarding the requirement for superior competent authority review of GCMCA decisions not to refer a sex-related offense, as defined in paragraph 5–29*c*(2), to trial by court-martial.

(2) *Sex-related offense defined.* For purposes of this paragraph, the term “sex-related offense” means any of the following:

(a) Rape or sexual assault under subsection (a) or (b) of UCMJ, Article 120 (as in effect at the time of the offense).

(b) Rape or sexual assault of a child under subsection (a) or (b) of UCMJ, Article 120b (as in effect at the time of the offense).

(c) Forcible sodomy under UCMJ, Article 125, if committed prior to 1 January 2019 (see appendixes 21 and 22, MCM, 2024).

(d) An attempt to commit an offense specified in paragraph 5–29*c*(2)(*a*), 5–29*c*(2)(*b*), or 5–29*c*(2)(*c*) as punishable pursuant to UCMJ, Article 80.

(3) *Pretrial advice.* To advise the convening authority and to facilitate further review, in cases that may be subject to this rule, the pretrial advice of the SJA may include an assessment as to whether or not the available evidence at the time of referral is sufficient to prove the offense beyond a reasonable doubt (see appendix 2.1, MCM, 2024).

(4) *Non-referral decisions by a convening authority requiring review.* A superior competent authority will review GCMCA decisions not to refer charges to trial by court-martial in cases involving sex-related offenses alleged by a victim as set forth in paragraphs 5–29*c*(5) and 5–29*c*(6). In any case in which the accused is charged with committing multiple sex-related offenses against one or more victims and the GCMCA refers at least one sex-related offense to trial by court-martial, superior competent authority review is not required. If the GCMCA does not refer any sex-related offenses, review by the appropriate superior competent authority is required (see paras 5–29*c*(5) and 5–29*c*(6)).

(5) *Non-referral decisions by a convening authority requiring review by the Secretary of the Army.*

(a) Pretrial advice. In any case, where a GCMCA decides not to refer any sex-related offense to trial by court-martial after receiving SJA UCMJ, Article 34 pretrial advice recommending that a sex-related

offense be referred to trial by court-martial, the GCMCA must forward the case to the Secretary of the Army for review.

(b) Specific review requirements. As part of the review, the Secretary of the Army will consider the case file (as defined in para 5–29*c*(5)(*c*)), and whether the GCMCA forwarding the case file for review considered the victim's statement(s) and views concerning the disposition of the alleged sex-related offense(s) in making the referral decision.

(c) Elements of a case file. A case file forwarded to a superior competent authority for review pursuant to this paragraph will include all of the following: all preferred charges and specifications; all reports of investigations of such charges, including the military criminal investigation organization report and the UCMJ, Article 32 preliminary hearing report or waiver; certification that the victim(s) of the alleged sex-related offense(s) was notified of the opportunity to express views on the victim's preferred disposition of the alleged offense(s) for consideration by the GCMCA; all statements of the victim(s) provided to the military criminal investigative organization and to the victim's chain of command relating to the alleged sex-related offense and any statement provided by the victim(s) to the GCMCA expressing the victim's view on the preferred disposition of the alleged offense(s); the SJA's written UCMJ, Article 34 pretrial advice to the GCMCA; a written statement, signed by the GCMCA, explaining the reason(s) the GCMCA decided not to refer the sex-related offense(s) to trial by court-martial; and certification that the victim(s) of the alleged sex-related offense(s) was informed of the GCMCA's decision to forward the case to higher authority for review.

(d) Procedure for forwarding case file to the Secretary of the Army. Case files forwarded to the Secretary of the Army pursuant to this paragraph will be submitted to OTJAG–CLD. Transmittal of case files pursuant to this chapter does not automatically toll the speedy trial clock. Files should be forwarded within seven days of the GCMCA's determination not to refer charges to trial by court-martial. The servicing OSJA must email a scanned copy of the file, along with mailing a hard copy file, containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in paragraph 5–29*c*(5)(*c*) to OTJAG–CLD. The Chief, OTJAG–CLD, will forward the file to The Deputy JAG, who will prepare the case file for review by the Secretary of the Army. Nothing in this paragraph should be construed to provide an enforceable right of review beyond the Secretary of the Army.

(e) Review by The Judge Advocate General of the Army Designee. In any case, where a GCMCA declines to refer a sex-related offense to trial by court-martial, the Secretary of the Army must review the decision related to that charge or charges as the superior competent authority if TJAG's designee, in response to a request by the detailed government counsel, requests review of the decision by the Secretary of the Army. Requests for review will be submitted to the Chief, OTJAG–CLD, who will forward the request to a JA designated by TJAG for review prior to review by the Secretary of the Army. The servicing OSJA must email a scanned copy of the government counsel's request and a scanned copy of the file, along with delivering or mailing a hard copy file containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in paragraph 5–29*c*(5)(*b*). If TJAG's designee requests review by the Secretary of the Army, the elements of the case file will be forwarded to the Secretary of the Army within seven days of this request in accordance with paragraph 5–29*c*(5)(*d*).

(6) *Non-referral decisions by a convening authority requiring review by the next superior commander authorized to exercise general court-martial convening authority.* In any case not requiring review under paragraph 5–29*c*(5) where the GCMCA decides not to refer any sex-related offense to trial after receiving charges forwarded by a special court-martial convening authorities (SPCMCAs), the GCMCA will forward the case file for review to the next superior commander authorized to exercise GCMCA.

(a) Specific review requirements. As part of the review conducted by the next superior GCMCA, consideration will be given to the requirements set forth in paragraph 5–29*c*(5)(*b*).

(b) Elements of case file. A case file forwarded to the next superior GCMCA for review must include each of the elements set forth in paragraph 5–29*c*(5)(*c*).

(c) Next superior general court-martial convening authority review. After reviewing a case file, the next superior GCMCA will either refer the charges of a sex-related offense to trial by court-martial or uphold the decision of the subordinate GCMCA not to refer the case. Nothing in this paragraph will be construed to provide an enforceable right of review beyond that which has already been provided for in this regulation or other applicable laws or regulations. If the next superior GCMCA decides to refer charges of a sex-related offense to trial by court-martial, they will personally refer the charges to their court-martial panel and not direct the subordinate GCMCA to refer them. The next superior GCMCA will use the trial team and special victim capability personnel at their disposal, if available, and will pay for all trial-related

expenses for the court-martial, including witness fees, TDY, expert witness expenses, and any other necessary expenses. If the next superior GCMCA does not have a court-martial panel, trial team or special victim capability personnel, they will coordinate with the subordinate GCMCA to provide such services for the court-martial proceedings. If the next superior GCMCA agrees with the subordinate GCMCA's decision not to refer the charges of a sex-related offense to trial by court-martial, they must provide written justification for the decision and immediately notify the victim(s) as set forth in paragraph 5–29*c*(7).

(7) *Victim to be informed of review decision.* The victim(s) of the alleged sex-related offense(s) must be notified of the results of any review conducted pursuant to paragraphs 5–29*c*(5) or 5–29*c*(6). Notification to the victim(s) must be conducted in a manner consistent with paragraph 17–15.

5–30. Referrals to special courts-martial

a. In general.

(1) The following personnel will be detailed to all SPCM:

(a) Military judge.

(b) Government counsel qualified pursuant to UCMJ, Article 27(b) and certified pursuant to UCMJ, Article 24a, as applicable.

(c) Defense counsel qualified pursuant to UCMJ, Article 27(b).

(d) Court reporter capable of producing a verbatim record of the proceedings.

(2) For offenses over which a special trial counsel does not exercise authority, prior to referring any charge to an SPCM, the convening authority will consult with a JA pursuant to RCM 406(a)(2). The court-martial convening authority or any higher convening authority may require the servicing SJA to prepare the pretrial advice in an individual case or class of cases. For offenses over which a special trial counsel has exercised authority and has not deferred, prior to referring any charge to an SPCM, the special trial counsel will make a written determination that each specification under a charge alleges an offense under the UCMJ, there is probable cause to believe the accused committed the offense charged, and a court-martial would have jurisdiction over the accused and the offense (see RCM 406(b)).

(3) Unless the convening authority or special trial counsel causes restrictive language to be added to the "instructions" portion of block 14, DD Form 458, all SPCM referrals that meet the requirements in paragraphs 5–30*a*(1) and 5–30*a*(2) are empowered to adjudge a bad-conduct discharge (BCD). There is no requirement to annotate on block 14 of DD Form 458 that the court is empowered to adjudge a BCD.

b. Special court-martial with military judge alone convened pursuant to the Uniform Code of Military Justice, Article 16 (c)(2)(A).

(1) A convening authority or special trial counsel may refer a case to an SPCM with a military judge alone pursuant to UCMJ, Article 16(c)(2)(A) by annotating on the charge sheet as a special instruction that the case will be tried by a military judge alone.

(2) SPCM convened pursuant to UCMJ, Article 16(c)(2)(A) are only authorized for cases in which all charged misconduct occurred on or after 1 January 2019, unless referral is part of plea agreement in accordance with paragraph 5–27*c*(2).

(3) An accused may object to trial by SPCM consisting of a military judge alone under UCMJ, Article 16(c)(2)(A) pursuant to RCM 201(f)(2)(E) prior to arraignment. The objection may be made at any time after referral, and there is no requirement to wait until arraignment. When the objection is made prior to the first UCMJ, Article 39(a) session, the military judge may sustain the objection without calling the court to order. If a military judge sustains an objection for offenses over which a special trial counsel does not exercise authority, the trial counsel will inform the convening authority. The convening authority or special trial counsel will withdraw the charges and may dispose of the charges, at their discretion, pursuant to RCM 404 and 407 or RCM 401A, as applicable.

c. Special court-martial convening authority. For offenses over which a special trial counsel does not exercise authority, SPCMCAs are encouraged to take advantage of the full range of authorized means of disposing of charges. A GCMCA may withhold authority to convene SPCMs in any individual case or class of cases.

5–31. Service of accused's copy of charge sheet

a. Summary courts-martial. At the trial's opening session, before arraignment, the SCM officer will give the accused a copy of the charge sheet, as received and corrected by the officer.

b. Special and general courts-martial. Immediately on receipt of charges referred for trial by SPCM or GCM, the trial counsel or special trial counsel will—

(1) Serve (or cause to be served) a copy of the charge sheet on the accused, as received and corrected by the counsel.

(2) Inform the defense counsel that this copy has been served (see RCM 602(a), Discussion).

5–32. Preliminary procedures for courts-martial

a. Docketing and calendar management. The Chief Trial Judge will establish docketing and calendar management procedures and publish them in the *United States Army Trial Judiciary Rules of Practice Before Army Courts-Martial* (Rules of Court) (available on JAGCNet).

b. Article 39(a) sessions.

(1) Sessions pursuant to UCMJ, Article 39(a), will be called on order of the military judge or on request of the trial counsel, special trial counsel, defense counsel, or special victims' counsel (but only pertaining to matters that may affect a victim's rights under UCMJ, Article 6b). In requesting a UCMJ, Article 39(a), session, counsel should give opposing counsel adequate opportunity to prepare. If the military judge has issued a pretrial order setting forth specific dates for submission of motions and responses thereto, such matters will be submitted in accordance with the order(s). If the military judge has not issued such an order or orders, counsel will comply with the notice and service provisions of the Rules of Court. The notice will inform opposing counsel and the judge whether submission will be on brief only, by oral argument, or both, and whether evidence will be presented. The notice will include—

(a) A statement of the substance of the matter, and

(b) The points and authorities on which counsel will rely.

(2) Counsel will comply with orders of the military judge regarding submission of briefs on pretrial motions. In the absence of an order, counsel are encouraged to submit briefs to the military judge and opposing counsel before UCMJ, Article 39(a) sessions and in accordance with any applicable rules of court.

(3) Motion sessions will be scheduled and conducted so that interlocutory matters will be promptly decided and dilatory or piece-meal presentations will be precluded (see RCMs 905 through 907, as to waiver of issues by failure to present timely motions for relief).

(4) The use of audiovisual technology (such as video teleconferencing technology) to establish the presence of the accused, military judge, trial counsel, special trial counsel, defense counsel, or special victims' counsel, as applicable, is authorized, provided that the requirements of UCMJ, Article 39 and the MCM, 2024 are satisfied.

5–33. Witness attendance

a. Subpoenas. A subpoena may be served informally by certified first-class mail, return receipt requested, or by email with a request for acknowledgment of receipt. Personal delivery must be used for formal service of subpoenas (see RCM 703(g)(3)(G) and Discussion).

b. Warrants of attachment. When it is necessary to issue a warrant of attachment, the military judge, or the convening authority if a military judge has not been detailed pursuant to UCMJ, Article 30a or Article 26, will use DD Form 454 (Warrant of Attachment). A warrant of attachment may be executed by a U.S. Marshal or other proper authority, as described in RCM 703(g)(3)(J) and Discussion.

c. Arrangements for travel overseas. See paragraph 17–23 for arrangements for travel of civilian witnesses to proceedings overseas.

d. Audiovisual and teleconferencing technology. Witnesses may testify through the use of audiovisual and teleconferencing technology, consistent with the MCM, 2024 applicable statutory provisions and case law, and the United States Constitution.

e. Employment of expert witnesses and consultants. When the employment of a prosecution expert witness or consultant is considered necessary, trial counsel or special trial counsel, as applicable, will in advance of employment of the expert, submit a request for funding of the expert to the GCMCA.

f. Witness fees and allowances overseas. When there is a court-martial or UCMJ, Article 32 Preliminary Hearing in a foreign country outside the jurisdiction of the civil courts of the United States, the affected major overseas commander or designee prescribes the fees and allowances for witnesses who the U.S. government does not employ. Unless otherwise provided for in international agreements, such fees and allowances will not exceed the maximum rate permitted to such witness when attending the courts of the United States or the courts of the foreign country, whichever is higher. If a fee schedule governs the compensation of local expert witnesses in the host nation, the major overseas commander or designee may prescribe the use of the host nation fee schedule to pay the local expert witness.

g. Army National Guard witnesses not on active duty. Subject to available funding, ARNG Soldiers who are not on AD and whose physical presence as a witness during a UCMJ, Article 32 hearing or a court-martial proceeding is determined to be necessary will be afforded the opportunity to volunteer for activation pursuant to ADOS orders. If a Soldier declines to volunteer or the funding for ADOS orders is determined to be unavailable, invitational travel orders to travel in civilian status may be provided. The SJA requesting the presence of the witness will coordinate with the NGB's Office of General Counsel and OTJAG, PPTO–RC, for ADOS orders prior to the proceeding. Thirty days advance coordination for the production of orders is generally recommended.

Section V

Trial

5–34. Procedure for summary courts-martial

a. In general. DA Pam 27–7 and appendix 8, MCM, 2024, will serve as guides for SCM procedure, but nothing contained therein will give an accused any greater protection than that required by military due process.

b. Relationship between covered offenses and summary courts-martial. Commanders cannot refer charges and specifications to trial by SCM until after deferral by special trial counsel for offenses over which a special trial counsel has exercised authority. If, after deferral, a commander refers charges and specifications to trial by SCM and a Soldier exercises their right to object to trial by SCM, the commander must consult with special trial counsel before proceeding. Only a special trial counsel may refer charges and specifications alleging a covered offense to trial by SPCM or GCM (see UCMJ, Article 24a(c)(5) and RCM 601(b)(2)). However, nothing in this paragraph prohibits a commander or convening authority from referring charges and specifications to trial by SPCM or GCM, where the charges and specifications do not allege a covered offense if the special trial counsel declines to do so.

c. Accused consultation with counsel. The SCM officer will grant the accused an opportunity to consult with qualified defense counsel before the trial date for advice concerning the accused's rights and options and the consequences of waivers of such rights in voluntarily consenting to trial by SCM.

d. Accused Representation at summary courts-martial. The accused at SCM has a right to representation by military defense counsel. An accused may seek to be represented by civilian defense counsel. Civilian defense counsel representation will not be at the expense of the DoD or the Army. The accused may waive the detailing or presence of defense counsel. If the accused waives the right to have defense counsel present during the SCM proceeding, the SCM officer will inquire into whether the waiver is knowing and voluntary. Presence of defense counsel may be accomplished by remote means through the use of audiovisual technology only if the accused consents to the presence of counsel by remote means and there is the opportunity for confidential consultation with defense counsel during the summary court-martial proceeding.

e. Government Representation at summary courts-martial. Counsel will not represent the government at SCM unless counsel represents the accused and the SJA approves the representation.

f. Notification and waiver. The DA Form 5111 (Summary Courts-Martial Rights Notification/Waiver Statement) will be completed and attached to each copy of the charge sheet.

g. Spokesperson. Convening authorities are authorized, but not required, to provide the accused the assistance of an assigned spokesperson to assist in gathering evidence to be used either in findings or sentencing, building a presentation for the SCM officer, and speaking on behalf of the accused. Authorizing or using a spokesperson will not unreasonably delay the court-martial proceedings. The SJA will provide any spokesperson with a copy of DA Pam 27–7.

5–35. Conditional pleas of guilty

Because conditional guilty pleas subject the government to substantial risks of appellate reversal and the expense of retrial, SJAs will consult with the Chief, Government Appellate Division (GAD) prior to the government's consent regarding an accused entering a conditional guilty plea at court-martial. In cases involving charges and specifications referred to court-martial by a special trial counsel, special trial counsel will consult with the LSTC and the Chief, GAD prior to entering into a conditional guilty plea. Once this coordination is complete, the trial counsel or special trial counsel may consent, on behalf of the government, to entering the conditional guilty plea by the accused in accordance with RCM 910(a)(2).

5–36. Personally identifiable information

a. In general. Unless sealed, the ROT and documents introduced at a court-martial should be treated as presumptively public documents. SSNs, bank account numbers, and other sensitive information should not be introduced into evidence unless relevant to some issue in contention. When it is necessary to include such information in the ROT, counsel should submit the matter under seal (except for the SSN of the accused on the charge sheet). Counsel will not presume that some other person will remove PII from the records at a later time (see also para 5–56*h*).

b. Identification of witnesses. After a witness is sworn, the witness should be identified for the record (full name, rank, and unit, if military, or full name and work address, if civilian (see RCM 913(c)(2), Discussion)). Neither an SSN nor a home address will be used to verify the witness's identity.

5–37. Sentencing

a. Evidence of the accused's prior service. For purposes of RCM 1001(b)(2) and (d), trial counsel, special trial counsel, or defense counsel may, at the counsel's discretion, introduce to the court-martial copies of any personnel records that reflect the past conduct and performance of the accused, made, or maintained according to departmental regulations. Examples of personnel records that may be presented include—

(1) The Enlisted Record Brief, Officer Record Brief, or SRB (or comparable document).

(2) Promotion, assignment, and qualification orders, if material.

(3) Award orders and other citations and commendations.

(4) Records of NJP, except for summarized records of proceedings (DA Form 2627–1) and not including records of NJP maintained in MJO (these records are used for statistical purposes only), from any file in which the record is properly maintained by regulation.

(5) Written reprimands or admonitions required by regulation to be maintained in the AMHRR of the accused.

(6) Reductions for inefficiency or misconduct.

(7) Bars to continued service.

(8) Evidence of civilian convictions entered in official military files.

(9) Officer and NCO evaluation reports.

(10) The DA Form 3180 (Personnel Screening and Evaluation Record).

(11) Records relating to discipline and adjustment boards and other disciplinary records filed in corrections files in accordance with AR 190–47.

(12) Personnel records contained in the AMHRR or located elsewhere, including but not limited to the correctional file, unless prohibited by law or other regulation (see AR 600–8–104, which discusses personnel files, and AR 190–47, which discusses corrections files.)

b. Use of original documents. Copies may be substituted for original documents or evidence, with permission, in the record (see MRE 901 for authentication of original copies).

c. Authenticating government files. SJAs may designate personnel within the OSJA to act as authorizing officials for Soldiers' AMHRRs. Designation must be in writing and specify the period of time in which the designation will be valid. Once designated, these authorizing officials may access and download Soldiers' AMHRRs from government databases for use at courts-martial or nonjudicial and administrative proceedings.

5–38. Automatic reduction of enlisted Soldiers pursuant to UCMJ, Article 58a

a. In general. Automatic reduction to the lowest enlisted pay grade by operation of UCMJ, Article 58a, will be effected in the Army in accordance with this paragraph. In all cases, the court-martial may adjudge a reduction to the grade of private E–1 or any intermediate grade or no reduction at all.

b. Finding of guilty for any offense committed before 1 January 2019. In cases where the judgment of the court-martial entered into the record under UCMJ Article 60c includes a finding of guilty for any charge or specification that alleges conduct that was committed prior to 1 January 2019, reduction to the lowest enlisted pay grade will be automatically only in a case in which the approved sentence includes, whether, or not suspended, either—

(1) A DD or BCD.

(2) Confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

c. All alleged offenses committed on or after 1 January 2019. In cases where all charges and specifications allege conduct that was committed on or after 1 January 2019, reduction to the lowest enlisted pay grade will be automatic only if at least one of the offenses for which the accused is sentenced occurred after the President had delegated to the Secretary the authority to establish the conditions for automatic reductions, and the sentence included either—

(1) A DD or BCD.

(2) Confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

5–39. Accused's rank insignia while in confinement

Confinement facilities will determine the insignia of rank, if any, that Soldiers will wear in confinement; this determination will not affect entitlement to pay and allowances. Restoration of rank or suspension of a reduction will not affect the insignia of rank worn by a Soldier within a confinement facility.

5–40. Hard labor without confinement

Hard labor without confinement is an authorized court-martial sentence for enlisted members (see RCMs 1003 and 1301). Hard labor without confinement (like the punishment of restriction) is effective upon EOJ at an SPCM or GCM, or at an SCM, when ordered executed in the convening authority's action in accordance with UCMJ, Article 57(a)(6).

a. Hard labor without confinement will—

(1) Be performed in a manner directed by the Soldier's immediate commander. Such duties will normally be performed in public view and may not include duties that constitute a safety or health hazard to the convicted Soldier.

(2) Focus on punishment and may include duty to induce fatigue.

(3) Not excuse the Soldier from their regular duties. The immediate commander will determine the number of hours of hard labor the Soldier will perform in addition to their regular duties.

(4) Not include duties associated with maintaining good order and discipline, such as charge of quarters and guard duties.

(5) Run consecutively once ordered executed and served in its entirety unless the executed portions are remitted by the convening authority.

(6) Not impinge upon the Soldier's opportunity to consume three meals daily, though meals may be provided by meals ready to eat or similar substitutes, nor impinge upon the opportunity for a minimum of four uninterrupted hours of sleep per night.

b. Upon completion of the duties specified as the daily assignment of hard labor without confinement the Soldier should be permitted to take leave or pass to which entitled.

c. A sentence to hard labor without confinement will not trigger an automatic reduction in rank pursuant to a UCMJ, Article 58a (see para 5–38).

Section VI

Post-Sentencing Procedures for Cases Referred on or after 1 January 2019

5–41. Effective dates relating to post-trial processing and post-sentencing procedures

a. For cases referred on or after 1 January 2019, follow the post-sentencing process in this section.

b. For cases referred before 1 January 2019, follow the post-trial process in appendix D, section I.

5–42. Statement of Trial Results for special and general courts-martial referred on or after 1 January 2019

a. Preparation. A Statement of Trial Results (STR) will be prepared in all cases in which an accused has been arraigned, regardless of the eventual disposition of the accused's case. The STR replaces the Report of Result of Trial for all purposes, including confinement, pay, and any other personnel action associated with the result of a trial of the accused. Unless otherwise directed by the military judge, the trial counsel or special trial counsel will ensure that a STR, in accordance with RCM 1101 and paragraph 5–42*b*, is prepared in MJO so that it will be ready for review and signature by the military judge as soon as possible after the sentence is announced. Before signing the STR, the military judge will review the STR for accuracy with trial counsel or special trial counsel and counsel for the accused.

b. Contents. In addition to the contents required pursuant to RCM 1101(a), the STR will include the following:

(1) The SSN and DoD identification number of the accused.

(2) An indication of whether deoxyribonucleic acid (DNA) processing is required in accordance with DoDI 5505.14.

(3) An indication of whether sex offender registration is required in accordance with 34 USC 20901 et seq. or DoDI 1325.07.

(4) An indication of whether the accused has been convicted of a crime punishable by imprisonment for a term exceeding one year (see 18 USC 922(g)(1)).

(5) An indication of whether any offense for which the accused was convicted is a misdemeanor crime of domestic violence (see 18 USC 922(g)(9)).

(6) The date of any board of inquiry pursuant to RCM 706.

(7) An indication of whether the accused was convicted of a qualifying sex-related offense that requires an ASCO of L3 or L8 (see chap 24).

c. Distribution.

(1) Trial counsel or special trial counsel will ensure that the STR is distributed in accordance with RCM 1101(d) and Appendix H and included in the ROT in accordance with RCM 1112(b)(6). For RCM 1101(d) purposes, the convening authority's designee is the SJA or legal advisor who provides the convening authority with clemency advice.

(2) Trial counsel or special trial counsel will provide a copy of the STR to the servicing DMPO in any case involving a reduction in rank, a forfeiture of pay, or a fine and will ensure a copy is filed in the accused's AMHRR.

(3) Escorts for post-trial prisoners transferred to the U.S. Disciplinary Barracks (USDB) or other military corrections system facilities must carry a copy of the signed STR for delivery to the USDB with the prisoner.

(4) Trial counsel or special trial counsel will provide a copy of the STR to the military law enforcement agency that investigated the case, either the servicing Provost Marshal's Office for military police investigator investigations; or HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134 for CID investigations.

(5) A signed STR indicating that an L3 or L8 ASCO is required based on the accused's conviction of a qualifying sex-related offense constitutes a complete request for such code. The STR may be transmitted to HRC without additional documentation to support an L3 or L8 ASCO request in accordance with procedures established by HRC.

5–43. Reassignment of post-trial Soldiers in confinement or on excess leave

a. Place of confinement. The place of confinement will be determined in accordance with AR 190–47.

b. Reassignment of confined accused. Personnel accountability for post-trial Soldiers in confinement will be administratively reassigned immediately after trial from their unit of assignment at the time of their conviction to the appropriate personnel control facility (PCF) of the designated military confinement facility, except those Soldiers who receive an adjudged sentence of 120 days (4 months) or less of confinement, without a discharge, or a sentence that is limited by pretrial agreement to 120 days (4 months) or less of confinement, and no discharge, who will remain assigned to their parent unit.

c. Reassignment of accused on excess leave. Personnel accountability for post-trial Soldiers on excess leave will be administratively reassigned from their unit to the Fort Sill PCF immediately upon action placing them in excess leave status. Such administrative reassignment of personnel accountability will not affect the authority of the convening authority to grant clemency pursuant to UCMJ, Article 60a and 60b.

d. Service on Clerk of Court, U.S. Army Court of Criminal Appeals. The GCMCA will ensure that the Clerk of Court, USACCA, is expeditiously furnished copies of all reassignment orders and excess leave orders or a copy of DA Form 31 (Request and Authority for Leave) when an accused has been reassigned from their jurisdiction or placed on excess leave. All documents reflecting a change in the Soldier's duty status or unit of assignment, including voluntary or involuntary excess leave documents, will be included with the allied papers in the ROT. If the ROT has been previously forwarded for appellate review, any new documents reflecting a change in duty status or unit of assignment, including voluntary and involuntary excess leave documents, will be mailed promptly to the Clerk of Court, USACCA.

5–44. Compliance with plea agreements

If a Soldier is transferred to a PCF and there was a plea agreement in the court-martial that resulted in the post-trial confinement, the convening authority of the gaining unit will comply with all the terms and conditions in the plea agreement. If the plea agreement or pretrial agreement included a provision precluding administrative separation, the Soldier will be reassigned to their original unit upon release from confinement. Separation for misconduct by the accused while in confinement would not be precluded by such a provision in a plea or pretrial agreement.

5–45. Accused/crime victim access to the court-martial record

a. In general. Upon receiving a valid written request pursuant to either RCM 1106, 1106A, or both, the trial counsel or special trial counsel will provide the court-martial record to the counsel for the accused and to a crime victim or counsel for any crime victim, as required. The trial counsel or special trial counsel is not required to honor a request for a court-martial record made pursuant to this paragraph after the convening authority has taken action on the case.

b. Court-martial record. For the purpose of compliance with RCM 1106 and 1106A, and this paragraph, the court-martial record consists of—

(1) A copy of the audio recording of all open court-martial sessions (if providing an audio recording is impracticable, a substantially verbatim written transcript of all open court-martial sessions satisfies this requirement).

(2) Unless sealed, access to the evidence admitted at the court-martial.

(3) Unless sealed, access to the appellate exhibits.

c. No redaction required. The redaction requirements in paragraph 5–56*h* do not apply to audio court-martial records provided to an accused or a victim pursuant to RCM 1106 and RCM 1106A.

d. Timing. Unless otherwise impracticable, within five duty days after receiving a proper request for access to the court-martial record, the trial counsel or special trial counsel will ensure compliance with paragraph 5–45*a.* The 10-day time period for submission of accused and victim matters to the convening authority pursuant to RCM 1106, and 1106A is not dependent upon receipt of a court-martial record. However, failure by the trial counsel or special trial counsel to comply with the time requirement under this paragraph will constitute good cause for allowing up to 20 additional days pursuant to RCM 1106 and 1106A.

e. Audio court-martial records. The format of audio court-martial records provided under this section will be MP3 or similar format. Requesters in paragraph 5–45*a* may state, in writing, that they require a different format that can be produced by the Army's official court-martial recording system at the time the request is made and the reasons that this different format is required. The SJA or their designee is the final decision authority for such requests.

f. Evidence and exhibits. The government must provide access to admitted evidence and appellate exhibits upon written request from the defense counsel; the SVC, if the victim is represented; or the victim, if the victim is unrepresented, but should not normally provide copies. If the government provides copies, third-party personal information must first be redacted.

5–46. Staff Judge Advocate advice on clemency action

a. In general. Except as provided in paragraph 5–46*f*, the SJA will advise the convening authority in writing prior to the convening authority's exercise of clemency power. The advice will include the clemency powers that apply in a particular case based on the date of the earliest offense for which the accused was found guilty. Use of an appropriate standard template, such as the SJA Clemency Advice template in MJO, satisfies the requirements of this paragraph.

b. Advice on findings. The SJA will advise the convening authority if the convening authority is authorized to set aside any finding of guilty pursuant to RCM 1110. If the convening authority has no authority to set aside a finding, the advice will so state.

c. Advice on sentence. The SJA will advise the convening authority if the convening authority is authorized to take action on any part of the sentence pursuant to RCM 1109 or RCM 1110. If the convening authority has no power to set aside or suspend any part of the sentence, the advice will so state.

d. Recommendation. When the convening authority may exercise clemency under paragraphs 5–46*b* and 5–46*c*, the SJA may recommend whether the convening authority should exercise that power. A written recommendation is not required.

e. Other matters. The SJA clemency advice will indicate the following:

(1) Whether the accused made any request for deferment or waiver of forfeitures, including whether the accused submitted the necessary information for transferring forfeitures for the benefit of dependents.

(2) Whether the accused or any victim submitted matters for the convening authority's review and whether any of those matters are prohibited pursuant to RCM 1109(d)(3)(C).

(3) Whether the military judge made a suspension recommendation and, if so, the limits of the convening authority's suspension authority based on the military judge's recommendation.

f. Exception. The requirement for written advice does not apply to any case in which the sentence does not include a punitive discharge, dismissal, or confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

g. Notice. When the convening authority's clemency action is served on the accused or crime victim, the written advice to the convening authority required pursuant to this rule, if any, will be included (see para 5–49).

5–47. Suspension of sentence

a. In general. The authority to suspend the execution of parts of a sentence is set forth in RCM 1107(b).

b. Limitations when suspension is based on substantial assistance. In cases pursuant to RCM 1109(e) where a convening authority suspends a sentence based on the recommendation of trial counsel or special trial counsel who prosecuted the accused, on the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, no part of a sentence may be suspended beyond a reasonable period. A reasonable period of suspension will be calculated from the date of the EOJ, incorporating the convening authority's action to suspend the sentence.

c. Limitations when suspension is based on recommendation of military judge. In cases where the convening authority suspends a sentence on the basis of a military judge's recommendation in the STR pursuant to RCM 1109(f), the portion of the sentence that is to be suspended may not exceed the portion of the sentence that the military judge recommended be suspended, and the duration of the suspension may not be less than that recommended by the military judge.

5–48. Vacation of suspended sentences

a. In general. For sentences adjudged by GCM or SPCM, including a BCD, see RCM 1108(d). DD Form 455 (Report of Proceedings to Vacate Suspension of a Court-Martial Sentence), with appropriate modifications, may be used as a guide for the hearing and for recording the evidence relied on and the reason(s) for vacating the suspension. The original and two copies of any proceedings vacating a suspension will be sent to the office of the Clerk of Court, USACCA.

b. Cases involving the suspension of a dismissal. In a case of a suspended dismissal, the officer exercising GCM jurisdiction over the accused, following a vacation hearing pursuant to RCM 1108(d), will forward the record of the hearing and all recommendations and a proposed action to vacate the suspension if the GCMCA recommends vacation, to the Clerk of Court, USACCA.

5–49. Convening authority clemency action

a. In general. This paragraph explains the convening authority's post-trial responsibilities and authorities. Convening authority clemency powers applicable in a case are dependent on the date of the earliest offense of which the accused was found guilty.

b. Procedures. If a case was referred to trial on or after 1 January 2019, the post-trial procedures contained in this paragraph and UCMJ, Articles 60a and 60b, as well as RCMs 1109 and 1110, MCM, 2024 will be used.

c. Convening authority clemency power. The convening authority's power to grant clemency is based on the date of the earliest offense of which the accused was found guilty. The SJA Clemency Advice template in MJO provides a summary of the convening authority's clemency powers based on the date of the earliest offense for which the accused was found guilty.

(1) In a case in which the accused was found guilty of an offense that occurred before 24 June 2014, apply the clemency authority described in RCM 1107, MCM, 2012.

(2) In a case in which the earliest offense of which the accused was found guilty was before 1 January 2019 but on or after 24 June 2014, apply the clemency authority described in RCM 1107, MCM, 2012, or 2016 as appropriate.

(3) In a case in which all offenses of which the accused was found guilty occurred on or after 1 January 2019, see RCMs 1109 and 1110, MCM, 2024.

d. Suspension authority upon recommendation by a military judge. After receiving a suspension recommendation from the military judge, the convening authority may suspend a sentence in accordance with RCM 1109(f) regardless of when the offense was committed. The authority to suspend a sentence pursuant to RCM 1109(f) is in addition to any other suspension power the convening authority may have (see RCM 1109(c)(5); RCM 1110(c)).

e. Memorializing convening authority action. Regardless of which version of clemency authority applies, and even if the convening authority decides to take no action, the SJA will ensure that the convening authority complies with the requirements of RCM 1109(g). The use of the Convening Authority Action template in MJO satisfies this requirement. The action (or memorialization of no action) by the convening authority will be promptly forwarded to the military judge and incorporated in the EOJ and as an attachment to the ROT. A decision by the convening authority to take action or no action on a case must be signed by the convening authority. The action will indicate if either adjudged or automatic forfeitures were deferred. If waiver of automatic forfeitures is approved and included in the action, the waiver must state the person to whom the forfeitures are to be awarded.

f. Convening authority not able to take action. If it is impracticable for the convening authority to take action, that person will cause the court-martial record to be forwarded to an officer exercising GCM jurisdiction over the command. The memorandum or message that causes the record to be so forwarded will contain a statement of the reasons why the convening authority could not act on the record and any other matters deemed appropriate by the forwarding officer. A copy of the memorandum or message will be included as an attachment to the ROT.

g. Service of convening authority action.

(1) If the convening authority takes any action on the findings or sentence, a copy of such action will be served on the accused, crime victim, or their respective counsel. If the action is served on counsel, counsel will, by expeditious means, provide the accused or crime victim with a copy. If the judgment is entered within ten duty days of the convening authority's action, service of the EOJ will satisfy this requirement.

(2) If the convening authority elects to take no action on the findings and sentence, the accused and any crime victim will be notified. Notification may occur by any reasonable means, and notice may be served on their respective counsel.

5–50. Post-trial Article 39(a) sessions

a. Timing of motions. Post-trial motions will be filed no later than fourteen days after the defense counsel, or the accused when unrepresented, receives the STR unless the time to file is extended by the military judge, subject to the exceptions in 5–50*a*(1) and (2).

(1) Motions to correct an error in the convening authority's action will be filed no later than five days after the party receives the convening authority's action.

(2) Motions to correct a clerical or computational error in a judgment entered by the military judge will be made within five days after a party receives a copy of the EOJ.

b. Required matter. Post-trial UCMJ, Article 39(a) sessions will be used to resolve any matter that substantially affects the legal sufficiency of any finding or the sentence that is capable of being resolved at the trial-level (see RCM 1104). By court rule or by court order, the military judge may require counsel to file all such motions, including—

(1) Any claim of error in the acceptance of a guilty plea.

(2) Any motion to set aside one or more findings of guilty because the evidence is legally insufficient.

(3) A material error in the STR.

(4) Any error in the post-trial processing of the court-martial.

(5) Any error in the convening authority's action pursuant to RCM 1109 or 1110.

5–51. Entry of judgment

a. In general. In all cases where an STR was prepared, an EOJ will also be prepared. While the military judge is responsible for entering the court-martial judgment into the ROT, the SJA is responsible for creating the ROT and the orderly administration of the post-trial process. The EOJ will be created electronically using one of the JAGCNet military justice applications designed for this purpose.

b. Timing when there is a guilty finding. In an SPCM or GCM with a finding of guilty, the military judge will enter the judgment of the court-martial within five duty days of the later of:

(1) Receipt of the convening authority's action referred to in paragraph 5–49.

(2) The resolution of any post-trial motions filed pursuant to paragraph 5–50.

c. Timing when no finding of guilty. When court-martial results in a full acquittal or when a court-martial terminates before findings, the judgment will be entered as soon as practicable. When a court-martial results in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, the judgment will be entered as soon as practicable after a hearing is conducted pursuant to RCM 1105.

d. Service of judgment on accused. Within 24 hours of EOJ, in cases where the accused is in confinement, the SJA serving the convening authority will notify the confinement facility where the accused is or will be confined and the DMPO providing service to that confinement facility of the EOJ. The SJA may use any form of communication that meets the 24-hour requirement, including electronic messages, facsimiles, and the Defense Joint Military Pay System (DJMS). If DJMS is used, the SJA will coordinate with the appropriate DMPO for the use of DJMS, provided that the 24-hour requirement can be met. At a minimum, notification will include—

(1) The name, rank, SSN, and unit of the accused.

(2) The date sentence was adjudged.

(3) The exact sentence adjudged by the court.

(4) A copy of the EOJ with attachments.

e. Copies of the judgment. Copies of entries of judgment will be forwarded pursuant to Appendix H of this regulation and filed in the accused's AMHRR.

Section VII

Records of Trial for Cases Referred on or after 1 January 2019

5–52. Effective dates relating to records of trial

a. For cases referred on or after 1 January 2019, follow the process in this section.

b. For cases referred before 1 January 2019, follow the procedures in appendix D, section II.

5–53. Preparation of records of trial

a. In general. Records of trial will be prepared as prescribed in RCMs 1112 and 1305.

b. Important terms.

(1) *Court-martial record.* The court-martial record is defined in RCM 1106(c) and paragraph 5–45*b*. The court-martial record consists of a copy of the recording of all open sessions of the court-martial and copies of, or access to, the evidence admitted at the court-martial and the appellate exhibits. The court-martial record will not include sealed or classified material or recordings unless authorized by a military judge upon showing good cause. A military judge will issue appropriate protective orders when authorizing such access. The term court-martial record is relevant only for RCMs 1106 and 1106A purposes. It is prepared and made available, upon request, shortly after the announcement of the sentence.

(2) *Certified record of trial.* The ROT is the official record of the proceedings of a court-martial. The ROT consists of the eight items listed in RCM 1112(b). Principal among these contents is the substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting, including any UCMJ, Article 30a sessions conducted in accordance with RCM 309(e). The court reporter certifies that the ROT contains all the items required by RCM 1112(b) as soon as practicable after the judgment has been entered into the record.

(3) *Copies of record of trial for distribution.* No copy of the ROT provided to the accused or a victim, or made public pursuant to UCMJ, Article 140a, will contain classified information, information under seal, or recordings of closed sessions of the court-martial (see RCM 1112).

(4) *Written transcript.* A written transcript of a court-martial proceeding is included with the other attachments to the ROT when a ROT is forwarded for appellate review (see RCM 1112(f)). When required by RCM 1114, the written transcript is prepared and in any SPCM or GCM with a finding of guilty, contemporaneously with the rest of the post-trial process described in this regulation. This requirement for a written transcript in all SPCM or GCMs with a finding of guilty is for the purposes of enabling timely compliance with redaction requirements and to provide a written transcript in every case in which the record of an SPCM or GCM will be reviewed.

c. Other attachments to the record of trial. Materials regarding pretrial confinement will be attached to the ROT. This includes but is not limited to a copy of the commander's checklist for pretrial confinement, DA Form 7568 (Army Victim/Witness Liaison Program Evaluation), and a copy of the magistrate's

memorandum approving or disapproving pretrial confinement. Also, see paragraph 12–7 for the identification of companion cases on the covers of original records of trial. In all cases in which the accused is sentenced to confinement for six months or more, whether, or not all or part of the confinement is suspended, an additional copy of the ROT will be prepared for the Army Clemency and Parole Board for clemency review purposes and distributed under paragraph 5–58. The cover of this additional copy will be marked prominently with the phrase “Clemency Copy.”

d. Verbatim transcript. A certified verbatim transcript of the ROT will be prepared in all cases that include a finding of guilty (see subparagraphs 5–56*d* through 5–56*h*).

e. Record of acquittals. If the proceedings result in an acquittal of all charges and specifications or in termination before or after findings, the ROT will be prepared pursuant to RCM 1112. Although a redacted transcript of the proceedings is required by paragraph 5–57*b* for service on the accused and victim, it is not a required attachment to the ROT. The DD Form 490 (Certified Record of Trial) may be modified and used as a binder for the ROT.

f. Records for summary courts-martial. In SCM cases, preparation of DD Form 2329 (Record of Trial by Summary Court-Martial) (see appendix 5, MCM, 2024) will include the following:

(1) In the left-hand column of item 8, insert each article of the UCMJ alleged to have been violated and include a summary of each specification in the format outlined in DD Form 2329.

(2) In the lower right-hand corner of item 8, and only after the written review required by RCM 1307 has been completed and has determined the ROT to be legally sufficient, enter the following phrase in block form: “This record of trial has been reviewed pursuant to UCMJ, Article 64(a) and RCM 1307 and is legally sufficient.”

(3) In those cases where review is completed pursuant to RCM 1307(f) and review pursuant to RCM 1201(j) is required, item 13 will be annotated with the result of the completed action by the convening authority and indicate that additional review is required pursuant to RCM 1201(j). The original charge sheet (DD Form 458) and all allied papers, documentary evidence, and descriptions or photographs of physical evidence will be attached to the original ROT. This ROT will be forwarded to the Clerk of Court, USACCA. After initial action, this file will be forwarded for JA review pursuant to paragraph 5–60*b* before review pursuant to RCM 1201(j), followed by disposition pursuant to paragraph 5–59*b* of this regulation.

g. When accused tried in absentia. In the event a Soldier is tried *in absentia*, the SJA will ensure that the documents used to notify the Deserter Control Point are included among the allied papers submitted with the ROT.

5–54. Readability of contents of records of trial and attachments

The Chief Judge, USACCA, is delegated the authority to promulgate local rules regarding the formatting and readability of records of trial and any transcript of a ROT. Except as the Chief Judge may otherwise provide, the original and all copies of records of trial forwarded for appellate review, including examination pursuant to UCMJ, Article 69, must meet the standards set forth below:

a. Any transcript of a court-martial audio record attached to a ROT must appear double-spaced on one side of 8 1/2by 11-inch letter-sized white paper of sufficient weight (for example, 20-lb.) that the print on each succeeding page does not show through the page above.

b. The type of font will be promulgated by the Chief Judge, USACCA, in the USACCA local rules of court.

c. The printer used must produce a clear, solid, black imprint.

d. The top margin of each page must be sufficient (for example, 2 inches) so that no line of text is obscured by the document fasteners used to attach the pages.

e. All accompanying papers, including stipulations, motions, briefs, appellate exhibits, and copies, should, to the maximum extent practicable, be prepared in accordance with the standards noted above.

5–55. Retention of trial notes or recordings

The court reporter’s notes and recordings of the original proceedings of all SPCMs and GCMs, including any proceedings or hearings conducted under UCMJ, Article 30a and UCMJ, Article 32, will be maintained by the military justice section of the servicing OSJA for five years after EOJ or until completion of appellate review, whichever is later.

5–56. Review, authentication, and certification of records of trial

a. In general. The certification of a ROT and its attachments is a multi-step process. The outcome of this process is the production of a complete ROT and a true, accurate, and complete written transcript that will be forwarded to ACCA for completion of any required appellate review. Those performing any review, authentication, or certification of a SPCM or GCM under this paragraph will use DD Form 490 and the instructions in appendix E for this purpose. The SJA or the SJA's designee will sign the DD Form 490.

b. Supervision. The military judge, with the court reporter's supervisor, is responsible for supervising the quality of the certification of the ROT and any transcript accompanying the ROT.

c. Motions to correct non-minor errors in the transcript. In the case of a non-minor error in the ROT, any party may make a motion to correct the transcript to conform with the audio recording. Motions to correct non-minor errors prior to EOJ will be made to the military judge. Errors identified after EOJ will be listed in a submission or motion to the reviewing or appellate authority.

d. Pre-certification preparation of the record of trial and attachments. A court reporter will organize the ROT as required by RCMs 1112(b), 1112(f), and 1116, appendix E of this regulation, and DD Form 490. Upon completion of these requirements, including the preparation of a substantially verbatim written transcript, a court reporter will forward the ROT and attachments for a pre-certification review pursuant to 5–56*e*. If the court reporter who recorded the proceedings is not available for this purpose, the SJA or their designee will designate another court reporter to prepare the ROT and attachments.

e. Pre-certification review of the record of trial and attachments. The court reporter referred to in paragraph 5–56*d* will notify the trial counsel, special trial counsel, or other person designated by the SJA, as applicable, that the ROT is ready for a pre-certification review. The person conducting the pre-certification review will confirm compliance with paragraph 5–56*d*. This review includes ensuring that the written transcript is a substantially verbatim copy of the court-martial proceedings. A substantially verbatim written transcript is one that contains all of the court-martial proceedings as recorded by audio or video, contains no substantive errors in the transcription of a military judge's ruling, the testimony of a witness, a plea, a finding, or a sentence, but has not necessarily been corrected for grammar, spelling, punctuation, and other transcription errors. When the pre-certification review is complete, the court reporter will notify the military judge that the ROT with attachments is ready for authentication.

f. Military judge authentication of the record of trial and attachments. Authentication consists of verifying compliance with the requirements in paragraph 5–56*d* and listing any necessary corrections in the transcription of a military judge's ruling, the testimony of a witness, a plea, a finding, or a sentence. The Rules of Court may specify additional requirements for authentication of a ROT. Necessary corrections do not include errors in grammar, spelling, or punctuation unless the military judge determines the error is legally significant. The military judge may review the audio record of the court-martial proceedings as necessary to comply with the requirements of this paragraph, but such review is not required. The military judge will return the ROT and attachments to the SJA or their designee, along with the signed authentication and a list of any missing items in the ROT, and any necessary corrections in the transcript. After authentication by the military judge, the ROT and attachments will be certified by the court reporter. If multiple court reporters assisted in the creation of a substantially verbatim recording of the court-martial proceedings, each court reporter will certify the portion of the record they recorded.

g. Court reporter certification of record of trial and written transcript. After correcting any deficiencies noted by the military judge, the court reporter will certify the ROT and transcript. If multiple court reporters assisted in the creation of a substantially verbatim recording of the court-martial proceedings, each court reporter will certify the portion of the record they recorded. Pursuant to RCM 1112(c), if the court reporter cannot certify the ROT, the military judge who presided over the proceedings will certify the ROT.

h. Redaction. To speed the eventual transfer of court-martial documents and audio recordings to a system of records, and to protect PII, trial counsel, special trial counsel, and counsel for the accused, in conjunction with the court reporter and others as designated by the SJA, will ensure that PII and any protected health information is only included in the ROT when necessary. The following information will be redacted from the ROT prior to releasing it, including any transcript made pursuant to RCM 1114 and attached to the ROT, unless the information establishes an element of an offense or is otherwise required:

(1) Any recordings of closed sessions, any transcripts of closed sessions, and any sealed exhibits.

(2) Names of victims who are minors and witnesses who are minors; if an identifier is used, use only the initials.

(3) SSNs. If an individual's SSN is relevant, use only the last four digits.

(4) Financial account information. If financial account numbers are relevant, use only the last four digits.

(5) Home addresses. If a home address is relevant, use only the city and state.

(6) Telephone numbers. If a telephone number is relevant, use only the last four digits.

(7) Personal email addresses. If a personal email address is relevant, use only the first two characters and the domain separated by three asterisks (for example, a2***@msn.com).

(8) Dates of birth. If a named individual's date of birth is relevant, use only the year unless the birth month is relevant to the charged offense.

(9) Any other information held in a database that could be used to identify a specific person other than the accused.

5–57. Copies of the record of trial

a. Accused and crime victim notice to receive record of trial.

(1) The defense counsel must notify the accused of their right to receive a copy of the ROT. In writing, the defense counsel will notify the court reporter whether the accused elects to receive a copy of the ROT or elects to have the record given to the defense counsel. Notice to the court reporter must include an address for delivery of the ROT.

(2) The trial counsel or special trial counsel, as applicable must notify each crime victim of their right to receive a copy of the ROT. If a crime victim elects to receive a copy of the ROT, such counsel will notify the court reporter. Notice to the court reporter must include an address for delivery of the ROT.

(3) Notice of the right to receive a copy of the ROT under this paragraph may be made at any time prior to EOJ.

b. Service of record of trial.

(1) *Applicable rules.* Court reporters will serve records of trial in SPCMs and GCMs in accordance with RCM 1112(e). The SCM officer will cause records of trial in SCMs to be served in accordance with RCM 1305(d).

(2) *Documentation required.* Court reporters will use a Receipt for Copy of Court-Martial Document or Certificate of Service (see DD Form 490), as applicable, when distributing a ROT under this paragraph.

(3) *Audio recording substituted for service on accused or victim.* For purposes of serving the ROT on the accused and victim under this paragraph, the certified verbatim transcript prepared under RCM 1114 will constitute the substantially verbatim recording of the court-martial proceedings under RCM 1112(b)(1). In cases of complete acquittals or other proceedings abated after arraignment, either a redacted substantially verbatim transcript of the court-martial proceedings or a redacted substantially verbatim audio recording of the court-martial proceedings will be provided to the victim and the accused, unless service is waived.

c. Redaction of records of trial. Records of trial will be redacted in accordance with paragraph 5–56*h* before serving the ROT on the accused and any victim.

5–58. Forwarding of records of trial

a. Special and general courts-martial. In all GCMs except those terminated before findings, and in SPCMs in which the judgment includes a finding of guilty, the certified ROT and attachments required pursuant to RCM 1112(f) will be forwarded to the Clerk of Court, USACCA (see para 12–7 for identification of companion cases). In cases in which an additional ROT is prepared for the Army Clemency and Parole Board, the record will be sent directly to Army Review Boards Agency (ARBA), Clemency and Parole Board. For SPCMs in which there were no findings of guilty entered and for GCMs that terminated before findings, the record will be disposed of in accordance with paragraph 5–59.

b. Sealed exhibits and closed hearings. In a case with sealed exhibits or closed hearings, each exhibit and each recording of the closed hearing (and any transcript of any closed hearing) will be placed in its own envelope, and a military judge-initiated sealing order explaining the nature of the material contained therein and the reason it was sealed will be affixed to each envelope. The sealed envelopes will be inserted in the record, where they otherwise would have been located had they not been sealed. When necessary, more than one record volume may be used. The following safeguards will be observed:

(1) The audio record of open sessions of the court-martial will not be placed on the same media (for example, a compact disc (CD)) that is used for closed hearings.

(2) For additional guidance on organizing open and closed hearings in a ROT, see appendix E of this regulation.

c. Capital cases. In cases in which the death penalty has been adjudged, there are special reporting requirements before the ROT is forwarded (see para 28–2).

d. Means of delivery. Delivery by electronic means should be used to transmit records of trial to recipients for any official purpose that permit the delivery of certified electronic copies of records of trial. Otherwise, certified first-class mail with return receipt requested or delivery by commercial means with a return receipt requested should be used to transmit records of trial for any official purpose.

e. Number of copies. In addition to the original certified ROT, the electronic certified ROT (e-ROT) or two non-electronic copies of the certified ROT (copy 1 and 2) are required for all SPCMs and GCMs in which the judgment includes a finding of guilty. In cases in which the sentence does not include confinement for more than six months or a punitive discharge, a hardcopy of the written transcript will not be attached to any mailed ROT. In such cases, only electronic versions of the written transcript will be forwarded. If non-electronic copies are forwarded and the trial involved more than one accused (a joint or common trial), forward to USACCA an additional copy for each additional accused.

f. Electronic records of trial. e-ROTs will be uploaded to the respective installation e-ROT library, located on the USACCA webpage at https://www.jagcnet.army.mil/acca. Audio recordings or digital media, sealed exhibits, closed sessions, or classified matters will not be included in the e-ROT. The certified verbatim transcript of all open sessions of court will be included.

5–59. Local disposition of summary courts-martial and certain special and general courts-martial

a. Summary courts-martial. On completion of review pursuant to RCM 1307 and any required supplemental action, records of trial for SCMs will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

b. Special courts-martial without a finding of guilty. In the case of a SPCM in which the accused was not found guilty of any offense, the ROT will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

c. General courts-martial terminated prior to findings. In the case of a GCM which was terminated prior to findings, the ROT will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

5–60. Review of records of trial pursuant to RCM 1201 and RCM 1307

a. RCM 1201 reviews. Review of cases pursuant to RCM 1201 will be conducted by an attorney, designated by TJAG to conduct such review, in one of the following duty positions: Attorney in OTJAG–CLD; Attorney in the Office of the Clerk of Court, USACCA; Attorney in the U.S. Army Trial Judiciary, including attorneys in the RC; and Appellate Military Judge, USACCA.

b. RCM 1307 reviews. Review of cases pursuant to RCM 1307 is ordinarily done either by a JA in the OSJA of the convening command or by a JA otherwise under the technical supervision of the SJA, if available. In the event no JA is available, the SJA may request that their higher technical chain appoint a JA to conduct this review.

5–61. Distribution of summary court-martial action and record of trial

a. Distribution of convening authority's action in a summary court-martial. The convening authority will provide a copy of the initial action by the convening authority in a SCM to—

(1) The accused's immediate commander (company-level commander) and next higher commander.

(2) The SJA of the GCMCA.

(3) iPERMS for permanent filing in the AMHRR through MJO or, if that option is not available, documents will be web-uploaded to iPERMS and must include the words "adverse action" in the comment field of the iPERMS batch.

(4) The MPD or personnel service company (PSC) maintaining the personal records of the accused, addressed to the Record Section, in compliance with AR 600–8–104. The MPD or PSC will transmit the order to the Finance and Accounting Office that maintains the pay account of the accused, for purposes of filing and use as a substantiating document according to AR 637–1.

(5) USARC, Office of the Staff Judge Advocate, Chief Military Law Division, 4710 Knox St. Fort Bragg, NC 28310, if the accused is a member of the USAR.

(6) The military law enforcement agency that investigated the case, as applicable—

(a) The Provost Marshal's Office.

(b) HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134.

(7) Army Corrections Command (DAPM–ACC), usarmy.pentagon.hqda-pmg.list.npe-mgt@army.mil.

b. Distribution of record after action. On completion of the convening authority's action, the SCM ROT (DD Form 2329) will be distributed as follows:

(1) One copy to the accused.

(2) One copy will be retained by the SCM authority.

(3) If the accused is confined, one copy to the commander of the confinement facility in which the accused is or will be confined.

c. Distribution after summary court-martial review. On completion of review pursuant to RCM 1307 or RCM 1201, the completed review will be distributed as follows:

(1) One copy to the accused.

(2) One copy will be retained by the SCM authority.

(3) Additional copies will be distributed as provided in paragraph 5–61*a*.

d. Forwarding the original record of trial. The original ROT of a SCM will be maintained by the SJA of the commander exercising GCM authority over the SCM convening authority (SCMCA).

Section VIII

Post-Trial

5–62. Rehearing in cases in which the accused is absent without leave

The following procedures will be followed in pending rehearing cases when the accused is absent without leave:

a. Action by convening authority. For cases involving charges referred by a convening authority, the convening authority having jurisdiction over the accused will make the final decision on the practicability of holding a rehearing. For cases involving charges referred by a special trial counsel, special trial counsel will make a determination if a rehearing is impracticable. If the convening authority or special trial counsel decides to defer the final decision, the convening authority or special trial counsel will cause a notation to be placed in the accused's unit personnel file. The notation will state that the accused is in an absent without leave status and that a decision regarding rehearing on other charges is pending at a certain jurisdiction. In such cases, the SJA will return the original and all copies of the record for safekeeping to the Clerk of Court, USACCA.

b. Action by the Clerk of Court, U.S. Army Court of Criminal Appeals. The Clerk of Court, USACCA will establish procedures for determining the status of the accused and reviewing cases returned pursuant to paragraph 5–62*a*. When the review indicates that the practicability of conducting the rehearing should be reconsidered, the record together with any pertinent information acquired will be transmitted to the appropriate convening authority or special trial counsel for determination.

5–63. Petition for new trial pursuant to UCMJ, Article 73

a. In general. RCM 1210 and UCMJ, Article 73 prescribe procedures for petitioning TJAG for a new trial on the grounds of newly discovered evidence or fraud on the court.

b. Where filed. When direct review of petitioner's case is before either the USACCA or the U.S. Court of Appeals for the Armed Forces (USCAAF), the petition for new trial will be filed with the Clerk of Court, USACCA. For all other cases, the petition will be filed with the Chief, OTJAG–CLD. In either event, the petition must be filed within 3 years after the date of EOJ pursuant to UCMJ, Article 60c.

5–64. Clemency pursuant to UCMJ, Article 74

a. Article 74 authority. The Secretary of the Army, or the Secretary's designee, is empowered by UCMJ, Article 74(a) to remit or suspend any part or amount of the unexecuted part of any court-martial sentence, other than a sentence approved by the President; and by UCMJ, Article 74(b) for good cause, to substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. However, in a case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the proceeding sentence may not be delegated and may be exercised only after the service of a period of confinement of no fewer than 20 years.

b. Delegation to The Judge Advocate General. Except as noted below, TJAG may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a court-martial sentence prior to completion of appellate review. TJAG may not mitigate, remit, or suspend a sentence affecting a general officer, a

sentence to confinement for life without eligibility for parole, or a sentence imposing death or dismissal. The unexecuted portion of a court-martial sentence includes discharges or dismissals not yet ordered into execution; unserved confinement, hard labor without confinement, or restriction; and uncollected fines and forfeitures (see UCMJ, Article 57(c) for what constitutes completion of appellate review).

c. Forwarding of requests. All other requests for clemency petitions to the Secretary of the Army pursuant to UCMJ, Article 74, should be addressed to the ARBA, Clemency, and Parole Board, army.arbainquiry@army.mil, and must be submitted by the convicted Soldier or an attorney or recognized veterans' organization acting on the Soldier's behalf. If the Soldier is in confinement, the petition will be forwarded through the confinement facility commander. The confinement facility commander will forward the petition along with copies of relevant documents reflecting the Soldier's record in confinement. If the Soldier has reached their maximum release date, the Clemency and Parole Board no longer has authority to act on a clemency request. At that point, Soldiers should direct their requests to either the ABCMR or the Army Discharge Review Board (ADRB). The ADRB does not have authority over punitive discharges adjudged by a GCM.

d. Reference. For policy regarding the power of the Army Clemency and Parole Board to review cases for clemency and parole, see AR 15–130.

5–65. Certification of completion of appellate review or appeal

In all SPCMs and GCMs being reviewed pursuant to UCMJ, Articles 65, 66, 67, and 67a, upon the completion of appellate review pursuant to RCM 1209, the Clerk of Court, USACCA will certify that the appellate process is complete. A copy of the certification will be attached to the ROT and a copy will be forwarded to the original GCMCA. In a case where the sentence after review includes a BCD or DD, the certification and a copy of the judgment will be forwarded to the appropriate PCF where the discharge will be executed. In a case where the sentence after review includes a sentence of dismissal, the certification and a copy of the judgment will be forwarded to the ASA (M&RA) for approval under Article 57(a)(4). In a case where the sentence after review includes death, the certification will be attached to the ROT prior to the record being forwarded to the President.

Section IX

Other Considerations

5–66. Delegation of authority to modify procedures

Notwithstanding any other provision in this regulation and to the extent permitted by UCMJ, Article 54 and the MCM, 2024, TJAG has the authority to issue directions through technical channels, changing the procedures for preparing, copying, serving, certifying, authenticating, or distributing records of trial, including allied papers and orders. Such direction may be promulgated by issuance of policy memorandums, technical instructions, or through other means deemed appropriate by TJAG.

5–67. Release of information pertaining to the administration of military justice and accused persons

a. General. Public information about and access to military judicial proceedings promote public awareness and confidence in the military justice system. Those responsible for administering military justice and those providing information to the public and the media must exercise sound judgment to strike a fair balance among the following: protection of individuals accused of offenses, the presumption of innocence until guilt is proven, public understanding and transparency of the military justice system, and the state of discipline in the military. No statements or other information will be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect (see AR 27–26).

b. Release and dissemination of information. The release and dissemination of information pertaining to military justice matters, including accused persons, will be accomplished in consultation with the convening authority's public affairs officer. Requests for information received from representatives of news media will be referred to the appropriate public affairs officer for action. Care should be taken to indicate that the accused is alleged to have committed an offense, as distinguished from stating or implying that the accused has actually committed an offense. As a general rule, the charge sheet should not be released before arraignment unless the public interest significantly outweighs the privacy interest of the accused and

the charge sheet has been appropriately redacted. The following factors should be considered when releasing charge sheets:

(1) *After preferral.* Generally, the grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(2) *Cases pending UCMJ, Article 32 preliminary hearing.* Generally, the name and grade of the accused and the general nature of the offenses may be released, but the charge sheet should not be released because specifications can easily be amended.

(3) *After referral.* Generally, the name, grade, age, unit, duty station, and sex of the accused and the general nature of the charges may be released. A copy of the charge sheet generally will not be released.

(4) *After arraignment.* Because arraignment signifies greater finality of the charges (see RCM 601), an appropriately redacted copy of the charge sheet may be released. Any release of the charge sheet should be accompanied by a statement that charges are merely accusations and that the accused is presumed innocent until proven guilty.

(5) *Prohibited information.* Subjective opinions, observations, or comments concerning the accused or any witness' character, demeanor, credibility, or expected testimony will not be released. Nor will any other information be released, when there is a reasonable likelihood that the dissemination of such information will affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration of military justice before, during, or after trial. Except for individuals listed in paragraph 5–67*c*, no interviews or responses to the news media will be conducted without prior coordination with OTJAG–CLD.

c. Defense counsel. Personnel assigned to USATDS and the Defense Appellate Division (DAD) will handle media inquiries in accordance with the policies of the Chief, USATDS, and Chief, DAD, respectively.

5–68. Exculpatory evidence discovered post-trial

a. General. Any member of the JALS who learns of new, credible, and material evidence or information creating a reasonable likelihood that an accused did not commit an offense of which the accused has been convicted at court-martial must process that evidence as provided below.

b. After adjournment but before entry of judgment.

(1) Any trial counsel or special trial counsel who learns of such evidence or information must promptly disclose that evidence to the accused through counsel and make reasonable efforts to cause an investigation to determine whether the evidence substantially affects any finding of guilty or the sentence.

(2) Any other member of JALS who learns of such evidence or information must promptly disclose that evidence or information to the SJA of the convening authority who referred the case to trial. The SJA will then ensure such evidence is processed in accordance with paragraph 5–68*b*(1).

c. After entry of judgment but before completion of appellate review. Any member of JALS who learns of such evidence or information must promptly notify the Clerk of Court, USACCA. If the case is pending review pursuant to UCMJ, Article 66, the Clerk must promptly forward the notice to the appellate defense counsel of record or, if none has been assigned, the Chief, DAD. If the case is pending review pursuant to UCMJ, Article 69, the Clerk must forward the notice to OTJAG–CLD.

d. After completion of appellate review. Any member of JALS who learns of such evidence or information must promptly notify OTJAG–CLD. The Criminal Law Division must promptly forward the notice to the last known address of the accused.

Chapter 6
United States Army Trial Defense Service

6–1. General

This chapter governs the operations of the USATDS and sets forth information, policies, and procedures applicable to the provision of all defense counsel services throughout the Army. USATDS comprises all USATDS elements in the RA, USAR, and the ARNG. Any individual performing defense counsel functions, or support thereto, will comply fully with the provisions of this chapter and the USATDS standard operating procedure, regardless of whether that individual is assigned to USATDS when defense counsel functions are performed.

6–2. Mission

The mission of USATDS is to provide specified defense counsel services for Army personnel, whenever required by law or regulation and authorized by TJAG or TJAG's designee. The USATDS will also develop programs and policies to promote the effective and efficient use of defense counsel resources and enhance the professional qualifications of all personnel providing defense services.

6–3. Organization and personnel

a. Responsibilities.

(1) *Regular Army.* TJAGLCS, a field operating agency of OTJAG, provides manpower, budgetary, and administrative support to the USATDS. Whether assigned to TJAGLCS with duty at a particular installation, or assigned to another organization, USATDS counsel are supervised, managed, and rated solely by their respective USATDS supervisory chain.

(2) *U.S. Army Reserve.* The United States Army Reserve Legal Command (USARLC), a MSC of the United States Army Reserve Command (USARC), provides manpower, budgetary, and administrative support to the USAR Component of USATDS (USAR TDS). USAR TDS counsel are supervised, managed, and rated solely by their respective USAR TDS supervisory and technical chain.

(3) *Army National Guard.* The NGB and the States, Territories, and the District of Columbia provide manpower, budgetary, and administrative support to the ARNG Component of USATDS (ARNG TDS). For those States participating in the ARNG TDS program, whether assigned to NGB, the States, Territories, or District of Columbia with duty at a particular installation or armory, or assigned to another organization, ARNG TDS counsel are supervised, managed, and rated solely by their respective ARNG TDS supervisory chain.

(4) *Commanding General, The Judge Advocate General's Legal Center and School and Commanding General, U.S. Army Reserve Legal Command.* The CG, TJAGLCS, provides professional control and supervision of USATDS and its counsel and UCMJ authority over the RA USATDS counsel. The CG, USARLC, has UCMJ authority over USAR TDS counsel.

(5) *Chief, U.S. Army Trial Defense Service.* The Chief, USATDS, is a JA, designated by TJAG, who exercises supervision, control, and direction of defense counsel services in all three components, the RA, RC, and ARNG. The Chief, USATDS—

(a) Holds the authority to detail defense counsel representation and will ensure the timely detail of defense counsel in courts-martial, UCMJ, Article 32 preliminary hearings, and in other judicial and adverse administrative proceedings requiring such representation. This authority may be delegated.

(b) Sets operating policies and procedures for all USATDS operations and all defense counsel functions. These policies apply equally to IMC and to non-USATDS JAs detailed to perform defense counsel functions.

(c) Manages assignments for USATDS personnel, including by name identification of individual deployers.

(d) Sets leave policies for all USATDS personnel, including locally attached support personnel.

(6) *Commander, Legal Operations Detachment–Trial Defense, Army Reserve.* Commanders, Legal Operations Detachment (LOD) LOD–TD, USAR, are JAs designated by TJAG, who, as directed by the Chief, USATDS, exercise supervision, control, and direction of defense counsel services in the USAR.

(7) *Chief, Army National Guard Trial Defense Service.* The Chief, ARNG TDS, is a JA, nominated by the General Counsel of the NGB, designated by TJAG, who, as directed by the Chief, USATDS, exercises supervision, control, and direction of defense counsel services in the ARNG. In the ARNG, state Adjutants General exercise disciplinary and other command functions for ARNG TDS members. For any misconduct allegations against ARNG TDS members, the respective SJA will coordinate with the Chief, ARNG TDS, to determine the appropriate course of action and whether minor disciplinary infractions will be processed through USATDS technical channels or if the member will be transferred out of USATDS in order for the Adjutant General to address more serious misconduct allegations.

b. Organization and personnel.

(1) *Circuit.* The circuit is the major subordinate supervisory and control element of USATDS. It encompasses a geographical area designated by TJAG.

(2) *Regional defense counsel.* A JA designated by TJAG and certified pursuant to UCMJ, Article 27(b), an RDC is responsible for the performance of the USATDS mission within a circuit. Each RDC will—

(a) Supervise, evaluate, and rate all SDC within the circuit.

(b) Ensure policies and procedures set by the Chief, USATDS, are followed by all USATDS personnel in the circuit.

(c) Provide and manage defense-related training as directed by the Chief, USATDS.

(d) Maintain continuing liaison with SJAs, military judges, special trial counsel, commanders, and convening authorities.

(e) Make periodic visits to all field and branch offices within the circuit.

(f) Detail, as authorized by the Chief, USATDS, defense counsel pursuant to paragraph 6–10.

(g) Provide professional supervision of IMC operating in the circuit.

(h) Recommend replacements for departing USATDS counsel.

(3) *Reserve Component deputy regional defense counsel.* A deputy RDC is a JA in the USAR or ARNG designated by the TJAG or their designee and certified pursuant to UCMJ, Article 27(b), who is responsible for assisting the USAR or ARNG RDC in the performance of the USATDS mission.

(4) *Trial Defense Service field office.* The USATDS field office is the primary point of service for USATDS support and is the subordinate operating element of a circuit. Each USATDS field office is supervised by an SDC. Each USATDS field office provides defense counsel services for specified organizations or geographical areas determined by the Chief, USATDS, or in the ARNG, the state in which it is located.

(5) *Senior defense counsel.* An SDC is a JA, certified pursuant to UCMJ, Article 27(b), who is responsible for the performance of the USATDS mission within the area serviced by a field office. The SDC is the direct supervisor of all trial defense counsel within a field office, as well as those serving in subordinate branch offices. Each SDC will—

(a) Detail, as authorized by the Chief, USATDS, defense counsel pursuant to paragraph 6–10.

(b) Ensure policies and procedures set by the Chief, USATDS, and the RDC are followed by all supervised personnel.

(c) Provide technical advice and training to supervised personnel.

(d) Act as the primary USATDS liaison with SJAs, special trial counsel, commanders, and convening authorities of organizations served by the field office.

(e) Represent Soldiers in courts-martial, administrative boards, and other proceedings.

(f) Act as consulting counsel as prescribed by the Chief, USATDS.

(6) *Trial defense counsel.* A trial defense counsel is a JA, certified pursuant to UCMJ, Article 27(b), and currently assigned, attached, or detailed to TJAGLCS and USATDS, a LOD–TD, USAR, or a state. The primary duties of a trial defense counsel are to represent Soldiers in courts-martial, administrative boards, and other proceedings, and to serve as consulting counsel as required by law or regulations. Other defense-related duties may be performed by the trial defense counsel as prescribed by the Chief, USATDS.

(7) *Defense paralegals.* A defense paralegal is an experienced MOS-qualified 27D, or civilian equivalent, serving in a USATDS field or branch office. The primary duty of a defense paralegal is to assist defense counsel in the representation of Soldiers in courts-martial, administrative boards, and other adverse proceedings as designated by the SDC (see para 6–4*b*).

(8) *Complex Litigation Defense Counsel.* A Complex Litigation Defense Counsel (CLDC) is a JA, certified pursuant to UCMJ Article 27(b), who is responsible for representing Soldiers in courts-martial and performing other defense-related duties as prescribed by the Chief, USATDS.

(9) *Complex Litigation Defense Paralegal.* A Complex Litigation Defense Paralegal (CLDP) is an experienced MOS-qualified 27D serving in a USATDS field office in support of one of the CLDC assigned in that circuit. The CLDP will perform defense-related duties as prescribed by Chief, USATDS, and directed by the CLDP in furtherance of those duties.

(10) *Legal Administrative Specialist.* A civilian legal administrator serving in a USATDS field office. The primary duty of the civilian legal administrator is to support the administrative, logistical, and personnel functions of the circuit and perform other duties as prescribed by the Chief, USATDS, and directed by the RDC responsible for the circuit in which the civilian legal administrator is assigned, in furtherance of those duties.

(11) *Defense Investigator.* A civilian defense investigator serving in a USATDS field office. The Defense Investigator (DI) will perform defense-related duties as prescribed by the Chief, USATDS, and directed by the RDC responsible for the circuit in which the DI is assigned in furtherance of those duties.

6–4. Administrative and logistical support

a. Installation Support. Trial Defense Service field offices are tenant units on the installation and are entitled to administrative and logistical support to meet mission requirements, to the greatest extent feasible and authorized. Such support includes, but is not limited to:

(1) Permanent or temporary quarters for defense personnel and their Family members to the same degree as are provided regularly assigned officers/Soldiers of like grade and similar responsibility. Defense counsel will not share quarters.

(2) Assistance and maintenance of military personnel records, finance records, officer/Soldier qualification records, and all other personnel requirements.

(3) Private office space appropriate for the grade and position.

(4) Office furniture to include, but not limited to, an appropriate desk, chairs, carpeting, equipment, and supplies.

(5) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(6) Private long-distance telephone line, facsimile machine, digital scanner, wireless email service, and email accessibility.

(7) Modern computer hardware (to include a high-quality desktop or laptop computer and laser printer), software, networking, and telecommunications equipment (to include a high-quality smartphone and a computer wireless internet aircard) that meets standards established for JAGCNet, and connection with a local area network that will permit access to email and the internet.

(8) Army transportation resources, including aircraft, as far as is necessary.

b. Paralegal support personnel. Each USATDS office will be provided paralegal support to accomplish its mission.

(1) *Assignment of U.S. Army Trial Defense Service paralegals.* Where practicable, USATDS support personnel will be 27D paralegal Soldiers with military justice experience. Civilian paralegal support may be used in circumstances where provision of 27D personnel is impracticable. Ideally enlisted defense paralegal assignments in USATDS will be for 24 months. Early movement requires coordination with the supervising RDC and will be approved only for good cause (for example, professional development, mission requirements, or rehabilitative transfer). Support personnel assigned to a USATDS office will perform duties under the direct supervision of the SDC. Defense paralegals and support personnel will not be assigned legal duties within the local legal office without coordination with the SDC.

(2) *Duties.* The primary duty of defense paralegals is USATDS support, regardless of the manpower source from which they are derived (such as TJAGLCS, defense legal services organizations, and the OSJA) or the manner in which they are provided (assigned, attached, or operationally controlled). Accordingly, in the absence of coordination with the SDC and approval of the chief paralegal NCO and/or paralegal sergeant major assigned to the servicing GCMCA, defense paralegals will not perform duties incompatible with their primary duty. Soldiers performing duty as defense paralegals and support personnel will wear the USATDS shoulder sleeve insignia and will not wear organizational uniform items of the servicing GCMCA, such as berets. USATDS support duty includes attendance at USATDS-related training events.

(3) *Supervision and rating of support personnel.* Defense paralegals will perform duties under the direct supervision of the SDC. Non-defense legal duties will not be assigned to defense paralegals without prior coordination with the SDC. Defense paralegals will be rated and/or senior rated by USATDS personnel whenever practicable. When preparing evaluation reports for defense paralegals and support personnel, the senior paralegal NCO for the servicing OSJA will be consulted to ensure proper procedures and techniques are followed. Civilian defense paralegals will be rated by the SDC.

(4) *Support.* Defense paralegals will be supported as follows:

(a) The USATDS HQ staff will be responsible for processing of travel and TDY orders and Noncommissioned Officer Evaluation Reports (NCOERs) for defense paralegal NCOs. RC NCOERs will be processed through their respective chief and to HQ, USATDS.

(b) All other logistical and administrative support for defense paralegals will be provided by the local installation in accordance with paragraph 6–4*a*. In addition, the servicing OSJA will provide administrative assistance for travel related issues, including government travel card matters, when necessary.

c. Administrative support provided by U.S. Army Trial Defense Service. The HQ, USATDS staff will be responsible for the following:

(1) TDY orders of defense counsel and its support personnel; and

(2) Officer Evaluation Reports (OERs) and NCOERs will be processed through HQ, USATDS. For members of the RC, officer, and NCO evaluation reports will be processed through their respective chief and to HQ, USATDS.

6–5. Funding responsibilities for U.S. Army Trial Defense Service personnel

a. Costs funded by U.S. Army Trial Defense Service and The Judge Advocate General's Legal Center and School. Except as provided in paragraph 6–5*b*, the CG, TJAGLCS, provides funding for the travel and per diem costs of USATDS counsel and support personnel when travel away from the individual's place of duty or employment is ordered by the Chief, USATDS. Such travel includes trips to interview the accused or any witnesses; take depositions requested by the defense; investigate the case; and to attend GCM, SPCM, UCMJ, Article 32 hearings, pretrial confinement hearings, or other pretrial hearings. Travel funded by USATDS and TJAGLCS is limited to the following:

(1) Travel to obtain professional and continuing legal education training for USATDS counsel and support personnel;

(2) Travel to provide representation or perform functions related to the representation of any Servicemember facing court-martial charges; or

(3) Travel to provide representation or perform functions related to the representation of any Servicemember in any other matter when authorized by the Chief, USATDS.

b. Court-martial costs funded by the convening authority. Convening authorities, or in the case of the ARNG, the appropriate state requesting support, will fund all other authorized costs related to judicial and administrative proceedings.

(1) *Authorized costs.*

(a) Travel and per diem costs for USATDS counsel and support personnel when such travel is necessitated by a permanent change of location of the accused or a change in the location of the proceedings after preferral of charges.

(b) Travel by USATDS personnel caused by the temporary movement of the accused from the accused's duty station, including when, after the preferral of charges, the accused is placed in pretrial confinement, to a place other than their duty location.

(c) Travel and per diem costs for USATDS counsel and support personnel to attend depositions requested by the government or ordered by a military judge.

(d) The costs associated with the appearance of IMC not currently assigned to USATDS.

(e) As provided by RCM 703, the costs associated with the production, travel, and employment, as may be the case, of defense witnesses, expert witnesses, expert consultants, and other persons appointed to the defense team.

(2) *Requests and review.*

(a) Any defense requests for funding that are required to effect the support under paragraph 6–5*b*(1) will be made in writing to the GCMCA with jurisdiction over the accused. The GCMCA will carefully consider all such requests and respond in a timely fashion in writing.

(b) Any denial of such request will be accompanied by a summary of the options considered by the GCMCA to satisfy the request and a reason for the denial. Denial of defense requests for funding associated with judicial and administrative proceedings may be submitted for review to the court-martial or appellate court with jurisdiction over the accused.

c. Travel not associated with military justice. Commanders will fund all USATDS counsel and support personnel travel in support of operational or training exercise deployments and all USATDS counsel and support personnel travel required for matters that are nonjudicial or administrative in nature. This includes separation boards, pre-deployment training, and medical travel.

d. Additional funding responsibilities in the Army National Guard.

(1) States are responsible for the cost of attendance at professional military education and non-USATDS-hosted continuing legal education courses.

(2) The Office of the Chief, ARNG TDS is responsible for the cost of the following:

(a) Attendance at circuit training events and annual USATDS leadership training.

(b) Leader visits to supervised field and branch offices and visits to supported Adjutants General, SJAs, military judges, and commanders.

(c) Attendance at civilian continuing legal education courses with approval by the Chief, ARNG TDS.

6–6. Witness for the Defense

a. Witnesses for the Defense. The Chief, USATDS will establish a Trial Defense Service Litigation Fund Policy (TDSLFP) outlining the policies and procedures by which USATDS will approve and fund the presence of witnesses for the defense. Nothing in the TDSLFP or this paragraph prohibits defense counsel from requesting defense witness production by the government in accordance with RCM 703(c).

b. Approval authority. The approval authority for the expenditure of funds necessary to arrange the presence of witnesses for the defense will be established in the TDSLFP.

c. Military Lay Witnesses. Defense counsel will obtain the presence of military lay witnesses whose testimony the defense counsel considers relevant and necessary by submitting a request for approval and funding utilizing the procedures outlined in the TDSLFP. Upon approval of the expenditure of funds necessary to arrange for the presence of the witness, the trial counsel will be responsible for all logistics and for the physical presence of the witness. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the witness travel (for example, a line of accounting).

d. Civilian Lay Witnesses. Defense counsel will obtain the presence of civilian lay witnesses whose testimony the defense counsel considers relevant and necessary by submitting a request for approval and funding utilizing the procedures outlined in the TDSLFP. Upon approval of the expenditure of funds necessary to arrange for the presence of the defense civilian lay witness, the defense counsel may, post-referral, request an *ex parte* hearing to arrange for the issuance of a subpoena. Upon approval of the expenditure of funds necessary to arrange for the presence of the witness, the trial counsel will be responsible for all logistics and for the physical presence of the witness. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the witness travel (for example, a line of accounting).

e. Expert Consultants. When defense counsel considers the employment of an expert consultant necessary, the defense counsel will, in advance of the employment of an expert consultant, submit a request for approval of the expenditure of funds for the employment of the expert consultant and fix the compensation of that expert utilizing the procedures outlined in TDSLFP. USATDS personnel will be responsible for managing the expert consultant contract in accordance with the TDSLFP. Pre-referral, defense counsel will be responsible for all logistics and for physical presence of the expert consultant, as required. Post-referral, upon approval of the expenditure of funds necessary to arrange for the presence of the consultant, trial counsel will be responsible for all logistics and for the physical presence of the consultant. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the expert consultant travel (for example, a line of accounting). Alternatively, post-referral and if approved in accordance with the procedures outlined in the TDSLFP, defense counsel may be responsible for all logistics and for the physical presence of the expert consultant.

f. Post-Referral Military Expert Witnesses. When, post-referral, defense counsel considers the employment of a military expert witness relevant and necessary, the defense counsel will, in advance of the employment of the expert witness, submit a request for approval to authorize employment of the expert witness utilizing the procedures outlined in TDSLFP. Upon approval of the expenditure of funds necessary to arrange for the presence of the witness, the trial counsel will be responsible for all logistics and for the physical presence of the witness. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the witness travel (for example, a line of accounting). Alternatively, if approved in accordance with the procedures outlined in the TDSLFP, defense counsel may be responsible for all logistics and for the physical presence of the witness.

g. Post-Referral Civilian Expert Witnesses. When, post-referral, defense counsel considers the employment of a civilian expert witness relevant and necessary, the defense counsel will, in advance of the employment of the expert witness, submit a request for approval to authorize employment and fix the compensation of that expert witness utilizing the procedures outlined in TDSLFP. USATDS personnel will be responsible for managing the expert witness contract in accordance with the TDSLFP. Upon approval of the expenditure of funds necessary to arrange for the presence of the witness, the trial counsel will be responsible for all logistics and for the physical presence of the witness. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the witness travel (for example, a line of accounting). Alternatively, if approved in accordance with the procedures outlined in the TDSLFP, defense counsel may be responsible for all logistics and for the physical presence of the witness.

h. Ex Parte Subpoena. Pursuant to RCM 703(g)(3)(D), defense counsel may request, post-referral, an *ex parte* hearing to compel production of any civilian expert consultant, civilian expert witness, or civilian

lay witness which is disapproved by the approval authority identified in the TDSLFP. The funding procedures, contracting process, and logistics and production requirements for such witnesses are outlined in the TDSLFP. Upon approval of the expenditure of funds necessary to arrange for the presence of the witness, the trial counsel will be responsible for all logistics and for the physical presence of the witness. Defense counsel will provide the trial counsel or their designated representative with the information needed to fund the witness travel (for example, a line of accounting).

6–7. Training

As required by paragraph 6–2, the Chief, USATDS, in coordination with DCAP, develops programs and policies designed to enhance the professional qualifications of defense counsel and USATDS paralegal personnel. This will be accomplished primarily through the use of internally developed programs of instruction and attendance by USATDS counsel and USATDS paralegal personnel at continuing legal education courses offered by TJAGLCS. These programs may be supplemented at the discretion of the Chief, USATDS by criminal law, ethics, and related courses sponsored either by military agencies or civilian organizations.

6–8. Installations without a U.S. Army Trial Defense Service office

a. General. Any installation without a local USATDS field office will coordinate with USATDS to ensure USATDS support to that installation. The post, organization, or activity JA will coordinate, through the RDC, with USATDS to arrange to ensure all appropriate USATDS services and associated support requirements.

b. Determination of support requirements. The post, organization, or activity JA and RDC will assess what USATDS support is needed for that installation and will jointly develop an appropriate support plan. The proposed USATDS support plan will be forwarded to the Chief, USATDS, for approval. The RDC and coordinating JA will then periodically liaise to monitor the defense function at the installation. The provision of USATDS support to these installations remains subject to the priority and availability of services as determined by USATDS.

c. Support. Support needs and solutions will vary based on the particulars of the installation without a USATDS field office. The coordinating JA will ensure that all logistical and administrative resources necessary to facilitate appropriate USATDS support is provided by that installation. Potential solutions include, but are not limited to—

(1) Routine shuttle service for personnel needing USATDS services to a nearby installation with local USATDS field office;

(2) Office space on the installation for visiting USATDS personnel to conduct interviews, client counseling, and other USATDS-related functions;

(3) Appropriate technology, including desktop video teleconferencing and other communications solutions, to facilitate the remote provision of defense services;

(4) Travel, funded by the installation, for periodic visits by USATDS personnel to conduct defense counsel functions on the installation.

d. Army National Guard. States without ARNG TDS counsel may request support from the Office of the Chief, ARNG TDS. Support is contingent on availability of counsel. All costs associated with the delivery of services will be paid by the requesting state.

6–9. Mutual support responsibilities

a. General. SJAs and SDC will develop administrative policies and procedures to meet local requirements and support the basic mission of the command being served. They should meet often to discuss matters of mutual concern. Provision of counsel in cases involving such administrative matters as financial liability for loss of property rebuttals, evaluation report rebuttals or appeals, traffic violations, or administrative letters of counseling or reprimand is an SJA responsibility. SDC and SJAs should discuss and agree on the extent to which USATDS will share that responsibility.

b. Compliance with local policies. The USATDS counsel will comply with host installation command, personnel, and administrative policies, such as duty hours, physical fitness, appearance, weapons qualification, uniform, and equipment standards, and similar requirements, to the extent practicable and commensurate with the mission of USATDS. SDC are encouraged to coordinate memoranda of understanding with local supporting units or organizations to reflect USATDS independence and responsibility to ensure necessary Army and local standards are met. Approval authority for such MOUs rests with the RDC.

(1) *Exceptions notwithstanding any memorandum of understanding.* USATDS counsel will not perform duty as installation or command staff duty officers nor wear the shoulder patch or distinctive insignia or organizational uniform items of the local organization or command. All USATDS uniformed personnel, including paralegal support staff, will wear the USATDS shoulder patch. USATDS counsel will not perform non-defense duties unless approved by the Chief, USATDS.

(2) *Other exceptions.* In all other cases, the RDC will coordinate proposed exceptions with the Chief, USATDS.

c. Assistance to the U.S. Army Trial Defense Service. If the defense workload at an installation temporarily exceeds the capability of the USATDS office to perform its mission, the SJA will, within the SJA's capability, provide non-USATDS counsel to assist in providing defense services. Non-USATDS counsel will not be detailed to a USATDS office by an SJA without the approval of the Chief, USATDS, and when detailed, will perform defense duties under the supervision of the SDC. Normally, such duties will not involve representation at courts-martial or UCMJ, Article 32 preliminary hearings. Non-USATDS counsel should not assist Soldiers with matters related to the subject of an attorney-client relationship that the Soldier already enjoys with a USATDS counsel.

d. Nondefense duties. Except as outlined in paragraphs 6–9*a* and 6–9*b*, only the Chief, USATDS, may direct the performance of nondefense duties by USATDS counsel. The USATDS counsel may only be ordered to depart on or return from TDY by the Chief, USATDS. This latter authority may be delegated to an RDC or SDC.

e. Tactical unit support. If a USATDS office is in support of a command whose mission includes field deployment for operational or training purposes, the Chief, USATDS, will designate one or more USATDS counsel, by name, for deployment. The HQ, USATDS staff will develop and maintain plans for USATDS' support of units with deployment missions. Deployment of USATDS counsel will be coordinated with and approved by the Chief, USATDS. The SJAs will coordinate with the SDC when USATDS tactical unit support is required.

6–10. Detail of defense counsel

a. In the RA and the USAR, the Chief, USATDS details trial defense counsel for SPCMs and GCMs. This authority may be delegated to the SDC in all non-capital cases. Detail of counsel will be reduced to writing and included in the ROT or announced orally on the record at courts-martial. The writing or announcement will indicate by whom the counsel was detailed.

b. Pursuant to RCM 503(c)(3), TJAG delegates to the Chief, USATDS the authority to make counsel available to serve as counsel in a court-martial in a different armed force, CCMD, or a joint command.

c. In the ARNG, counsel are detailed according to procedures set forth by the Chief, ARNG TDS.

d. The authority to detail counsel does not alter an accused's right to be represented by civilian counsel provided at no expense to the government or by military counsel of the accused's own selection (whether or not assigned to USATDS), if reasonably available. The act of detailing is an administrative designation by the detailing authority. It does not confer any status or rights nor does it alter any status or rights that may exist at the time of detailing. To meet requirements, the Chief, USATDS may authorize SJAs to recommend the detail of non-USATDS counsel. The Chief, USATDS, or that officer's designee will detail non-USATDS counsel. The establishment of USATDS does not affect the basic legal qualifications of any JA, certified pursuant to UCMJ, Article 27(b), to perform defense counsel duties, when such are properly assigned.

6–11. Professional standards

a. General. The professional standards referred to in paragraph 5–8 apply to USATDS counsel.

b. Exercise of independent professional judgment.

(1) Nothing in this chapter limits a USATDS counsel's duty to exercise independent professional judgment on behalf of a client. The Chief, USATDS is granted authority to promulgate rules and requirements governing—

(a) The establishment of attorney-client relationships.

(b) Allocation of personnel resources.

(c) The setting of priorities within the various categories of services rendered by USATDS counsel.

(d) Trial Defense Service standard operating procedures and other policies.

(2) The USATDS counsel will strictly comply with these directives. However, once an attorney-client relationship is formed pursuant to these rules and requirements, defense counsel have an affirmative duty

to exercise independent judgment in control of the case. This duty is limited only by law, regulation, and the Army "Rules of Professional Conduct for Lawyers" (AR 27–26). Complaints involving the professional conduct or performance of USATDS counsel should be forwarded through the SDC and RDC to the Chief, USATDS, for action according to chapter 15 of this regulation and AR 27–1.

c. Business cards. Because business cards are necessary to perform their official duties and facilitate the performance of the USATDS mission, USATDS personnel, including trial defense counsel and defense paralegals, may print business cards at government expense in accordance with the provisions of AR 25–30. For commercially procured business cards, see AR 25–30.

Chapter 7
United States Army Trial Judiciary Military Judge Program

7–1. General

a. Military Judge Program. The Military Judge Program is a system in which military judges are designated and detailed as judges of GCM, SPCM, and proceedings conducted before referral pursuant to UCMJ, Article 30a. This chapter sets forth procedures for the Armywide operation of the Military Judge Program. This regulation implements UCMJ, Article 26.

b. Organization. The U.S. Army Trial Judiciary is an element of the USALSA, a field operating agency of OTJAG.

c. Military judge. The term "military judge" includes military magistrates specifically certified and authorized by TJAG to perform judicial duties pursuant to UCMJ, Articles 19 and 30a when performing those duties (see chapter 8 of this regulation and RCM 103(17)). A military judge will be detailed to all SPCMs and GCMs. The primary duty of a military judge is to preside over SPCMs and GCMs to which the judge is detailed. RA military judges (and mobilized USAR military judges) are assigned to the U.S. Army Trial Judiciary. Non-mobilized USAR military judges are assigned to the 150th LOD, USARLC. All military judges, RA, or USAR, are under the professional supervision of the U.S. Army Trial Judiciary.

d. Chief Trial Judge. The chief trial judge is a military trial judge who is designated by TJAG (see para 1–4*c*) as the chief of military trial judges.

e. Tenure for military judges. JAs are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years. This three-year minimum tenure can be served at more than one duty location, if necessary to meet the needs of the Trial Judiciary. An exception to the three-year minimum tenure can be made if—

(1) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment.

(2) The military judge retires or otherwise separates from military service.

(3) The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency.

(4) The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15, Section III for suspension of military judges).

7–2. Qualifications of military judges

a. A military judge is a commissioned officer who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by TJAG.

b. Before performing duties as a military judge of a GCM, a commissioned officer must be—

(1) Certified to be qualified for duty as a military judge of a GCM by TJAG.

(2) Designated for detail as a military judge by TJAG or their designee.

(3) Assigned and directly responsible to TJAG or their designee.

c. All military judges assigned or attached to the U.S. Army Trial Judiciary and the 150th LOD are assigned and directly responsible to TJAG or their designee. Consistent with UCMJ, Article 26(c)(3) and RCM 502(c)(1), both the Chief Trial Judge, U.S. Army Trial Judiciary, and Commander, 150th LOD, are TJAG's designees for this purpose.

d. All military judges who meet the requirements for presiding over a GCM may also preside over a SPCM.

e. Appropriate records will be maintained by the Chief Trial Judge as follows:

(1) Current lists of military judges assigned or attached to the U.S. Army Trial Judiciary and to the 150th LOD.

(2) A list of supporting documents showing that the qualifications of each military judge have been met.

7–3. Judicial circuits

A judicial circuit is one or more GCM jurisdictions or the geographical area where the HQ of such jurisdictions are situated, as designated by TJAG or TJAG's designee, the Chief Trial Judge. Judicial circuits will be established but may be altered and dissolved by TJAG or TJAG's designee as required, at which time all convening authorities concerned will be notified. TJAG or TJAG's designee also will designate one or more duty stations within each judicial circuit at which military judges assigned to the U.S. Army Trial Judiciary will be located.

7–4. Functions and duties of military judges

a. General. Military judges may perform all judicial duties imposed or authorized by the UCMJ, MCM, and applicable regulations.

b. Mandatory duties. A military judge will be detailed to all GCM, SPCM, and proceedings conducted pursuant to UCMJ, Article 30a.

c. Additional duties. Military judges may—

(1) Perform magisterial duties according to chapters 8 and 16 of this regulation.

(2) Issue authorizations on probable cause pursuant to chapter 8 of this regulation.

(3) Issue orders based on a probable cause standard, pursuant to 10 USC 1565a, requiring DoD repositories to make available specific DNA samples in accordance with the military judge's order.

(4) Receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190–53.

(5) Conduct hearings pursuant to AR 190–47 to determine whether an inmate at the USDB suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the USDB.

(6) Conduct training sessions for trial counsel, special trial counsel, and defense counsel.

(7) Serve as fact finders in debarment and suspension proceedings involving government contracts.

(8) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment by the Chief Trial Judge.

(9) Be detailed to a SCM if made available by the Chief Trial Judge.

d. Administrative responsibilities. Each military judge is responsible for—

(1) Maintaining an orderly trial calendar that will make efficient use of available time and provide, to the maximum extent possible, for scheduling of trials as requested by convening authorities.

(2) Submitting required reports as directed by the Chief Trial Judge.

(3) Cooperating closely with SJAs and military judges in the circuit. The military judge must exercise every legitimate and appropriate effort to assist convening authorities in the expeditious handling of court-martial cases while taking care to avoid any act that may be a usurpation of the powers, duties, or prerogatives of a convening authority or the convening authority's staff.

(4) Seeking necessary assistance through the judicial administrative channels specified in paragraph 7–6*c* in conflict cases, in other situations when another military judge may be required, or whenever they determine that additional military judge support is required for disposing of courts-martial referred to trial in their jurisdiction. In such cases, the military judge with primary responsibility for a GCM jurisdiction will obtain additional judicial support by conferring with the Chief Circuit Judge as provided in paragraph 7–6*c*.

e. Other courts-martial. Military judges will be detailed to all SPCM and GCM convened for the trial of persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

7–5. Responsibilities of the Chief Circuit Judge

The Chief Circuit Judge is the senior military judge in a judicial circuit or other judge designated by the Chief Trial Judge. The Chief Circuit Judge's responsibilities include:

a. General administration of the Military Judge Program within the judicial circuit.

b. Making recommendations to the Chief Trial Judge relating to the operation of the program within the circuit.

c. In coordination with the Chief Trial Judge, determining which military judge within the circuit will be primarily responsible for each GCM jurisdiction within the circuit.

d. In coordination with the Chief Trial Judge, determining the rater, intermediate rater, and senior rater as required for OERs concerning military judges and, where appropriate, for magistrates within the circuit.

e. Designating supervising military judges for military magistrates (see chap 8).

f. Ensuring adequate training for USAR military judges.

g. If authorized by the Chief Trial Judge, issuing circuit rules of court in accordance with paragraph 7–8. Such rules of court will not conflict with rules of court established by the chief trial judge.

7–6. Detailing of military judges

a. Authority to detail military judges. The Chief Trial Judge is authorized to detail military judges for all purposes for which military judges may be detailed (see RCMs 309(a) and 503(b)). This authority may be delegated to individual military judges.

b. Capital courts-martial. Military judges for capital courts-martial will be detailed by the Chief Trial Judge. In case of a conflict, the most senior Chief Circuit Judge will act as detailing authority.

c. Detail of military judges within general court-martial jurisdictions.

(1) The military judge who is designated as primarily responsible for a GCM jurisdiction (see para 7–5*c*) will—

(a) Normally detail themselves to preside over the courts-martial convened in that jurisdiction.

(b) Notify the Chief Circuit Judge when they require a replacement judge to be detailed to preside over a particular court-martial for any reason or determines that additional military judge support is required for disposing of courts-martial referred to trial in their jurisdiction.

(2) When a military judge requests the detailing of a replacement judge or requests additional military judge support, the Chief Circuit Judge will, if practicable, detail a replacement from the military judges within the circuit or will request a replacement judge or additional military judge support from the Chief Trial Judge.

d. Processing requests for replacement judges. Requests and responses to requests for replacement judges or additional military judge support will be expeditiously processed through judicial administrative channels.

e. Docketing. At installations with two or more military judges, one will be designated as the primary docketing judge to oversee docketing and calendar management within that installation. At all other installations, the GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 7–5*c* will oversee docketing and calendar management within that jurisdiction.

f. Cross-service detailing.

(1) Nothing in this regulation precludes the detailing of a military judge from another armed service who has been made available for detail to either a SPCM or GCM, provided that such military judge has been certified by TJAG of the military judge's armed service. The approval of the Chief Trial Judge will be obtained before the judge is detailed.

(2) Army military judges may preside at courts-martial for another armed force, CCMD, or a joint command pursuant to RCM 503(b)(3). The approval of the Chief Trial Judge will be obtained before the judge is detailed.

7–7. Administrative and logistical support

a. Duty station. Military judges are assigned to U.S. Army Trial Judiciary with duty at a specified location. Judges will not be further attached or assigned to any other unit without the written permission of the CG, USALSA. The installation trial judiciary office is a tenant unit on the installation and thus entitled to administrative and logistical support to meet mission requirements, to the greatest extent feasible and authorized. This support includes, but is not limited to—

(1) Permanent or temporary quarters for each military judge and the judge's Family members to the same degree as are provided regularly assigned officers of like grade and similar responsibility. Military judges will not share quarters.

(2) Assistance and maintenance of military personnel records, finance records, officer qualification records, and all other personnel requirements.

(3) Private office space appropriate for the grade and position.

(4) Office furniture to include, but not limited to, an appropriate desk, chairs, carpeting, equipment, and supplies.

(5) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(6) Private long-distance telephone line, facsimile machine, digital scanner, wireless email service, and email accessibility.

(7) A Soldier or civilian employee who will provide stenographic, clerical, and administrative assistance as required for the expeditious performance of duties to the military judge(s) assigned for duty at that installation.

(8) Modern computer hardware (to include a high-quality desktop or laptop computer and laser printer), software, networking, and telecommunications equipment (to include a high-quality smartphone, and a computer wireless internet aircard) that meets standards established for JAGCNet, and connection with a local area network that will permit access to email and the internet.

(9) Army transportation resources, including aircraft, as far as is necessary.

b. Sites of trials. At locations where military judges preside over court-martial proceedings, the command will provide administrative and logistical support, to include—

(1) A suitable and functional courtroom facility.

(2) Private office space and appropriate furnishings, to include automation and networking capability, adjacent to the courtroom for the exclusive use of the military judge while court is in session or when the judge is engaged in other judicial business.

(3) Class A telephone service in the military judge's office.

(4) Convenient access to legal research publications, online legal research (JAGCNet), and facilities.

(5) Stenographic, clerical, and administrative assistance as required for the performance of judicial duties.

(6) Army transportation.

(7) On-post billeting facilities appropriate for the judge's grade and position, if available and desired. Except under deployment conditions, military judges should not ordinarily be billeted in facilities also used to billet witnesses, court members, or other trial participants.

c. Courtrooms. The courtroom is the most visible symbol of military justice on an installation. A distinctive facility that provides for the proper atmosphere and decorum is essential to emphasize the Army's commitment to a fair and impartial application of military law. It is thus vital that the courtroom convey a sense of dignity and respect for the people who interact with it. Therefore, courtrooms will be designed, constructed, funded, and maintained by the installation in accordance with applicable Army courtroom facilities guidelines. Exceptions to these guidelines will be requested through the Chief, OTJAG–CLD, and can only be granted by the Army Facilities Standardization Committee. Priority of use of these facilities will be for courts-martial, and other uses will not interfere with court-martial proceedings.

d. Courtroom security.

(1) The installation SJA is responsible for ensuring adequate security measures for the courtroom and courtroom facilities. In meeting this responsibility the SJA must coordinate with the military judge, law enforcement personnel, and others, as appropriate.

(2) Adequate security measures include, but are not limited to, the following:

(a) Inspections. Periodic inspection, no less than annually, of courtrooms and courtroom facilities to assess and implement appropriate security measures for the protection of court-martial procedures, spectators, and property.

(b) Law Enforcement Personnel. The detailing of two of more law enforcement personnel (for example, MP, or DA Civilian police), to provide security during court-martial proceedings. Detailed law enforcement personnel will take general direction from the military judge and trial counsel or special trial counsel. Detailed law enforcement personnel will not act as bailiffs or escorts. Detailed law enforcement personnel will not be anticipated witnesses for the proceeding. The military judge may determine that detailed law enforcement personnel are unnecessary for court-martial proceedings on a case-by-case basis.

(c) Signage. All courtrooms will display DA-issued signage at the entry to the courtroom identifying prohibited items and security procedures.

(d) Screening. Detailed law enforcement personnel must screen all persons and bags entering the courtroom facility using a wand or walk-through metal detection technology. Thorough inspection requirements apply to all personnel regardless of rank or position. Physical searches of personnel must be conducted in the event the metal detector technology becomes inoperable.

(e) Media. Only the court reporter is authorized to make an audio recording of court-martial proceedings. With the exception of the security surveillance camera requirements in paragraph 7–7*d*(2)(*f*), any other use of photography, video, social media, or any other method of creating an audio or visual

recording of court-martial proceedings is prohibited without prior approval of the military judge in accordance with AR 360–1.

(f) Physical Security and Emergency Equipment. All courtrooms and courtroom facilities should possess the following physical security and emergency equipment: operable security surveillance cameras with recording capabilities, duress alarms/panic buttons, metal detector technology (for example, wands, or walk-through metal detectors), locking mechanisms that permit rapid evacuation (for example, cypher locks or key-code/smart card locks), first aid kits, and an automated external defibrillator. Detailed law enforcement personnel and those personnel with offices located in the courtroom facility will be trained in the use and operation of any security surveillance cameras, duress alarms/panic buttons, and metal detector technology. Any duress alarms/panic buttons will be routinely tested to ensure a timely and appropriate response from law enforcement personnel if triggered.

(3) The SJA responsible for any courtroom or courtroom facility that does not comply with the security measures in paragraph 7–7*d*(2) may request a waiver from the Chief, OTJAG–CLD. Requests for waivers must detail the specific reasons the SJA is unable to comply with the security measures and an estimated timeline for compliance.

(4) As a best practice, the installation SJA should create, and update as necessary, a courtroom facility security Standard Operating Procedure (SOP). The SOP should apply to all proceedings held in the courtroom facility and should be published to all routine court-martial participants (for example, the military judge, court reporters, and counsel). All non-routine participants, such as bailiffs, detailed law enforcement personnel, and witnesses, should be informed of the procedures relevant to their participation. The installation SJA should detail an individual in a rank no lower than E–7 or GS–11 as the courtroom facility security manager to oversee implementation and execution of the SOP. The courtroom facility manager should be able to identify security needs, address courtroom facility deficiencies, and resolve other courtroom facility requirements (for example, routine maintenance and work orders).

7–8. Rules of court

TJAG authorizes the Chief Trial Judge, pursuant to RCM 108, to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to Chief Circuit Judges. A copy of any local rules of court will be forwarded to the Chief Trial Judge.

7–9. Requests for military judges as individual military counsel

Requests for military judges to serve as IMC will be processed in accordance with paragraph 5–9*f*(2)(*d*). The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available. This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, USACCA, but no further review is authorized.

7–10. Contempt

A military judge may, pursuant to UCMJ, Article 48, and RCM 809, punish acts of contempt committed in any proceeding by any person or entity, including those not subject to the UCMJ, by a fine of up to $1,000.00, confinement of up to 30 days, or any combination thereof. The authority to pursue and impose such contempt of court action may be limited by status of forces or other international agreement.

a. Fine. Sentences for contempt involving a fine will be treated in the same manner as an approved sentence to a fine adjudged by court-martial.

b. Confinement. Individuals serving sentences to confinement for contempt are distinct from the categories of prisoners defined in AR 190–47. The timing and location of execution of a sentence to confinement for contempt is determined by the military judge and is not governed by AR 190–47. Individuals sentenced to confinement for contempt will normally be held in the same facility used by the local GCMCA for pretrial confinement. For sentences to contempt of 12 hours or less, the military judge may designate a local detention cell as the location for confinement. Upon application by the person sentenced to confinement for contempt, the military judge may designate an alternate location or means of confinement, such as house arrest or other form of restraint.

c. Contracted confinement facilities. At installations that utilize contracted space in civilian confinement facilities for the detention of pretrial confinees, the GCMCA will ensure that the contract terms provide for confinement of individuals sentenced to confinement for contempt.

d. Reporting. The supporting SJA will report within 48 hours the holding in contempt of any person by a military judge to Chief, OTJAG–CLD and the Clerk of Court, USACCA.

e. Appeal.

(1) *Notice of appeal.* Any person found in contempt by a military judge may appeal the punishment by filing a notice of appeal with the Clerk of Court, USACCA, within 20 days of being found in contempt. The notice of appeal must comply with the ACCA Rules of Practice and Procedure (ACCA Rules), available at https://www.jagcnet.army.mil/acca.

(2) *Action by the government upon notice of appeal.* Within 20 days of receiving or filing a notice of appeal, the trial counsel or special trial counsel will forward a record of the contempt proceedings to USACCA, for further distribution in accordance with ACCA Rules.

(3) *Briefing.* A contempt-appellant must file any brief in support of their appeal within 30 days of being served with a copy of the record specified in paragraph 7–10*e*(2). Opposing counsel may respond within 20 days of receiving the contempt-appellant's brief. If the United States elects not to respond or is the contempt-appellant, USACCA may direct that counsel be detailed to defend the finding of contempt and punishment.

(4) *Resolution of appeal.* Other procedures for resolution of an appeal from a contempt finding will be specified in rules prescribed by USACCA.

Chapter 8
Military Magistrates

Section I

General

8–1. Military magistrates generally

a. In general. This chapter implements specific procedures for the certification and designation of military magistrates pursuant to UCMJ, Article 26a.

b. Magistrate defined. A military magistrate is a RA JA who is certified by TJAG to be qualified for duty as a magistrate and is designated to perform such duty in accordance with this chapter. Military magistrate as used in this chapter does not have the meaning given in RCM 103.

c. Limitations. The authority of military magistrates is limited to those specifically authorized in paragraph 8–4.

d. Federal magistrate system distinguished. There is no relationship between a military magistrate under this chapter and DA's implementation of the Federal Magistrate System to dispose judicially of uniform violation notices and minor offenses committed on military installations (see AR 190–45).

8–2. Responsibilities

a. TJAG will certify all military magistrates and will specify which magistrate powers each military magistrate may exercise.

b. SJAs will—

(1) Nominate JAs for duty as military magistrates pursuant to paragraph 8–3*b*.

(2) Notify the designated military magistrate's supervising judge if the military magistrate can no longer perform military magistrate duties.

c. The Chief Trial Judge will promulgate standard operating procedures and other guidance for military magistrates.

d. Chief circuit judges will—

(1) Designate military magistrates pursuant to paragraph 8–3*b*.

(2) Establish and supervise training requirements for military magistrates.

(3) Review complaints made against any military magistrate involving allegations related to magistrate duties.

(4) Revoke designation when the designated military magistrate is reassigned to law enforcement or prosecution duties or is otherwise unable to continue performing magistrate duties.

(5) Detail a military judge to supervise each designated military magistrate in the performance of magistrate duties.

(6) Ensure that designated military magistrates receive training and support needed to accomplish their magistrate duties.

e. Supervising military judges will—

(1) Directly supervise the designated military magistrate's performance of magistrate duties.

(2) Conduct training of military magistrates.

(3) Ensure that designation as a military magistrate is revoked when the designated military magistrate is reassigned to law enforcement, prosecution, or other duties inconsistent with the magistrate role, or is otherwise unable to continue performing magistrate duties.

8–3. Certification and designation of military magistrates

a. Certification. All JAs who have successfully completed the JA Officer Basic Course (OBC) and have been certified under UCMJ, Article 27(b) are certified as qualified by TJAG, as required by UCMJ, Article 26a, to perform the duties of a military magistrate and exercise the powers described in paragraphs 8–4*a* through 8–4*c*. The exercise of any magistrate power is subject to designation pursuant to this chapter. Certification of qualification to perform judicial duties pursuant to UCMJ, Articles 19 and 30a requires a separate action by TJAG.

b. Designation. No JA will perform the duties of a military magistrate unless properly designated. Military magistrates will be designated as follows:

(1) *Nomination and review.* Each SJA may nominate one or more JAs from their office for service as military magistrates. Nominees will be competent and impartial JAs, not engaged in criminal investigation or prosecution functions, who possess the requisite training, experience, and maturity to perform magistrate duties. SJAs will submit nominations, along with other documents required by the standard operating procedures established by the Chief Trial Judge, through the supervising military judge, if applicable, to the appropriate chief circuit judge.

(2) *Designation.* Upon designating the nominee to perform military magistrate duties, the appropriate chief circuit judge will issue a memorandum to each designated military magistrate prescribing the duties for which they have been certified.

8–4. Powers of military magistrates

a. Review of confinement. All certified and designated military magistrates are authorized to conduct reviews of pretrial confinement. No military magistrate is authorized to review the detention of an enemy belligerent under the law of armed conflict.

b. Issuance of search, seizure, and apprehension authorizations. All certified and designated military magistrates are authorized to issue search and seizure authorizations and apprehension authorizations on probable cause pursuant to section II of this chapter.

c. Review of confinement pending outcome of foreign criminal charges. All certified and designated military magistrates are authorized to review the confinement of Soldiers in U.S. facilities pending final disposition, including appeals, of foreign criminal charges (see chap 16). Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges.

d. Articles 19 and 30a authorities. No military magistrate is authorized to perform judicial duties pursuant to UCMJ, Articles 19 and 30a, unless explicitly certified and designated by TJAG to do so.

e. Other duties. Unless certified and designated by TJAG to perform duties pursuant to UCMJ, Article 19 and/or Article 30a, or otherwise restricted by TJAG, a military magistrate may be assigned to perform other duties of a nonjudicial nature (for example, service as an administrative law attorney).

8–5. Pretrial confinement review by military magistrate

a. General.

(1) Military magistrates are empowered to order the release from pretrial confinement of anyone ordered into pretrial confinement pursuant to RCM 305 and any confinee in any U.S. Army confinement facility on determination (following review of the case) that continued pretrial confinement does not satisfy legal requirements. The military magistrate will consider all relevant facts and circumstances surrounding each case of pretrial confinement in arriving at this decision. Military magistrates will review each case of pretrial confinement according to the procedures and criteria contained in RCM 305(j) and this paragraph.

(2) Whoever initially authorizes pretrial confinement in a facility not administered by the Army will immediately notify the officer exercising GCM jurisdiction over the person confined, or that officer's SJA. This officer will immediately cause the responsible military magistrate to be notified of the case.

(3) Unless an Army magistrate has conducted a pretrial confinement review pursuant to paragraph 8–5*b*, below, the review of pretrial confinement of a Soldier of the U.S. Army will be governed by the military magistrate regulations of the military Service that has jurisdiction over the place of confinement. Soldiers ordered into pretrial confinement will be confined in Army confinement facilities whenever practicable.

(4) Servicemembers of other Services ordered into pretrial confinement in Army confinement facilities will be subject to the provisions of this section, unless specific exceptions to these provisions, consistent with RCM 305, are requested in writing by an officer of the other Service.

b. Procedures.

(1) The military magistrate will review pretrial confinement in accordance with RCM 305(j). The military magistrate's decision to approve pretrial confinement is subject to a request for reconsideration (see RCM 305(j)(2)(E) pertaining to reconsideration of a decision to approve confinement) pursuant to the provisions of this paragraph. Once charges for which the accused has been confined are referred, the accused may seek review of the propriety of pretrial confinement in accordance with RCM 305(k). During any review of pretrial confinement, the military magistrate must ensure that the victim's rights and concerns are addressed through their SVC or, if none, directly from the victim. Nothing in this paragraph will preclude an accused from seeking extraordinary relief. A copy of the military magistrate's memorandum to approve or disapprove pretrial confinement, required by RCM 305(j)(2)(D), will be served on the SJA, the SJA's designee, or special trial counsel, as applicable, and to the accused or the accused's defense counsel. Upon order of the military magistrate, an accused will be released immediately from pretrial confinement.

(2) The commander of the person confined, on ordering confinement or receiving notification of confinement, will provide the military magistrate with a completed DA Form 5112 (Checklist for Pretrial Confinement) no later than 36 hours after imposition of confinement. The commander will include (in the appropriate area of the pretrial confinement block of DA Form 5112) or attach to the DA Form 5112 a statement of the basis for the decision to confine (see RCM 305(i)(2)(C)). The commander of the person confined will direct the release of the person confined if a decision has been made not to prefer charges. Except in extraordinary cases, a decision to prefer charges will be made within 7 days of confinement. The 7-day timeline does not create a right on behalf of the accused.

(3) The unit commander concerned may impose any authorized pretrial restraint deemed necessary on a person who has been released from confinement by a magistrate. However, the unit commander may not order the return of that person to pretrial confinement except pursuant to the provisions of RCM 305(m). The military magistrate who ordered release will be immediately notified of any person returned to pretrial confinement and the reasons therefore.

(4) Circumstances of Soldiers who, after release by a military magistrate, are returned to confinement, will be reviewed by the military magistrate. The determination of whether continued pretrial confinement is warranted will be made on the same legal basis as the review and determination for initial pretrial confinement.

(5) The military magistrate will communicate the decision in each case to the Soldier confined or the Soldier's defense counsel. This may be accomplished by means of a copy of the written record of decision. In addition, a record of the military magistrate's decision(s) will be filed in that Soldier's correctional treatment file (see AR 190–47).

(6) Copies of the DA Form 5112 as completed by the commander and the military magistrate's memorandum approving or disapproving pretrial confinement will be included in the ROT.

Section II

Search, Seizure, and Apprehension Authorizations

8–6. Authority of military judges and military magistrates to issue authorizations

The following individuals are authorized to issue search and seizure and search and apprehension authorizations on probable cause (see MRE 315(d)(2)) with respect to persons and property specified in MRE 315(c):

a. Military judges assigned or attached to, or USAR military judges assigned to or under technical supervision of, the U.S. Army Trial Judiciary.

b. Military magistrates certified and designated pursuant to paragraph 8–3.

8–7. Issuance

a. In general. The procedures for issuing search and seizure and search and apprehension authorizations are contained in MREs 315 and 316.

b. Form of request. Authorizations to search and seize or search and apprehend may be issued on the basis of a written or oral statement, electronic message, or other appropriate means of communication. Information provided in support of the request for authorization may be sworn or unsworn. The fact that sworn information is generally more credible and often entitled to greater weight than information not given under oath should be considered.

c. Other matter. In addition to information presented to the authorizing official pursuant to a request for authorization to search and seize or apprehend, the authorizing official may consider any information they have, provided such information would not preclude them from acting in an impartial manner. These other matters will be noted as considered in the military magistrate's written decision.

d. Form of approval. DA Form 3744 (Affidavit Supporting Request for Authorization to Search and Seize or Apprehend) may be used if the supporting information is to be sworn. Authorizations to search and seize or search and apprehend may be issued orally or in writing. DA Form 3745 (Search and Seizure Authorization) or DA Form 3745–1 (Apprehension Authorization), may be used if an authorization is issued in writing.

8–8. Oaths

See chapter 10 of this regulation for the authority, procedures, and forms for administering oaths to persons providing information to commanders and other military personnel empowered to issue authorizations to search and seize.

8–9. Execution and disposition of authorizations and other related papers

a. Timing of execution. The authorization to search or seize should be executed within 10 days after the date of issue.

b. Inventory. An inventory of the property seized will be made at the time of the seizure or as soon as practicable. A copy of the inventory will be delivered to the person from whose possession or premises the property was taken. The DA Form 4137 (Evidence/Property Custody Document) may be used.

c. Disposition of authorization and other papers. After the authorization has been executed, the authorization and a copy of the inventory will be returned to the issuing authority. Thereafter, all documents and papers relative to the search or seizure will be transmitted to the appropriate law enforcement office. They will be filed for use in any future litigation or proceeding on the results of such a search.

8–10. Recovery and disposition of property

a. Evidence retained for courts-martial. Evidence retained for courts-martial will be disposed of according to applicable regulations. SJAs will make every effort to return property, when appropriate, as expeditiously as possible by substituting photographic or written descriptions when such measures will not jeopardize pending prosecutions or appeals.

b. Property seized by Criminal Investigation Command. The provisions of AR 195–5 govern the recovery and disposition of property seized pursuant to an authorization to search and seize conducted by U.S. Army criminal investigators.

c. Property seized by other authorized persons. The provisions of AR 190–30 govern the recovery and disposition of property seized pursuant to a search or seizure by other authorized persons.

8–11. Reapplication

Any person requesting authorization to search and seize must disclose to the issuing authority any knowledge that person has of denial of any previous request for a search or seizure authorization involving the same individual or the same property.

8–12. Legality of searches and seizures

The requirements set forth in this chapter are administrative only and the failure to comply does not, in, and of itself, render the search or seizure unlawful within the meaning of MRE 311. The "privatization" of on-post housing and other facilities does not diminish the authority of military judges, military magistrates, garrison commanders or senior commanders to authorize searches of on-post housing or facilities, whether "privatized" or not.

Chapter 9
Courts of Inquiry

9–1. General
This chapter applies only to courts of inquiry.

9–2. Jurisdiction
a. Statutory provisions. Courts of inquiry to investigate any matter may be convened by any person authorized to convene a GCM. They may also be convened by any other person designated by the Secretary of the Army for that purpose, whether, or not the persons involved have requested such an inquiry.

b. Policy. A court of inquiry is a formal, fact-finding tribunal. A court of inquiry will not be convened to investigate a particular matter to ascertain the facts if there are other satisfactory means (prescribed by law or regulation or authorized by the customs of the Service). Under this policy, it is proper to convene a court of inquiry only when—

(1) The matter to be investigated is one of grave importance to the military Service or to an individual; or

(2) The testimony is expected to be so diverse, complicated, conflicting, or difficult to obtain that a court of inquiry can best—

(a) Procure the pertinent evidence.

(b) Ascertain the facts.

(c) Assist the convening or superior authority in determining what action should be taken.

c. Persons whose conduct may be subject to inquiry. As a court of inquiry may be convened to investigate any matter (pursuant to UCMJ, Article 135(a)), it may also lawfully investigate the conduct of any person. As a matter of policy, a court of inquiry will not, without prior approval of the Secretary of the Army, be convened to investigate the conduct of a person who is not a member of the Army unless the convening authority exercises GCM jurisdiction over that person.

d. Effect of application for court of inquiry. Any person subject to the UCMJ who believes they have been wronged by any accusation or imputation against their person and who cannot secure adequate redress by any other means (prescribed by law, regulation, or authorized by the customs of the Service) may submit an application for a court of inquiry. The application will be sent through the person's immediate commander to the officer exercising GCM jurisdiction over the command for convening a court of inquiry to investigate and report the alleged accusation or imputation. The officer exercising GCM jurisdiction may, according to the policy in paragraph 9–2*b*, convene a court of inquiry to investigate the matter or may take other appropriate action. The applicant will be advised if the GCM authority refuses to convene such a court and will have the right to appeal to superior authority.

9–3. Composition
a. Number of members. A court of inquiry will consist of three or more members. The senior member will be the president.

b. Qualifications of members.

(1) Any commissioned officer on AD will be eligible to serve on a court of inquiry. No member will be junior in grade to, nor lower on the promotion list than, any officer who is initially designated as a party to the inquiry, unless exigencies of the Service so require. The decision by the convening authority, in this regard, as indicated by the order appointing the court, is final.

(2) The convening authority will appoint as members of a court of inquiry persons who are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. One or more members having experience or training in the subject of the inquiry should, when possible, be appointed if that special experience or training will benefit the inquiry. When a minority or female officer or enlisted Soldier is initially designated a party to the inquiry, a minority or female officer or enlisted Soldier, as appropriate, senior to and of the same branch as that party, will, if possible, be appointed as a member of the court. Neither a party to the inquiry, nor their counsel, nor a witness against that party will be eligible to serve as a member of the court.

c. Counsel. For each court of inquiry, the convening authority will appoint by letter of appointment a commissioned officer as counsel for the court and assistant counsel as the convening authority deems appropriate. If practicable, the counsel appointed for the court will be an officer who is certified by TJAG to be qualified as counsel of a GCM pursuant to the provisions of UCMJ, Article 27(b). Neither a party to

the inquiry, nor such a person's counsel, nor a witness against that party will be eligible to serve as counsel for the court.

d. Reporters and interpreters. For each court of inquiry, the convening authority will provide a qualified court reporter who will record the proceedings and testimony taken before that court. When necessary, the convening authority will provide an interpreter who will interpret for the court.

9–4. Convening order

a. Format. The format of the order convening a court of inquiry will be similar to that for a court-martial (see appendix 11, MCM, 2024).

b. Content. In addition to naming the members and setting the time and place of assembly of the court, the initial convening order will clearly specify the matter to be investigated and the scope of the findings required. The order will also prescribe the number of copies of the record to be prepared. If it is desired that the court express opinions or make recommendations, the order must specifically so state. When appropriate, the convening order will designate the party whose conduct is subject to inquiry.

9–5. Designation of parties

a. Person "whose conduct is subject to inquiry." Any person subject to the UCMJ whose conduct is subject to inquiry will be designated as a party. The conduct of a person is "subject to inquiry" when the court of inquiry is directed in the convening order to inquire into any past transactions or any accusation or imputation against that person.

b. Person who has "a direct interest in the subject of inquiry."

(1) Any person who is subject to the UCMJ, employed by the DoD, or with respect to the Coast Guard, employed by the Department of Homeland Security, who has a direct interest in the inquiry, will have the right to be named as a party on request to the court.

(2) A person has a direct interest in the subject of inquiry when the findings, opinions, or recommendations of the court may, in view of the person's relation to the incident or circumstances being inquired into—

(a) Reflect questionable or unsatisfactory conduct, efficiency, fitness, or performance of duty, or

(b) Affect the person's pecuniary responsibility.

(3) The question of whether a person has a direct interest in the subject of the inquiry rests in the discretion of the court. Any doubts should be resolved in favor of the person claiming such an interest.

c. Designation of parties by court. When it appears to the court during the course of an inquiry that a person subject to the UCMJ or employed by the DoD, or with respect to the Coast Guard, employed by the Department of Homeland Security, has a "direct interest in the subject of inquiry" (as that term is defined in paragraph 9–5*b*) the court, before completing its inquiry, will inform the person concerned, orally, or in writing, of—

(1) The precise nature of the person's interest in the case.

(2) The right to be designated as a party to the inquiry. The fact that the person was notified and the person's desires with respect to being designated as a party will be made a part of the record.

d. Procedure on designation of party by court.

(1) When the court designates a person as a party, it will take appropriate action to ensure that the person—

(a) Understands the person's rights as such.

(b) Is fully informed of the evidence pertaining to the person that was received by the court.

(2) Any reasonable request by the party for recall of previous witnesses for the purpose of cross-examination will be granted by the court if practicable. If the witness cannot be recalled, cross-examination may be accomplished by written interrogatories. Any testimony already given by such a party remains in the record but, after the party's designation as a party, these rights as a witness are governed by paragraph 9–7*b*.

9–6. Rights of parties

A party to the inquiry, whether designated initially or during the course of the inquiry, has the following rights:

a. To be given due notice of such designation.

b. After a party's designation, to be present and to have counsel present during all proceedings in open court.

c. To be represented by civilian counsel if provided by the party at no expense to the government, by appointed military counsel, or by military counsel of the party's own selection, if reasonably available.

d. To challenge members, but only for cause stated to the court.

e. To cross-examine witnesses.

f. To introduce evidence and to examine and object to the introduction of evidence.

g. To testify as a witness under the rules set forth in paragraph 9–7*b*.

h. To make a voluntary statement in any form, personally, or through counsel.

i. To make an argument at the conclusion of presentation of the evidence.

j. To submit a written brief at the conclusion of the inquiry, after examination of the record of proceedings.

9–7. Witnesses

a. General. Witnesses may be subpoenaed to appear, testify, and be examined before courts of inquiry. A court of inquiry and counsel for such court have the same powers with respect to obtaining the attendance of witnesses as a court-martial and the trial counsel of a court-martial (see RCM 703).

b. Party to the inquiry. In all proceedings in courts of inquiry the person charged will, at the person's own request, be a competent witness. The party's failure to make such a request will not create a presumption against the party (18 USC 3481). Any party to the inquiry who is charged with or suspected of an offense that is then the subject of inquiry by the court is deemed to be "charged" within the meaning of the above act and is, on request, a competent witness. A party to the inquiry who is not charged with or suspected of an offense may be called as a witness and required to testify under oath on any matter on which the party might be a material witness, subject to the limitations imposed by UCMJ, Article 31.

c. Examination.

(1) The examination of a witness may be conducted, at the discretion of the court, by members and counsel for the court.

(2) Any person designated as a party to the inquiry and the person's counsel will have the right to examine and cross-examine witnesses.

(3) MREs 301, 305, 502, 503, and 504 pertaining to the right against self-incrimination and to privileged communications, are applicable to the examination of witnesses before a court of inquiry.

9–8. Procedure

a. General. Except as otherwise provided by this regulation, the procedure before courts of inquiry will be governed by the provisions of AR 15–6 for formal boards of officers.

b. Duties of counsel for court. The counsel for a court of inquiry will perform substantially the same duties as are prescribed by AR 15–6 for the recorder of a board of officers. Counsel will be present during all proceedings in open court and may be present when the court is closed. An assistant counsel for the court is competent to perform any duty of counsel for the court. The counsel will perform such duties in connection with the inquiry as counsel for the court may designate.

c. Quorum. Three members of the court will constitute a quorum and must be present at all of its sessions. An exception is that a member who was previously absent from or newly appointed to a court may participate in the proceedings if the substance of all proceedings and the evidence introduced previously have been made known to the member.

d. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court in the presence of the members. The procedure for determining challenges is as follows:

(1) Any challenge for cause will be decided by a majority vote of the members upon secret written ballot in closed session.

(2) The challenged member will not be present at the closed session at which the challenge is decided.

(3) A tie vote on a challenge disqualifies the member challenged.

(4) Before closing, the president will give such instructions as may be necessary to resolve the challenge.

(5) Each challenge will be decided separately, and all unexcused members except the challenged member will participate.

(6) When only three members are present and one is challenged, the remaining two may decide the challenge.

(7) When the president is challenged, the next senior member will act as president for purposes of deciding the challenge.

e. Oaths.

(1) Before a court commences the inquiry directed by the convening order, the counsel for the court will administer to the members the following oath or affirmation: Do you, (names), (swear or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court of inquiry and that you will examine and inquire, according to the evidence, into the matter now before you without partiality (so help you God)?

(2) When the oath or affirmation has been administered to the members of the court, the president of the court will administer to the counsel (and assistant counsel, if any) the following oath or affirmation: Do you, (name), (swear or affirm) that you will faithfully perform the duties of counsel for this court (so help you God)?

(3) Every reporter and interpreter will, before performing duties, make an oath or affirmation, administered by the counsel for the court, in the following form: Do you, (name), (swear or affirm) that you will faithfully perform the duties of reporter (interpreter) to this court (so help you God)?

(4) All persons who testify before a court of inquiry will be examined on oath or affirmation, administered by the counsel for the court, in the following form: Do you, (name), (swear or affirm) that the evidence you will give in the case now in hearing will be the truth, the whole truth, and nothing but the truth (so help you God)?

(5) The counsel for the court will administer the following oath to a challenged member who is to be examined under oath as to their competency: Do you, (name), (swear or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case (so help you God)?

f. Presence of party. Although a party to the inquiry has the right to be present during all proceedings in open court, their presence is not essential, and the absence does not affect the authority of the court to proceed with the inquiry. An absent party may be represented by counsel. If a party is absent because of sickness or other good reason and was not represented by counsel during the absence, the court will, if practicable, adjourn the inquiry until the party or counsel can be present. Otherwise, the court will, upon request of the absent party—

(1) Make known to the party the evidence pertaining to the party that was received during the party's absence.

(2) Give the party a reasonable opportunity to cross-examine available witnesses and to present evidence on the party's own behalf.

g. Rules of evidence.

(1) Although not generally bound by the rules of evidence contained in the MCM, 2024 (but see para 9–7*c*(3) for exceptions), courts of inquiry will, as far as practicable, observe those rules to ensure an orderly procedure and a full, fair, and impartial investigation. Thus, a court may consider certificates of officers or affidavits of enlisted personnel or civilians if it is impossible or impracticable to secure their personal testimony or depositions.

(2) Similarly, if it is impracticable to produce a witness to authenticate a document, the court may dispense with formal proof of its authenticity. However, the court must be satisfied that the document is what it purports to be. When a deposition is taken under the provisions of UCMJ, Article 49 and RCM 702, all known parties to the inquiry will be given notice and permitted to submit cross-interrogatories. In determining the materiality of evidence, the court should consider that the scope of the inquiry is limited by the directions contained in the convening order or in subsequent communications of the convening authority.

9–9. Report

a. General. After all the evidence has been presented and briefs, if any, submitted, the court will close to consider the evidence and formulate its findings and, if any are required, its opinions and recommendations. Only the members and counsel for the court (see para 9–3*c*) may be present during its closed sessions. The findings, opinions, and recommendations of the court will not be divulged to anyone other than the convening authority; nor will the vote or opinion of any member be disclosed unless disclosure is required by these regulations or by a court of justice in due course of law.

b. Findings. After careful consideration of the evidence of record and the instructions contained in the convening order, the court will record its findings. A finding is a clear and concise statement of a fact or a conclusion of the court that may reasonably be inferred from the evidence. On request of the court, the counsel for the court will assist the court in putting the findings in proper form. Each finding must be supported by evidence of record. In arriving at its findings with respect to disputed facts, the members of the court should use their professional knowledge, best judgment, and common sense in weighing the

evidence. They will consider the probability or improbability of the disputed facts and should regard as established facts those that are supported by evidence deemed most worthy of belief.

c. Opinions. If the convening order directs the submission of opinions, the court will set forth the opinions that it believes may reasonably be inferred from the facts. The opinions consist of a concise summary of the results of the inquiry consequent from the evidence supported by the facts. They may consider matters in extenuation or mitigation. The court's opinions may include conclusions of law; for example, whether the facts found establish the commission of an offense that is punishable under the UCMJ.

d. Recommendations. If the convening order requires that recommendations be submitted, the court will make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the inquiry and the facts found. Recommendations must be appropriate and warranted by the findings and opinions. In general, they should cover the punitive, pecuniary, and corrective phases of the matter under investigation. If any member of the court recommends trial by court-martial, a charge sheet, signed, and sworn to by that member, will be prepared and submitted to the convening authority with the record of proceedings. These charges may be signed and sworn to before the counsel for the court.

e. Minority report. The report of the court will be based on the opinion of the majority of the members sitting at the inquiry. If a member does not concur with the findings, opinions, or recommendations of the majority of the court, the member will prepare a minority report. It will contain an explicit statement of the parts of the majority report with which the member disagrees and the reasons therefore.

9–10. Preparation and submission of record

a. Contents. The record of proceedings of a court of inquiry will include—

(1) The convening order.

(2) Any other communication from the convening authority.

(3) An accurate transcript of the proceedings, including a verbatim report of the testimony.

(4) The findings of fact.

(5) The opinions and recommendations, if any were required.

(6) The exhibits that were received in evidence.

b. Form. The provisions of appendix 14, MCM, 2016 so far as they are applicable, will serve as a general guide for the preparation of the record of the proceedings of a court of inquiry.

c. Copies. The convening authority ordinarily will provide in the convening order for preparation of sufficient copies of the record to permit distribution to agencies directly concerned with the subject(s) of the inquiry. If the convening order fails to prescribe the number of copies, the record will be prepared in duplicate.

d. Authenticating and forwarding. All copies of the record will be authenticated below the findings, opinions, and recommendations of the court, including any minority report, by the signature of the president and counsel for the court. In case the record cannot be authenticated by the president, it will be authenticated by a member in lieu of the president. In case the record cannot be authenticated by the counsel for the court, it will be authenticated by a member instead of counsel. After the record is authenticated, all copies will be forwarded to the convening authority or, in the case of a court convened by the President or the Secretary of the Army, to TJAG.

9–11. Action of convening authority

a. Revision. If not satisfied with the investigation, facts, opinions, or recommendations, the convening authority may return the record to the court with explicit instructions to—

(1) Have the investigation pursued further, or the facts, opinions, or recommendations stated in greater detail, or in more definite and unequivocal terms.

(2) Correct some other error or defect or supply some omission.

b. Review and formal action. The convening authority will review the record of proceedings of a court of inquiry and consider the findings, opinions, and recommendations. The convening authority will state at the end of the record over the convening authority's own signature, approval, or disapproval in whole or in part, of the findings, opinions, and recommendations. In taking this action, the convening authority is not bound by the findings, opinions, or recommendations of the court.

9–12. Disposition of record

Immediately after taking action on a record of the proceedings of a court of inquiry, the convening authority will forward the original copy of the record, by letter of transmittal, through normal command channels, to TJAG. The letter of transmittal will contain a statement as to what action the convening authority has taken or proposes to take on the matter investigated by the board. Superior commanders may take such action as they deem appropriate on the subject of the inquiry and the action of subordinate commanders thereon. A notation of any action taken by such a superior commander will be included in an endorsement forwarding the record. The original copy of each record of a court of inquiry will be permanently filed by the Clerk of Court, USACCA, in the same manner as records of trial by GCM (see para 5–58).

Chapter 10
Oaths

10–1. General

This chapter implements UCMJ, Articles 42 and 136, and various rules of the MCM, 2024. It authorizes commanders to administer oaths related to military justice. It also authorizes other military personnel who are empowered to authorize searches and seizures (pursuant to MRE 315(d)) to administer oaths for such searches and seizures and for apprehensions.

10–2. Court-martial personnel required to be sworn

All court-martial personnel listed in RCM 807(b)(1)(A) will take an oath to perform their duties faithfully, pursuant to UCMJ, Article 42(a). Oaths to court-martial personnel need not be administered in the presence of the accused.

10–3. Oath administration procedure for military judges

A military judge will take a written oath on DA Form 3496 (Military Judge's Oath) before an officer qualified to administer oaths pursuant to UCMJ, Article 136(a), to faithfully and impartially perform their duties in all cases to which the military judge is detailed (pursuant to UCMJ, Article 26(b) and RCM 807(b)(1)(A)). An oath need not be taken again when the military judge is detailed to a court-martial. A military judge of another armed force who has taken an oath to perform their duties properly in all cases to which they are detailed need not take an oath when detailed as a military judge at courts-martial convened in the Army.

10–4. Oath administration procedure for counsel

a. Army Judge Advocates. A counsel certified pursuant to UCMJ, Article 27(b), who is a member of the JAGC will take the oath on DA Form 3497 (Counsel's Oath) before an officer qualified to administer oaths pursuant to UCMJ, Article 136(a). The DA Form 3497 will be filed in the service folder of the officer's AMHRR and a copy will be retained by the JA who took the oath. Once executed on DA Form 3497, an oath need not be taken again when previously sworn counsel are individually requested or detailed to that duty.

b. Counsel from another armed service. Counsel who are members of other armed services (who have taken oaths to perform their duties faithfully in any case to which they are individually requested or detailed as counsel) need not take an oath when they participate as counsel at courts-martial convened in the Army.

c. Other counsel. All other counsel will be administered the appropriate counsel's oath for any case referred to the court to which they have been detailed, or in any case in which they enter an appearance on the record.

10–5. Oath administration procedure for court members

The trial counsel or special trial counsel will normally administer the oath to court members in open session. As a matter of policy, such oaths should be administered at every court-martial to impress on the participants the solemnity of the proceedings. When court members are not sworn because they have been administered such an oath previously, this fact will be noted on the transcript or in the ROT.

10–6. Oath administration procedure for reporters

a. The trial counsel or special trial counsel will administer the oath to the reporter at the court-martial. At the discretion of the SJA of the command to which the reporter is assigned (or employed), reporters may execute a written oath to perform their duties faithfully in all cases to which they are detailed (or employed), before an officer qualified to administer oaths (see UCMJ, Article 136(a)).

b. When a reporter who has been so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. The SJA authorizing the administration of a written oath will maintain a copy of such oath so that it may readily be determined that the reporter has been previously sworn. When reporters are not sworn because they have been administered such an oath previously, this fact will be noted in the transcript or ROT.

10–7. Oath administration procedure for interpreters

a. The trial counsel, special trial counsel, or SCM officer will administer the oath to interpreters at the court-martial. At the discretion of the SJA of the command to which an interpreter is assigned (or employed), interpreters may take a written oath to interpret truly in all cases to which they are detailed or employed. The SJA will maintain records of the written oath so that it may be readily determined that an interpreter has been previously sworn.

b. When an interpreter so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. When interpreters are not sworn because they have previously been administered a written oath, this fact will be noted in the transcript or ROT.

10–8. Forms of oaths for court-martial personnel

Oaths in Army courts-martial will take the form of oaths as described in RCM 807(b)(2), Discussion.

10–9. Forms of oaths and administration procedure for persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend

a. Except as provided in paragraph 10–9*b*, oaths are not required to be given to persons providing information in support of requests for authorizations to search and seize (see para 8–7). Commanders and other military personnel empowered to authorize searches and seizures, on probable cause, may administer oaths to persons presenting information in support of requests for such authorizations. When an authorizing person is presented with sworn matter and the authorizing person did not personally administer the oath, the matter should include the name and authority of the person who administered the oath and the date and place of administration. When information is presented by telephone or similar device to those empowered to authorize searches, seizures, and apprehensions, the authorizing official may administer the oath over such devices.

b. A warrant for wire and electronic communication pursuant to RCM 703A(b) may be issued based only on affidavit or sworn testimony.

c. No specific form of oath or affirmation is required as long as it imposes upon the requester a moral or legal responsibility for the correctness of the information. The following oath or affirmation, as appropriate, may be administered to persons providing information supporting requests for authorizations to search and seize or to apprehend: Do you (name) (swear or affirm) that the information you are providing is, to the best of your knowledge, information, and belief, the truth (so help you God)?

10–10. Form of oath for the accused following a plea of guilty

The following oath will be administered to the accused prior to the military judge questioning the accused concerning the accuracy of their plea (as described in RCM 910(e)): Do you (swear or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth (so help you God)?

Chapter 11
Form and Distribution of Court-Martial Orders

11–1. Effective dates relating to court-martial orders

a. For cases referred on or after 1 January 2019, follow the policies and procedures in this chapter.

b. For cases referred before 1 January 2019, follow the policies and procedures as outlined in appendix G.

11–2. Convening orders for special and general courts-martial

a. The convening authority will issue court-martial convening orders (CMCOs) for each SPCM and GCM as soon as practicable after determining the members of a court-martial.

b. CMCOs for SPCM and GCM will—

(1) Designate the type of court-martial.

(2) Designate the members, if any, as outlined in RCM 504(d).

(3) If the CMCO fails to specifically state that alternate members are authorized under this paragraph, no alternates are authorized. If the convening authority authorizes the use of alternate members, the CMCO will state whether the judge is—

(a) Authorized to impanel a specified number of alternate members.

(b) Authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain.

c. SJAs should advise convening authorities whether alternate members should be required in a particular case, to include advice that in non-capital GCMs, up to two members may be excused after impanelment without depriving the court-martial of a quorum.

11–3. Convening orders for summary courts-martial and special courts-martial convened pursuant to UCMJ, Article 16(c)(2)(A)

a. Court-martial convening orders for summary courts-martial. A SCM may be convened at the time of referral by annotating section V of the charge sheet after the words "convened by" as follows: this detail of (insert grade and name) as a summary court-martial on (date). If the convening authority has been empowered pursuant to UCMJ, Article 24(a)(4), the charge sheet will reference the order granting SCM authority (see RCM 504(d)(2)). Amendments to SCM CMCOs will be made by attachments to the charge sheet. The SCM CMCOs need not be numbered (see para 11–4*a*(2)).

b. Court-martial convening orders for special court-martial convened pursuant to Uniform Code of Military Justice, Article 16(c)(2)(A). Charges may be referred to a SPCM authorized by UCMJ, Article 16(c)(2)(A) by either a GCMCA, SPCMCA, or a special trial counsel. The SPCM is convened by annotating section V of the charge sheet as follows: "Referred for trial to the SPCM convened by (name of convening authority) (date), subject to the following instructions: This case is to be tried as a SPCM consisting of a military judge alone pursuant to UCMJ, Article 16(c)(2)(A)."

c. Summary court-martial promulgating order. Initial SCM promulgating orders are not required. Supplemental promulgating orders will be issued using the format in paragraph 11–4 of this regulation and appendix 11, MCM, 2024.

11–4. Format for court-martial orders

a. Heading.

(1) The heading of court-martial orders (CMOs) is the same as that used for other orders, except that the words "court-martial convening order," "general court-martial order," or "special court-martial order," are substituted for the word "Orders." MJO will be used for the production of CMOs.

(2) CMCOs, excepting a SCM or a SPCM convened pursuant to UCMJ, Article 16(c)(2)(A), will be numbered so that convening authorities and other interested parties are able to track the creation and amendment of CMCOs by calendar year.

(a) CMCOs may be grouped into separate categories, such as general and special courts-martial, with each category having its own numbering sequence and beginning anew each calendar year. Alternatively, a convening authority may wish to group all SPCM and GCM CMCOs together in one series, with each succeeding CMCO numbered sequentially and the whole series beginning anew each calendar year. This latter option may be preferable when a convening authority picks the same panel members to serve as a standing panel for both SPCMs and GCMs.

(b) For all CMOs, the first numbered order in each series issued in any calendar year will bear a notation above the heading of the first page showing the number of the last order issued for that series during the preceding year. For example, "Court-Martial Convening Order Number 37 was the last of the series for 2018."

(3) The type of order will be written in capital letters beginning at the left margin immediately opposite the date. The word “NUMBER” in capital letters will be placed immediately below the type of order. An Arabic numeral indicating the serial number of the order will be placed so that the last number is immediately below the last letter of the word “ORDER.”

(4) CMCOs will bear the date of their publication.

b. Body.

(1) CMCOs (see RCM 504(d)). Great care should be used to verify that the members actually detailed by the convening authority are present. At a minimum, each member should be asked to verify their name, rank, and unit. After verification, no document that includes the SSNs of court members should be attached to the ROT.

(2) Supplementary SCM promulgating orders. The order will be in the format contained in appendix 11, MCM, 2024, and the order will include, if applicable, the following:

(a) The date the sentence was adjudged if the supplementary action in any manner affects a sentence of confinement.

(b) The courts-martial case number (ARMY0000000) inserted in parentheses at the end of the distribution list.

c. Authentication. CMOs are authenticated in the same manner as other orders discussed in DA Pam 600–8–105 with the exception of the authority line. The authority line in CMCOs indicates that the commander has personally acted with respect to the selection of the personnel named in the order. In CMOs, the authority line reads—

(1) “By command of (grade and last name)” when the commander is a general officer.

(2) “By order of (grade and last name)” when the commander is below the grade of brigadier general.

d. Distribution designation.

(1) The word “distribution” is placed beginning at the left margin opposite the signature block. A list of the individuals, organizations, and installations to which copies of the order will be sent and the number of copies to be furnished will be indicated under “distribution.” Distribution includes one copy for the reference set, when needed, and the record set of military publications.

(2) Standard distribution of orders within a command and to agencies requiring full distribution may be designated by letters, for example, distribution A, B, or combinations thereof, to indicate all or part of the distribution made. Agencies included in each letter designation are shown in a distribution list prepared and published by the HQ or agency concerned (see DA Pam 600–8–105).

e. Corrections. CMOs are corrected in the same manner as other orders discussed in AR 600–8–105, with the following exceptions:

(1) Changed material will be underscored.

(2) Further corrections will be made by additional corrected copies, as necessary, with the figure “2d,” “3d,” and so forth, inserted before the words “corrected copy.” Extreme care should be used in preparing CMOs to avoid the need for corrections.

11–5. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various HQs will be dispersed in accordance with appendix H of this regulation.

Chapter 12
Appellate Matters

12–1. Petitions for extraordinary relief

a. Prior Coordination. Prior to seeking extraordinary relief under the All Writs Act (Title 28, Section 1651 of the United States Code), with the USACCA or the USCAAF on behalf of the United States or government officials, in their capacity as government officials, trial counsel, SJAs, or their representatives will coordinate with the Chief, GAD. Special trial counsel will coordinate with the LSTC and with the Chief, GAD. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the LSTC has exclusive authority to determine whether to seek extraordinary relief. The Chief, GAD will notify trial counsel or special trial counsel, as applicable, prior to filing a petition for extraordinary relief.

b. Special Victims’ Counsel. SVCs will coordinate with their supervisory attorneys prior to filing a petition for extraordinary relief with the USACCA or the USCAAF.

12–2. Government appeals of a sentence pursuant to UCMJ, Article 56(d) in cases referred on or after 1 January 2019

a. Delegation. In any appeal of a sentence pursuant to UCMJ, Article 56(d), TJAG designates the Chief, GAD, to process the request in accordance with RCM 1117(c)(1)-(5).

b. Coordination. Where the sentence is for an offense over which special trial counsel has exercised authority, the Chief, GAD will coordinate any appeal of the sentence with the LSTC.

c. Notice of appeal. The Chief, GAD will transmit the request, through the Chief Trial Judge, to the military judge who presided over the presentencing proceedings, the parties, and any person who is a crime victim.

d. Submissions by parties and crime victim(s). The military judge will invite the parties and any crime victim to make a submission in response to the government's request and inform them of the deadline to make submissions. The military judge will give the parties and the crime victim no fewer than 7 days to make any submission in favor of or opposing the government sentence appeal. A submission is not required. The military judge will forward any submission received from the parties and any crime victim through the Chief Trial Judge, to TJAG, not later than 20 days after having received the notice under paragraph 12–2*c*.

e. Action upon The Judge Advocate General approval. If TJAG approves the government request for appeal pursuant to UCMJ, Article 56(d), the approval, the certified ROT and all documents required pursuant to RCM 1112(f) will be transmitted to the Clerk of Court, USACCA. The Clerk of Court, USACCA will notify the accused, or counsel for the accused, that the application for review has been granted by depositing the notice in the U.S. mail for delivery by first-class certified mail to the accused at an address provided by the accused or to the latest address listed for the accused in the official service record of the accused. Proof of service will be attached to the ROT.

f. Appeal to U.S. Army Court of Criminal Appeals. Within 90 days of service upon the appellant as determined by the proof of service in paragraph 12–2*e*, the accused may appeal their case to USACCA to conduct a review pursuant to UCMJ, Article 66(d). The 90-day appeal deadline may be superseded by court rule or order.

12–3. Government appeals pursuant to UCMJ, Article 62

a. Notice of appeal.

(1) *Timing.* Not later than 72 hours after the military judge's ruling, the trial counsel or special trial counsel will serve a certificate of notice of appeal pursuant to RCM 908(b)(3) on the military judge.

(2) *Prior coordination.* For offenses over which a special trial counsel does not exercise authority, a trial counsel will not file a notice of appeal with the military judge pursuant to RCM 908 unless authorized to do so by the GCMCA or the SJA and after coordination with the Chief, GAD. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the LSTC has exclusive authority to determine whether to file an appeal. Prior to filing a notice of appeal with the military judge pursuant to RCM 908 the LSTC will coordinate with the Chief, GAD. Prior to filing a notice of appeal with the military judge and as part of the coordination required by this paragraph, trial counsel or special trial counsel will provide a memorandum of points and authorities to the Chief, GAD. Appeals forwarded pursuant to RCM 908(b)(6) and (7) will be sent to the Chief, GAD, JALS–GA, usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil.

(3) *Required matters.* The certificate will reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service on the military judge. The notice will include a certification by the trial counsel or special trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

b. Submission to Chief, Government Appellate Division. The matters forwarded pursuant to RCM 908(b)(6) and (7), including an original and three identical copies of the verbatim ROT (only those portions of the record that relate to the issue to be appealed), together with the certificate of notice of appeal, will be forwarded to the Chief, GAD, within 20 days from the date written notice of appeal is filed with the trial court. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the Chief, GAD will, after coordination with the LSTC, file an appeal as determined by the LSTC. For offenses over which a special trial counsel does not exercise authority, the Chief, GAD, will, after coordination with the Assistant JAG for Military Law and Operations, decide whether to file the

appeal with USACCA and will notify the trial counsel of this decision as soon as it is made. In all cases, the Chief, GAD will be responsible for the substance and content of submissions to the USACCA.

c. Withdrawal of Notification. For offenses over which a special trial counsel does not exercise authority, the Chief, GAD will determine whether to withdraw a notice of appeal filed pursuant to RCM 908(b)(3) or whether not to file an appeal with the USACCA. For offenses over which a special trial counsel has exercised authority and has not deferred, the LSTC will determine whether to withdraw a notice of appeal filed pursuant to RCM 908(b)(3) or whether not to file an appeal with the USACCA. If the decision is made not to file the appeal with the USACCA, the Chief, GAD, will return all copies of the record to the trial counsel.

d. Decision by U.S. Army Court of Criminal Appeals. Following a decision, the Clerk of Court, USACCA will notify the military judge and the convening authority, who will ensure the accused is notified promptly as required by RCM 908(c)(3). Whether the accused is notified orally on the record or by other means, the trial counsel's or special trial counsel's certificate as to the fact, date, and method of notification will be sent immediately to the Clerk of Court, USACCA.

12–4. Appeals pursuant to UCMJ, Article 66(b)(1)

a. Cases eligible for review pursuant to UCMJ, Article 66(b)(1). The USACCA has jurisdiction over the timely appeal of a SPCM or GCM where the judgment entered into the record includes a finding of guilty.

b. Notification of the right to file an appeal. If a SPCM or GCM is eligible for review pursuant to UCMJ, Article 66(b)(1), then the SJA will, in conjunction with service of the EOJ on the accused as required by paragraph 5–51*d* and RCM 1112(f), notify the accused of their right to file an appeal under UCMJ, Article 66(b)(1) (see UCMJ, Article 65(c)). Proof of service of the notice will be attached to the ROT.

c. Detail of appellate defense counsel. Unless the accused declines the detailing of appellate defense counsel in writing, within ten days of receipt of transmittal at USACCA of the certified ROT and all attachments required pursuant to RCM 1112(f), the Clerk of Court, USACCA will forward a copy of the ROT to appellate defense counsel who will be detailed to review the case and, upon request of the accused, to represent the accused before USACCA.

d. Review by U.S. Army Court of Criminal Appeals. Within 90 days of service upon the appellant as determined by the proof of service in paragraph 12–4*b*, unless USACCA by rule or order provides a later time for filing, the accused may appeal to USACCA to conduct a review pursuant to UCMJ, Article 66(d) and (e).

e. Review by The Office of the Judge Advocate General. If the accused waives the right to appeal, withdraws from appellate review, or fails to file a timely appeal, the case will be reviewed pursuant to UCMJ, Article 65(d)(3).

12–5. Appellate advice after trial

a. In accordance with RCM 502(d)(5), Discussion, and RCM 1010, the trial defense counsel will explain to the accused the rights to appellate review that apply to the case. The trial defense counsel will submit for attachment to the ROT a record of the notice given to the accused concerning appellate review.

b. The Chief, USATDS will prescribe policies and procedures to ensure compliance with this paragraph.

c. With regard to appellate advice after a decision by the USACCA, see paragraph 12–9, and DA Form 4917 (Advice as to Appellate Rights), DA Form 4918 (Petition for Grant of Review in the United States Court of Appeals for the Armed Forces), and DA Form 4919 (Request for Final Action).

12–6. Waiver or withdrawal of appellate review

a. Cases referred on or after 1 January 2019.

(1) A waiver of appellate review or withdrawal of an appeal pursuant to UCMJ, Article 61 and RCM 1115 will be made on DD Form 2330 (Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals) or DD Form 2331 (Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of The Judge Advocate General). The withdrawal of an appeal must be filed with, or immediately forwarded to, the Clerk of Court, USACCA.

(2) The Clerk of Court, USACCA will refer the withdrawal to the court before which the appeal is pending or to OTJAG–CLD and thereafter will return all copies of the record for review pursuant to RCM 1201 and the rules or instructions of the cognizant court or division.

(3) An accused may not revoke a waiver or withdrawal of appellate review made in substantial compliance with RCM 1115. When, however, review pursuant to RCM 1307 or RCM 1201 results in a rehearing, the accused is entitled to any applicable appellate rights, unless they again waive or withdraw further appellate review.

b. Cases referred prior to 1 January 2019.

(1) A waiver of appellate review or withdrawal of an appeal pursuant to UCMJ, Article 61 and RCM 1110, MCM, 2016, will be made on DD Form 2330 or DD Form 2331. In GCM cases, and in SPCM cases in which a BCD or confinement for 1 year has been approved, a review pursuant to RCM 1112, MCM, 2016, will be completed before the ROT is forwarded, pursuant to paragraph 5–58. The withdrawal of an appeal must be filed with, or immediately forwarded to, the Clerk of Court, USACCA.

(2) The Clerk of Court, USACCA will refer the withdrawal to the court before which the appeal is pending or to OTJAG–CLD and thereafter will return all copies of the record for review pursuant to RCM 1112, MCM, 2016 under the rules or instructions of the cognizant court or division.

(3) An accused may not revoke a waiver or withdrawal of appellate review made in substantial compliance with RCM 1110, MCM 2016. When, however, review under RCM 1112 or RCM 1201(b)(2), MCM, 2016, results in a rehearing, the accused is entitled to any applicable appellate rights, unless they again waive or withdraw further appellate review.

12–7. Identifying companion and other cases

a. The SJA will ensure that the cover of each original ROT (DD Form 490) forwarded for review pursuant to the UCMJ, Article 66 identifies each person (rank, name, DoD ID number) tried or expected to be tried separately in a case potentially subject to appellate review pursuant to UCMJ, Article 66 for involvement in an offense that is the same as or related to one tried in the case being forwarded. These co-accused, co-actors, or co-conspirators, as the case may be, will be identified under the heading "Companion and other cases." The purpose of this is to ease case assignments among the panels of USACCA and to avoid conflicts of interest in assigning appellate defense counsel. If there are no companion cases, the word "None" will be entered under the above heading.

b. In the same manner, the SJA will ensure that the cover of each original ROT forwarded for review pursuant to UCMJ, Article 66 identifies any prosecution witness or victim known to have been tried for any offense by court-martial subject to review pursuant to UCMJ, Article 66 so that potential conflicts of interest in the assignment of appellate defense counsel can be avoided.

12–8. Appellate defense counsel

In all cases where TJAG is required to designate appellate defense counsel or where an accused may request appellate defense counsel, appellate defense counsel will be provided a certified copy of the ROT and all required attachments. The provided ROT will not include any sealed materials. DAD counsel will apply to the Clerk of Court, USACCA for access to sealed material.

12–9. Rules of appellate procedure

See the *United States Army Court of Criminal Appeals Rules of Appellate Procedure*, together with the *Joint Rules of Practice and Procedure of the Courts of Criminal Appeals* (available on JAGCNet).

12–10. Clerk of Court, U.S. Army Court of Criminal Appeals

a. The Clerk of Court, USACCA receives records of trial, petitions for extraordinary relief, petitions for a new trial in pending cases, withdrawals of appeals, and other appellate matters forwarded to TJAG, and acts in a ministerial capacity for TJAG in referring such matters to the USACCA or USCAAF and in designating appellate counsel for the parties.

b. In cases remanded to TJAG, the Clerk of Court, USACCA acts for TJAG under the order of remand and refers records of trial to the USACCA or a convening authority, with necessary instructions, for compliance with the mandate.

c. The Clerk of Court, USACCA keeps the Chief Trial Judge and TJAG informed of the state of the military appellate process and of the need for any statutory, regulatory, or rule changes.

12–11. Serving U.S. Army Court of Criminal Appeals decisions on the accused

a. To protect the rights of the government and the accused, a copy of each USACCA decision (opinion or order disposing of an appeal or petition) must be served as expeditiously as possible on each accused and counsel for the accused and a record maintained of the date and manner of service.

b. The Clerk of Court, USACCA is responsible for serving decisions on counsel for the accused and has discretionary authority to serve the accused. In cases where all of the accused's appellate counsel are DAD counsel, electronic service of the decision on DAD will constitute service on the accused's appellate counsel of record.

c. Information copies of decisions will be sent by email to the confinement facility in which the accused is confined, the special trial counsel who referred the charges, if applicable, the GCM authority exercising jurisdiction over the accused at the time of trial, and the GCM authority with clemency authority over the accused prior to EOJ, if one or both of them are different from the GCM authority currently exercising jurisdiction over the accused. The jurisdictional SJA and chief of military justice will receive the information copy on behalf of the GCM authority and are responsible for any related MJO/case management system updates.

d. The USACCA decision will be served on the accused in person, if possible. In addition to the decision, unless the decision sets aside all findings of guilty and the sentence and dismisses the charges or involves a case referred to the USACCA under UCMJ, Article 69, the accused will be given a completed copy of DA Form 4917, five copies of DA Form 4918 on which the accused's name, grade, DoD ID number, and USACCA docket number will be entered, and a postage paid envelope addressed to USCAAF. The person who served the decision personally on the accused will complete the certificate in section A of DA Form 4916 (Certificate of Service/Attempted Service) and ensure that the original and two copies are sent to the Clerk of Court, USACCA.

e. If personal service cannot be made because the accused is absent from their unit without proper authority, section B of DA Form 4916 will be used to certify the circumstances. The original and two copies with any available documentary evidence of the absence (for example, DA Form 4187 (Personnel Action)) will be sent to the Clerk of Court, USACCA.

f. If there is any other reason that appears to preclude personal service, the Clerk of Court, USACCA should be contacted for advice.

g. When personal service cannot be made because of the authorized absence of an accused (such as excess leave), the decision copy will be served by first-class certified mail, return receipt requested. The decision will be sent to the address provided by the accused at the inception of or subsequent to the absence. If the accused provided no address, the packet will be sent to the most recent home address reflected in the accused's official military personnel records. Except when the decision sets aside all approved findings of guilty and the sentence and orders the charges dismissed, the documents described in paragraph 12–11*d* will be prepared and sent with the decision.

h. As soon as the decision is mailed, the person mailing it must complete item 1 of section C on DA Form 4916. The form is then held for return of service to the Clerk of Court, USACCA when the earliest of the following happens:

(1) The signed U.S. Postal Service (PS) Form 3811 (Domestic Return Receipt) is received (complete item 2a, section C, DA Form 4916).

(2) The packet containing the USACCA decision is returned by the Postal Service as undeliverable (complete item 2b, section C, DA Form 4916).

(3) Sixty-five days have passed since the decision was mailed and nothing has been returned or received (complete item 2c, section C, DA Form 4916).

i. When section C of DA Form 4916 is used, the return of service to the Clerk of Court, USACCA will include the original and two copies of the completed DA Form 4916, and any material returned by the United States Postal Service, such as the signed Domestic Return Receipt, PS Form 3800 (Certified Mail Receipt) or the unopened envelope with its contents.

j. If a petition for grant of review by the USCAAF is received by the GCM authority, the date of receipt will be noted and the petition will be forwarded to USCAAF immediately.

12–12. Cases remanded by the U.S. Army Court of Criminal Appeals or the U.S. Court of Appeals for the Armed Forces

a. When a decision of the USACCA or USCAAF directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority, the accused must be located and

furnished a copy of the decision. Further proceedings in USACCA cases need not be delayed, however, solely to permit an accused to petition USCAAF for a grant of review or otherwise appeal the matter.

b. Any special instructions deemed necessary to carry out the mandate of the court will be transmitted by the clerk of court with the ROT that was remanded.

(1) *Original record of trial.* The original and any copies of a ROT that was remanded for further proceedings must remain intact except for documents needed for reintroduction in the further proceedings, such as the original charge sheet and exhibits to be readmitted into evidence. Documents and copies of documents withdrawn should be replaced if not used, or, if used, replaced by a trial counsel or special trial counsel memorandum explaining their disposition. In particular, the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice or written determination, and UCMJ, Article 32 preliminary hearing must not be withdrawn. All copies of the record remanded should be returned with the record of further proceedings except that, if action on the sentence is such that no further review pursuant to UCMJ, Article 66 or UCMJ, Article 67 is required, only the original record need be returned to the Clerk of Court, USACCA. All copies of the record remanded should be returned with the record of further proceedings.

(2) *Remands for correction of post-trial error.* For cases remanded for post-trial error, use the processing rules in effect at the time of the original post-trial action.

(3) *New documentation.* In addition to any new document in the nature of a pretrial advice or written determination and referral to a court-martial, the authenticated or certified record of further proceedings must be accompanied by the original of any new action by a convening authority and the same number of copies of an order promulgating the action or the EOJ, as required when a record is initially forwarded for review pursuant to UCMJ, Article 66 or UCMJ, Article 69.

(4) *Absence of advice.* In the absence of specific advice to the contrary, the GCMCA should consider that an accused's right to speedy disposition of criminal charges and right to address matters to a convening authority apply to the further proceedings.

12–13. Leave or reassignment pending appellate review

a. A Soldier who is under sentence to a dismissal or punitive discharge, and who is not serving a sentence to confinement, may, pursuant to AR 600–8–10, voluntarily, or involuntarily be authorized by the officer exercising GCM jurisdiction to take leave, including excess leave, until appellate review is complete. A Soldier who is on excess leave and not previously reassigned, will be reassigned to the Fort Sill PCF immediately upon action placing them on excess leave status.

b. The GCMCA will ensure that the Clerk of Court, USACCA is expeditiously furnished copies of all reassignment orders and excess leave orders, or a copy of DA Form 31, when an accused has been reassigned from their jurisdiction or is placed on excess leave.

12–14. Habeas corpus representation

Military prisoners sentenced to death by a court-martial, who seek to file in Federal civilian courts post-conviction *habeas corpus* petitions, will, upon request to TJAG, be detailed military counsel by TJAG to assist counsel appointed by the district court or individually retained for representation in such proceedings and any appeals therefrom (see UCMJ, Article 70(e)). This right exists irrespective of any decision by the accused Soldier to hire civilian counsel at their own expense for such representation.

12–15. Tenure for military appellate judges

JAs are certified as military judges by TJAG and assigned to the USACCA for a minimum of 3 years, except under any of the following circumstances:

a. The military judge retires or otherwise separates from military service;

b. The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency;

c. The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15).

Chapter 13
Application for Relief Pursuant to UCMJ, Article 69

13–1. Effective dates relating to application for relief pursuant to UCMJ, Article 69

a. For cases referred on or after 1 January 2019, follow the process outlined in this chapter.

b. For cases referred before 1 January 2019, follow the policies and procedures in appendix I.

13–2. General

a. This chapter implements UCMJ, Article 69 and RCM 1201, including the scope of review and application deadlines set forth in the statute and rule.

b. No provision exists for a hearing or personal appearance before TJAG.

13–3. Procedures for making application

a. Apply for relief on DA Form 3499 (Application for Relief from Court-Martial Findings and/or Sentence under the Provisions of Title 10, United States Code, Section 869).

b. The DA Form 3499 will be prepared and submitted according to the requirements set forth in the instructions contained on the form. The DA Form 3499 must be submitted to OTJAG–CLD by the accused, or by a person with authority to act for the accused.

c. Failure to file within the prescribed time may be excused by TJAG for good cause established by the accused.

13–4. Submission of application

When an application has been submitted to OTJAG–CLD, the application will be forwarded by OTJAG–CLD to the office of the SJA or special trial counsel, as applicable, of that GCM jurisdiction. That office will provide:

a. The original ROT.

b. Copies of all CMOs in the case.

c. Any matter related to the allegations of the applicant.

d. Responsive comments on the merits of the applicant's allegations, signed by the SJA or special trial counsel, as applicable, of the GCM jurisdiction.

e. Original review of the case in accordance with RCM 1307.

Chapter 14
Military Justice Online, Army Court-Martial Public Record System, and Other Data Requirements

14–1. Military Justice Online for the Regular Army

a. Purpose. MJO is the single tool in the Regular Army for creating, processing, and managing Soldier-subject law enforcement investigations (other than minor traffic incidents), administrative reprimands, administrative separations, NJP proceedings pursuant to UCMJ, Article 15, and courts-martial. To meet the data collection and review requirements of UCMJ, Article 140a and UCMJ, Article 146, paralegals, trial counsel, and special trial counsel will comply with the data entry requirements identified in paragraph 14–1*c*. The use of the Human Resources Command (HRC) export feature in MJO is required for all records of UCMJ, Article 15 proceedings and reprimands as the sole means of transmitting documents to HRC that are directed to a Soldiers' official record. MJO is also the primary means for the government to transmit preferred charges and the information required by RCM 308(c) to defense counsel. MJO-Defense is the primary means for defense counsel to receive this information from government counsel.

b. Mandatory use. The use of MJO is mandatory for the RA and highly encouraged for the RCs. All data fields applicable in a particular MJO action must be completed in a timely manner. The use of the MJO application must be included in office SOPs and tactics, techniques, and procedures related to the execution of administrative actions and military justice.

c. Data entry requirements. Paralegals, trial counsel, and special trial counsel will ensure the following data is timely entered in MJO:

(1) All Soldier-subject law enforcement investigations (other than minor traffic incidents), including updates for probable cause determinations, victim participation, preferences, and elections, and association with corresponding Army Law Enforcement Reporting and Tracking System data.

(2) Select administrative investigations, see AR 15–6.

(3) Soldier-subject , essential witness, and victim personnel data (for example, name, sex, race, ethnicity, and email addresses) for every action type.

(4) Court-martial documents and actions (for example, preferral, referral, procedural steps, findings, and sentencing) as documents are prepared or actions occur.

d. Court-martial documents.

(1) Paralegals, trial counsel, and special trial counsel will prepare charge sheets using MJO. Charge sheets will be kept current in MJO as changes are made to the charges and specifications during the courts-martial process, including at referral, through preparation of the ROT, and until the ROT is forwarded for appellate review.

(2) All court-martial documents must be properly and timely uploaded as an attachment in MJO. Such documents include, but are not limited to:

(a) Charge sheet;

(b) DD Form 457 (Preliminary Hearing Officer's Report) with enclosures;

(c) Papers accompanying the charges at the time of referral;

(d) Convening orders;

(e) Requests for RFGOS or discharge in lieu of trial by courts-martial;

(f) Victim preferences and elections;

(g) Plea agreements;

(h) Dismissal or withdrawal of charges;

(i) SJA's UCMJ, Article 34 advice or special trial counsel's UCMJ, Article 34 written determination;

(j) STR;

(k) EOJ; and

(l) DD Form 3114 (Uniform Command Disposition Report) for applicable offenses.

e. UCMJ Article 6 inspection. The use of the MJO application is subject to inspection pursuant to UCMJ, Article 6. Leaders at all levels will enforce the use of these systems and oversee the accuracy, quality, and completeness of the information contained within the MJO application. Prompt input of data and completion of actions and regular inspection will ensure that data and analysis generated from the MJO application are accurate.

f. Questions. Questions regarding the use of the MJO application should be directed to OTJAG–CLD, Operations Branch.

14–2. Results statements for publication

a. General. Chief, OTJAG–CLD is responsible for approving a summary each month of the courts-martial completed the previous month. Chief, OTJAG–CLD gathers information for this report from the Results Statement for Publication (RSP) generated within the MJO application. The SJA is responsible for certifying and submitting to OTJAG–CLD the RSP for each completed court-martial. Authority to certify and submit the RSP may be delegated to the Chief of Justice, but no further. Upon receipt of approved court-martial summary language from OTJAG–CLD, the SJA is responsible for publishing the summaries in the Army Court-Martial Public Records System by the fifth of the month.

b. Frequency and content. The RSP must be certified and submitted no later than the 5th of the month for courts-martial completed during the previous month. The RSP includes the following information—

(1) The date the court-martial was completed.

(2) The type of court-martial.

(3) The location the court-martial was convened.

(4) The rank and full name of accused, unless the result of the court-martial was an acquittal of all charges, in which case only the rank of the accused.

(5) The forum of the court-martial.

(6) The plea(s) of the accused.

(7) The findings on each charge and specification referred to court-martial.

(8) The sentence, when applicable.

(9) The impact of any pretrial agreement on the sentence.

c. Format. The specific format for the RSP is contained within the Post-Trial tab of the MJO court-martial action.

14–3. Export of documents to U.S. Army Human Resources Command
The only method for submitting records of UCMJ, Article 15 proceedings and reprimands to HRC for permanent filing in the iPERMS is through the HRC-Export function within the MJO application. SJAs will ensure that proper procedures are in place for the timely redaction and submission of documents to HRC. This includes proper oversight of HRC-Exports to ensure rejections by HRC are promptly identified, corrected, and resubmitted to HRC.

14–4. Army Court-Martial Public Record System
a. UCMJ Article 140a generally. UCMJ, Article 140a requires facilitation of public access to docket information, filings, and records in accordance with uniform standards and criteria prescribed by the Secretary of Defense.
b. Dockets. Current dockets will be accessible by the public for all general and special courts-martial and for USACCA. Trial dockets will include the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The USACCA docket will include a list of all cases pending before the court and an oral argument schedule which includes the name of the case, the panel to which the case is assigned, and the date and location of oral argument.
c. Public access to trial documents. For every special or GCM in which there is a finding of guilty for at least one specification, appropriately redacted copies of the charge sheet, convening order(s), court rulings STR, action by the convening authority, EOJ, and all pleadings, notices, petitions, and requests submitted to a trial court will be uploaded to the Army Court-Martial Public Record System (ACMPRS) no later than 45 calendar days following the certification of the ROT.
d. Public access to appellate documents. For every appeal to the USACCA, appropriately redacted copies of all pleadings, notices, petitions, and other requests submitted to the Court, along with all orders and opinions of the Court will be uploaded to the ACCA Appellate Library on ACMPRS no later than 45 calendar days following the issuance of a decision.
e. Additional public access in specific cases. Upon request, appropriately redacted copies of the following additional items may be made publicly accessible if the Chief, CLD determines that public interest in disclosure of the requested items outweighs the privacy interests of the accused, minors, and victims of crimes:
(1) Filings, trial-level court documents, or appellate documents prior to the date required by paragraph 14–4*c* or paragraph 14–4*d*.
(2) Filings and trial-level court documents from courts-martial in which there were no findings of guilty.
(3) Other items not made publicly accessible by paragraph 14–4*c* or paragraph 14–4*d*.
f. Records retention. All filings and records uploaded to ACMPRS and the ACCA Appellate Library will be accessible by the public for 3 years unless required to be removed by a proper authority. Releases made in error may only be directed to be removed by the SJA, ACCA Clerk of Court, or the Chiefs of GAD or DAD.

Chapter 15
Allegations of Misconduct and Suspension of Counsel and Military Judges

Section I

General

15–1. Scope
This chapter implements and amplifies RCM 109. It sets forth standards and procedures for handling complaints by and against counsel, including civilian counsel, and military judges. Counsel before courts-martial, appellate counsel, and military judges play a vital role in the preservation of military justice and discipline. A consequent obligation of this role is the maintenance of the highest standards of ethical conduct. Fundamental ethical principles are available as guides in maintaining this integrity (see para 5–10).

15–2. Withdrawal of certification by The Judge Advocate General

Nothing contained in this regulation is to be construed as a limitation on the power of TJAG to issue or withdraw—

a. Any certification of qualification to act as military judge made pursuant to UCMJ, Article 26.

b. Any certification of competency to act as counsel made pursuant to UCMJ, Article 27(b).

c. Any certification of qualification to act as a military magistrate made pursuant to UCMJ, Article 26a and chapter 8 of this regulation.

d. Any certification of qualification for duty as a special trial counsel made pursuant to UCMJ, Article 24a and chapter 30 of this regulation.

Section II

Suspension of Counsel

15–3. General

a. Action may be initiated to suspend counsel (pursuant to RCM 109) when a person acting, about to act, or likely to act, as counsel before proceedings governed by the UCMJ or the MCM—

(1) Is, or has been guilty of, professional, or personal misconduct of such a serious nature as to show that they are lacking in integrity or good demeanor; or

(2) Is otherwise unfit or unqualified to perform the duties of counsel.

b. Action to suspend under this chapter may be taken against a person who—

(1) Is certified as qualified to perform the duties of counsel of GCM pursuant to UCMJ, Article 27(b).

(2) Has been selected or obtained as counsel by the accused pursuant to UCMJ, Article 38(b).

(3) Has appeared as counsel for the accused in proceedings governed by the UCMJ or the MCM, or is likely to represent the accused at such proceedings in the future.

(4) Is certified as qualified for duty as a special trial counsel pursuant to UCMJ, Article 24a.

15–4. Grounds for suspension

a. Grounds for suspension include, but are not limited to—

(1) Demonstrated incompetence while acting as counsel during pretrial, post-trial, or appellate stages of the proceedings.

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(3) Fabricating or attempting to fabricate papers, testimony, or evidence.

(4) Tampering or attempting to tamper with a witness.

(5) Abusive conduct toward the members of the court, the military judge, or other counsel.

(6) Conviction of a felony or any offense involving moral turpitude.

(7) Conviction, receipt of NJP, or nonpunitive disciplinary action for a violation of UCMJ, Article 131f.

(8) Attempting to act as counsel in a case involving a security matter by one who is a security risk.

(9) Disbarment or suspension by a Federal, state, or foreign court.

(10) Suspension from practice as counsel before courts-martial by the JAG of another armed force or by the USCAAF.

(11) Flagrant or continued violations of any specific rules of conduct prescribed for military judges in paragraph 5–10, or other applicable standards.

(12) Violation of the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26) or other applicable ethical standards, whether such misconduct occurs before a military court or other tribunal, or in a military or civilian status in the course of the lawyer's activities as a lawyer or otherwise, whether committed within or outside the scope of professional duties that involve the U.S. Army, whether on or off duty.

b. Action to suspend should not be initiated because of—

(1) Personal prejudices or hostility toward counsel because they have presented an aggressive, zealous, or novel defense.

(2) When the apparent misconduct as counsel stems solely from inexperience or lack of instruction in the performance of legal duties.

15–5. Action to suspend military counsel

a. General. Action to suspend a person from acting as counsel before courts-martial or as appellate counsel may be initiated when other available remedial measures, including punitive action—

(1) Are inappropriate.

(2) Have failed to induce proper behavior.

b. Remedial measures. While not required as a prerequisite to the suspension of counsel, full consideration will be given to the appropriateness and effectiveness of such other available remedial measures, including but not limited to—

(1) Admonition.

(2) Instruction.

(3) Temporary suspension.

(4) Proceedings in contempt.

(5) Relief of the person from duties as appointed counsel, assistant counsel, or appellate counsel.

c. By a court-martial. The trial judge may determine whether a person is qualified to act as counsel before the court-martial in a particular case. If a counsel is guilty of misconduct, the trial judge may admonish them. If the misconduct is contemptuous, the trial judge or court-martial may punish them (see UCMJ, Article 48 and RCM 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should recess and report the fact to the supervising SJA, command JA, RDC, or the LSTC, as appropriate, for processing according to AR 27–1.

d. By an appellate court. Action to suspend a person acting as appellate counsel will be referred to the supervisory lawyer for processing according to AR 27–1.

e. Suspension. Suspension of counsel will be in accordance with the procedures set forth in AR 27–1.

15–6. Action to suspend civilian counsel subject to The Judge Advocate General's professional responsibility authority pursuant to the provisions of RCM 109

The procedures and actions set forth above for suspending military counsel or civilian counsel within the JALS will also apply, insofar as practicable, against civilian counsel who represent the accused, or are likely to represent the accused, at courts-martial or other proceedings governed by the UCMJ or the MCM and thus are subject to TJAG's professional responsibility authority pursuant to RCM 109, AR 27–1, and AR 27–26.

15–7. Modification or revocation of suspension or decertification

TJAG may (on their own initiative or on petition of a person who has been suspended or decertified as counsel (pursuant to UCMJ, Article 27(b) or RCM 109), and on good cause shown) modify or revoke a prior order to suspend or decertify. TJAG's designee may modify or revoke a temporary suspension.

15–8. Removal of counsel or reassignment of duties

Nothing in this chapter will prevent TJAG, Deputy Judge Advocate General, the military judge, the LSTC, or other appropriate official from removing a counsel from acting in a particular court-martial, nor prevent assignment temporarily to different duties prior to, during, or subsequent to proceedings conducted pursuant to the provisions of this chapter.

Section III

Suspension of Military Judges

15–9. General

Action may be initiated to suspend or revoke the certification to act as military judge (see UCMJ, Article 26; RCM 109) when a person acting or about to act as trial or appellate judge—

a. Is, or has been found guilty of professional, personal, or judicial misconduct or of unfitness of such a serious nature as to show that the individual is lacking in integrity or judicial demeanor.

b. Is otherwise unfit or unqualified to perform the duties of a military judge.

15–10. Grounds

A military judge may be censured, suspended from acting as military judge, or removed from the judicial role by revocation of their certification for actions that—

a. Constitute misconduct or constitute judicial misconduct or unfitness.

b. Violate the "Code of Judicial Conduct for Army Trial and Appellate Judges," the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26), or other applicable standards.

15–11. Removal of a military judge

a. Action to suspend a person from acting as military judge, or to revoke their certification as military judge, may be initiated when other available remedial measures are inappropriate or have failed to induce proper behavior. Accordingly, consideration will be given to other measures such as—

(1) Suspension from duties as military judge.

(2) Censure.

(3) Admonition.

(4) Instruction.

(5) Other sanctions, including punitive ones, as may be warranted.

b. In appropriate cases the Chief Trial Judge may temporarily withhold a military judge's detailing authority. Only TJAG can suspend (temporarily or indefinitely) a military judge or military appellate judge.

15–12. Procedure

Information on alleged judicial misconduct or unfitness will be reported to the Chief Trial Judge in the case of trial judges or the Chief Judge, USACCA, in the case of appellate judges, for processing according to RCM 109, AR 27–1, and AR 27–26.

15–13. Modification or revocation of suspension or decertification

TJAG may (on their own initiative, on petition of a person who has been suspended or decertified as a military judge, and on good cause shown) modify or revoke a prior order to suspend or decertify. TJAG may seek the advice of the Chief Judge, USACCA, or Chief Trial Judge, U.S. Army Trial Judiciary in making any such determinations.

Chapter 16
Foreign Jurisdiction and Provision of Counsel

16–1. General

Pursuant to DoDI 5525.01, commanders will maximize the exercise of U.S. jurisdiction over military personnel subject to foreign jurisdiction. Proceedings under the UCMJ are preferred to foreign criminal proceedings. Commanders should act to secure the release of personnel arrested by foreign authorities pending completion of all criminal proceedings. In the event foreign proceedings cannot be avoided, individual expenses related to the criminal proceedings may be approved and paid by the GCMCA.

16–2. Custody policies

a. When personnel are pending criminal proceedings in foreign courts or by foreign authorities, commanders must inform the designated commanding officer (DCO) in accordance with the procedures established by the Geographic Combatant Commander (CCDR) (see DoDI 5525.01). DCOs may or may not be Army commanders. Commanders should seek the release from foreign custody of Soldiers pending final disposition of their criminal charges under foreign law. Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges. Release from foreign custody will be sought through—

(1) The exercise of U.S. custody rights in accordance with applicable international agreements.

(2) The posting of bail.

(3) The exercise of other rights in accordance with local law.

b. Prior to final disposition, personnel pending criminal proceedings in foreign courts or by foreign authorities may only be transferred or removed from the jurisdiction of such courts with the approval of the DCO in accordance with procedures established by the CCDR. This includes departure in a leave status.

c. While personnel pending criminal proceedings in foreign courts or by foreign authorities are personally responsible for attending scheduled hearings, commanders will ensure that appropriate assistance is rendered to such personnel. When U.S. Army authorities have pretrial custody or custody pending

appeal, the individual will be made available for all court hearings in their case at which their presence is required (in accordance with status of forces agreements (SOFA) or other international agreements).

d. Any personnel stationed in foreign countries who are involved in incidents subject to the jurisdiction of foreign courts will not be curtailed, reassigned, or transferred to avoid jurisdiction by host country authorities.

16–3. Exercise of custody under international agreements

a. The commander of personnel pending criminal proceedings in foreign courts or by foreign authorities will determine the degree of custody required to meet custodial obligations under pertinent SOFAs. Such custody may include restriction to certain prescribed limits or confinement in a U.S. installation confinement facility. Confinement in a U.S. installation confinement facility will only be authorized when it is necessary to ensure the presence of the accused at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused. The seriousness of the offense charged and circumstances surrounding it are factors that may be used to determine whether the accused need be confined to ensure the accused's presence or whether future serious criminal misconduct is foreseeable.

b. Immediate steps will be taken to inform the individual confined of—

(1) The specific offense of which the individual is accused.

(2) The proposed action to be taken against the individual by foreign authorities.

c. Confinement under these provisions pending the final disposition of foreign criminal charges may be authorized by a GCM convening authority responsible for exercising U.S. custody over the Soldier.

d. The GCMCA's SJA must determine whether—

(1) Probable cause exists to believe that confinement is necessary to ensure the accused's presence at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused within the host country.

(2) Provision of a military legal advisor is necessary for individuals placed in pretrial confinement under this chapter.

e. In addition, SOFA confinement will be reviewed as follows—

(1) A military magistrate or comparable impartial legal officer will determine whether probable cause exists to believe that confinement is necessary. The review will be made in light of the SOFA and other international agreements between the United States and the host country. Consistent with the provisions of applicable international agreements and the policy of seeking release of Soldiers from foreign custody, the military magistrate or comparable impartial legal officer may also consider any pertinent factors, including specific requests by the host country to confine or by the Soldier to be confined in United States custody in lieu of foreign custody. Unless otherwise provided for under SOFA obligations, the military magistrate or comparable impartial legal officer will not inquire into the issue of whether probable cause exists to believe that the accused has committed the offenses charged under foreign law. The military magistrate or comparable impartial legal officer may recommend release from confinement if the military magistrate or comparable impartial legal officer determines that it is not necessary to ensure the accused's presence and that it is not foreseeable that the accused will engage in future serious criminal misconduct.

(2) The provisions of RCM 305 do not apply to review of SOFA confinement. If the military magistrate or comparable impartial legal officer determines that confinement is not necessary to ensure the accused's presence at trial or other foreign criminal proceeding, and that it is not foreseeable that the accused will engage in future serious criminal misconduct within the host country, the accused will be released from confinement, but may be subject to other forms of restraint.

16–4. Payment of Expenses in Foreign Criminal Proceedings

a. Necessary and reasonable expenses. Pursuant to 10 USC 1037, the Army may pay for counsel, bail, court costs, and other necessary and reasonable expenses incident to representation in foreign criminal proceedings involving:

(1) Individuals subject to the UCMJ;

(2) Persons not subject to the UCMJ who are employed by or accompanying the U.S. Armed Forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico; or—

(3) Dependents if at the time of the act or omission they were qualified as dependents under applicable regulations and were accompanying a member of the force or civilian component overseas.

b. Approval Authority. The GCMCA approves expense requests for military members and their dependents and for DA civilian employees working in the GCMCA's command. In the interest of obtaining prompt and effective legal service, the GCMCA may delegate approval authority to one or more officers.

c. Approval Criteria. Requests may be approved in pre-trial, trial, appellate, and post-trial proceedings in any criminal case where any of the following criteria are met:

(1) The act complained of occurred in the performance of official duty.

(2) The sentence that is normally imposed includes confinement, whether, or not such sentence is suspended.

(3) Capital punishment might be imposed.

(4) An appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the defendant.

(5) Conviction of the offense alleged could form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition.

(6) The case, although not within the criteria in paragraphs 16–4*c*(1) through 16–4*c*(5) above, is considered to have a significant impact on the relations of U.S. forces with the host country or involve any other particular U.S. interest.

d. Denials. An approval authority may deny a request for the provision of counsel, bail, or payment of expenses when—

(1) The requester is absent without leave, or

(2) The requestor is otherwise not subject to U.S. military control and no reasonable basis exists for the belief that the requestor will return to U.S. military control at the conclusion of the proceedings or service of an adjudged sentence.

e. Provision of bail. Bail or bond to secure the release of personnel from foreign confinement before, during, or after trial may be furnished. Unlike other expenses, bail, or bond is provided on a reimbursable basis. U.S. military authorities are expected to provide bail or bond only after other efforts have been made to secure the release of pretrial custody of an accused to U.S. authorities. Bail or bond will be provided only to guarantee the presence of the defendant. It will not be provided to guarantee the payment of fines or civil damages. Prior to the posting of bail or bond on behalf of defendants, they will sign an agreement to reimburse the Government if they willfully cause forfeiture of bail or bond.

f. Counsel Selection. Counsel represent the individual defendant and not the U.S. Government. For this reason, the individual will select the counsel, however the choice of counsel is not unlimited and should be limited to those counsel listed by the GCMCA. Counsel lists may be coordinated with the local court or bar association and the U.S. Diplomatic or Consular Mission. Lists will include:

(1) Attorneys who are qualified, competent, and experienced in trial practice, and

(2) Admitted to practice before the courts of country involved, and

(3) Who comply with local attorney fee schedules approved or suggested by local bar associations.

g. Acquisition. The approval of an expense is a verification of requirement and need. The acquisition and payment will follow applicable acquisition policy.

16–5. Criteria for the provision of counsel and payment of expenses in criminal cases

Requests for the provision of counsel fees and payment of expenses in criminal cases may be approved in pre-trial, trial, appellate, and post-trial proceedings in any criminal case where any of the following criteria are met:

a. The act complained of occurred in the performance of official duty.

b. The sentence that is normally imposed includes confinement, whether, or not such sentence is suspended.

c. Capital punishment might be imposed.

d. An appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused.

e. Conviction of the offense alleged could form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition.

f. The case, although not within the criteria in paragraphs 16–5*a* through 16–5*e* above, is considered to have a significant impact on U.S. interests, including upon the relation of the military services with the host country.

16–6. Implementation by overseas commands

Each Army overseas commander may, after prior approval by OTJAG–CLD, supplement this chapter and require—

a. A publication for each country in which the Army overseas commander's subordinate commands or assigned units and activities are located.

b. Procedures for the implementation of Army policy regarding custodial rights and responsibilities, the provision of counsel, and the payment of expenses by ACOMs.

c. Army commanders appointed as DCOs will forward any reports required by DoDI 5525.01 to the attention of OTJAG–NSLD.

Chapter 17
Victim and Witness Assistance

Section I

General Description

17–1. Purpose

This chapter implements DoDI 1030.02, DoDI 6400.07 and Army policy. It also establishes policy, designates responsibility, and provides guidance for the assistance and treatment of those persons who are victims of crime and those persons who may be witnesses in criminal justice proceedings.

17–2. Policy

a. The military justice system is designed to ensure good order and discipline within the Army and also to protect the lives and property of members of the military community and the general public, consistent with the fundamental rights of the accused. Without the cooperation of victims and witnesses, the system would cease to function effectively. Accordingly, all persons working within and in support of the system—that is, commanders, JAs, law enforcement and investigative agencies, corrections officials, and other personnel of Army multidisciplinary agencies—must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will be kept to an absolute minimum.

b. In those cases in which a victim has been subjected to attempted or actual violence or trauma, every reasonable effort will be made to minimize further traumatization. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct.

c. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies. Each Victim/Witness liaison (VWL) must be familiar with all such agencies and programs to ensure that necessary services are provided. Multidisciplinary participants include, but are not limited to, investigative, and law enforcement personnel, chaplains, health care personnel, Family advocacy/services personnel, JAs, including SVCs and other legal personnel, unit commanding officers and NCOs, and corrections/confinement facility personnel. In most instances, installations are expected to provide required services without referral to outside agencies. In death cases, the VWL will coordinate with the installation/community casualty working group (see AR 638–8) and CID.

d. A person's status as a victim or witness does not preclude and should not discourage appropriate recognition of conduct of the victim or witness during or following the perpetration or attempted perpetration of a crime, that clearly demonstrates personal courage under dangerous circumstances. Examples of such conduct include saving of human life under hazardous conditions or extraordinary sacrifice that aids or supports military law, order, or discipline, and that would otherwise merit official recognition (see AR 672–20 and AR 600–8–22). Such recognition normally should be delayed until after local disposition of the incident.

e. The provisions of this chapter are intended to provide guidance for the protection and assistance of victims and witnesses, and for the enhancement of their roles in the military criminal justice process, without infringing on the constitutional and statutory rights of the accused. These provisions are not intended to and do not create any entitlements, causes of actions, or defenses, substantive, or procedural, enforceable at law, by any victim, witness, or other person in any matter, civilian or criminal, arising out of the failure to accord a victim or witness the services enumerated in this chapter.

17–3. Application

a. This chapter applies to those components engaged in the detection, investigation, or prosecution of crimes under the UCMJ or Federal statutes, and in the detention and incarceration of military accused. This chapter is intended to apply to all victims and witnesses in UCMJ or Federal court proceedings or investigations. While special attention will be paid to victims of serious or violent crime, all victims and witnesses of crime will receive the assistance and protection to which they are entitled.

b. Provisions of this chapter may also apply to victims or witnesses of crimes under the jurisdiction of state, other Federal or foreign authorities during any portion of the criminal investigation or military justice proceedings conducted primarily by the Army or other DoD components.

17–4. Objectives

The objectives of the policies and procedures set forth in this chapter are—

a. To mitigate, within the means of available resources and under applicable law, the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by Army authorities.

b. To foster the full cooperation of victims and witnesses within the military criminal justice system and Federal justice system in cases where the Army has an interest.

c. To ensure that victims and witnesses are advised of and accorded the rights described in the MCM and this regulation subject to available resources, operational commitments, and military exigencies.

17–5. Definitions

For purposes of this chapter, the following definitions apply:

a. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD components. Such individuals will include, but are not limited to, the following:

(1) Military members and their Family members.

(2) When stationed outside the continental United States (OCONUS), DoD Civilian employees and contractors and their Family members, as defined by the terms of the contract. This applies to services not available to DoD Civilian employees and contractors, and their Family members, in locations within the CONUS, such as medical care in military medical facilities, if so defined by the terms of the contract.

(3) When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of preference): a spouse; legal guardian; parent; child; sibling; another family member; or another person designated by a court or the component responsible official, or designee.

(4) An institutional entity or an authorized representative of the entity. Federal departments and state and local agencies, as entities, are not eligible for services available to individual victims.

b. Witness. A person who has information or evidence about a crime and provides that knowledge to a DoD component concerning an offense within the component's investigative jurisdiction. When the witness is a minor, this term includes a family member or legal guardian. The term "witness" does not include a defense witness or any individual involved in the crime as an alleged perpetrator or accomplice.

Section II

Victim/Witness Assistance Program

17–6. General

a. The Victim/Witness Assistance Program (VWAP) is designed to accomplish the objectives set forth in paragraph 17–4, through—

(1) Encouraging the development and strengthening of victim and witness services.

(2) Consolidating information pertaining to victim and witness services.

(3) Coordinating multidisciplinary Victim/Witness services by and through VWLs.

b. TJAG is the responsible official for victim and witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.

c. SJAs are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will—

(1) Establish and provide overall supervision for the VWAP within their GCM jurisdictions.

(2) Ensure coordination, as required, with other GCM jurisdictions, or state or Federal VWAPs.

(3) Establish a Victim and Witness Assistance Council, to the extent practicable, at each military installation to ensure interdisciplinary cooperation among victim and witness service providers. Existing installation councils, such as The Family Advocacy Case Management Team, may be used, as appropriate.

(4) Ensure development of appropriate local management controls to ensure compliance with this chapter.

17–7. Victim/witness personnel

a. Victim/witness liaison. The VWL serves as a point of contact through which victims and witnesses may obtain information and assistance in securing available Victim/Witness services. The role of the VWL is one of facilitator and coordinator. To be most effective, VWLs must be impartial actors in the prosecution process. The VWL will act in conjunction with the unit victim advocates who are responsible for providing crisis intervention, referral, and ongoing nonclinical support to sexual assault victims (see AR 600–20), and the victim advocates who assist victims of domestic violence (see AR 608–18).

(1) *Designation.* SJAs will designate, in writing, one, or more VWLs they have certified as qualified. In the event of deployment, an SJA will appoint as a VWL at least one officer or, if not practicable, an E–6 or above, to accompany the GCMCA. SJAs will notify the OTJAG–CLD (Programs Branch) by email of the name and contact information of any new appointee as well as any changes to the status of current VWLs.

(2) *Criteria and certification.* The designated VWL should, when practicable, be a civilian in the grade of GS–11 or above. When necessary, an enlisted person in the grade of E–6 or above, or civilian in the grade of GS–6 or above, may be designated as a VWL if a civilian in the grade of GS–11 is not reasonably available. When for geographic or operational reasons it is necessary to designate more than one VWL within a GCM jurisdiction, the SJA will ensure that the responsibilities for cases or areas of each VWL are clearly defined. The VWL's primary non-VWL responsibilities should be outside the military justice section to the extent permitted by resources. To the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. Should an attorney receive a VWL appointment, the attorney must ensure that victims and witnesses understand the attorney's role as a VWL and clearly explain that no attorney-client relationship is formed as a result of VWL services provided by the attorney.

(3) *Role in victim interviews.* VWLs are considered victim advocates for the purposes of UCMJ, Article 6b(f) (see para 17–11*d*(4)).

b. Special Victim Liaisons. Special Victim Liaisons (SVLs) work with special trial counsel and Special Victim NCOs as a team to develop and litigate cases involving covered, known, and related offenses. SVLs provide victim-witness support to the special trial counsel team. Unlike VWLs, SVLs are not impartial actors in the prosecution process as SVLs work to ensure cases involving covered, known, and related offenses are properly investigated, and when warranted, properly charged and prosecuted. SVLs are assigned to the OSTC and are rated by a special trial counsel with oversight from the LSTC and SVL Program Manager.

c. Special Victims' Counsel. SVCs provide legal representation to eligible clients who report they are victims of qualifying offenses. Qualifying offenses include sex-related offenses under 10 USC 1044e, those offenses described in Section 548(g) of the NDAA for Fiscal Year 2020, and any allegation of a violation or attempted violation of the UCMJ when committed by a person subject to jurisdiction under UCMJ, Article 2 against that person's spouse, intimate partner, or immediate family member. SVC services are authorized by 10 USC 1044e(b), 10 USC 806b, and by the Secretary of the Army pursuant to 10 USC 7013(g). An SVC's primary duty is to zealously represent the desires of their client as required by the attorney-client relationship, even if their client's desires do not align with those of other interested parties, to include the U. S. government.

d. Interaction between Victim/Witness personnel. Although VWLs, SVLs, and SVCs have distinct roles and responsibilities, all are responsible for ensuring victims are provided responsive and timely support throughout the investigation and proceedings. SVC representation does not relieve a VWL or SVL of their responsibilities. However, to the extent permitted by ethical and professional obligations, VWLs, SVLs, and SVCs are encouraged to maintain professional working relationships with each other to enhance the support provided to victims.

17–8. Identification of victims and witnesses

At the earliest opportunity after the detection of a crime, and where it may be done without interfering with an investigation, the law enforcement official or commander responsible for the investigation or other individual with Victim/Witness assistance responsibilities under this chapter will—

a. Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 17–5.

b. Inform the victims and witnesses of their right to receive the services described in this regulation, and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. DD Form 2701 (Initial Information for Victims & Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the UCMJ or other statutory authority, or intended disposition of the offense. In cases where the victim is no longer located at the military installation where the alleged crime occurred, the victim should be referred to the VWL in closest proximity to the victim's current residence. To determine the location of the nearest VWL, consult appendix K of this regulation, or consult OTJAG–CLD.

c. Report victim and witness notification in accordance with DoDI 1030.02 and this regulation.

d. Ensure that victims receive assistance under the guidelines set forth in this chapter for victims identified as a result of investigations of potential UCMJ violations conducted in accordance with AR 15–6.

17–9. Initiation of liaison service

a. SJAs or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that these agencies provide victims and witnesses of crime the name, location, and telephone number of a VWL. Procedures should be established to ensure timely notification; however, notification by law enforcement and criminal investigative personnel should not interfere with ongoing investigations. SJAs are encouraged to establish memorandums of agreement to assist in ensuring a cooperative relationship with local civilian agencies to identify, report, investigate, and provide services and treatment to victims.

b. At the earliest opportunity, but no later than appointment of a UCMJ, Article 32 preliminary hearing officer or referral of charges to court-martial, the trial counsel or special trial counsel will ensure that victims are informed by a VWL of the services described in this chapter (sections III and V) and are provided victim/witness information. They will also ensure that witnesses are informed of the services described in this chapter (sections IV and V) and provided victim/witness information. The DD Form 2701 will be used for this purpose, if available. The Victim/Witness checklist in appendix J of this regulation, should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

17–10. Training and publicity

a. SJAs will ensure that annual VWAP training is provided to representatives of all agencies performing victim/witness assistance functions (for example, JAs, and legal, investigative, and law enforcement personnel; chaplains; health care personnel; Family advocacy/services personnel; unit commanding officers and NCOs; and corrections/confinement facility personnel) within their GCM jurisdictions. At a minimum, training will cover victims' rights; available compensation through Federal, state, and local agencies; providers' responsibilities under the VWAP; and requirements and procedures established by this chapter.

b. SJAs also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. SJAs will ensure that the DoD "Victim Bill of Rights" is displayed in the offices of commanders and Army multidisciplinary agencies that provide victim/witness assistance and that victim/witness brochures and pamphlets are available at appropriate locations throughout their jurisdictions. Installation public affairs resources should be used to obtain maximum publicity within the military community. Use of command policy letters endorsing the VWAP is encouraged.

Section III

Victim Services

17–11. Rights of crime victims

a. As provided for in UCMJ, Article 6b, and throughout the UCMJ, a crime victim has the following rights:

(1) The right to be reasonably protected from the accused offender.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(a) A public hearing (UCMJ, Article 39(a) session) concerning the continuation of confinement prior to trial of the accused.

(b) A UCMJ, Article 32 preliminary hearing related to the offense.

(c) A court-martial relating to the offense.

(d) A post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.

(e) A public proceeding of the service clemency and parole board relating to the offense.

(f) The release, escape, (including work release and furlough), or any other form of release from custody of the accused, unless such notice may endanger the safety of any person, including notice of the death of the offender, if the offender dies in custody.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph 17–11*a*(2) unless the military judge or hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard, which includes, but is not limited to, the right to be heard through counsel, at any of the following:

(a) A public hearing (UCMJ, Article 39(a) session) concerning the continuation of confinement prior to trial of the accused.

(b) A sentencing hearing relating to the offense.

(c) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the government at any proceeding described in paragraph 17–11*a*(4).

(a) Crime victims who are entitled to legal assistance may consult with an SVC or legal assistance attorney.

(b) Crime victims may also elect to seek the advice of a private attorney, at their own expense.

(6) The right to receive restitution, as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be informed in a timely manner of any plea agreement, separation-in-lieu-of-trial agreement, or non-prosecution agreement relating to the offense, unless providing such information would jeopardize a law enforcement proceeding or would violate the privacy concerns of an individual other than the accused.

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

b. In limited circumstances, the legal guardians of the victim or the representative of the victim's estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim (see UCMJ, Article 6b(c), RCM 801(a)(6) and RCM 1001(c)(2)).

c. UCMJ, Article 6b does not authorize a cause of action for damages; create, enlarge, or imply any duty or obligation to any victim of a UCMJ offense; or impair the exercise of discretion under UCMJ, Article 30 and UCMJ, Article 34 (see UCMJ, Article 6b(d)).

d. Additional rights of crime victims.

(1) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(2) The right to submit matters to the preliminary hearing officer upon completion of a preliminary hearing convened under UCMJ, Article 32 for consideration by the convening authority (see RCM 405(l)).

(3) The right to submit matters for consideration by the convening authority during the clemency phase of the court-martial process (see RCM 1106A).

(4) A victim of any UCMJ offense who is designated as a witness at a preliminary hearing convened under UCMJ, Article 32 or a court-martial may request their interview by defense counsel only take place in the presence of trial counsel, special trial counsel, counsel for the victim, to include SVC, or if applicable, a victim advocate (see UCMJ Article 6b(f)).

(5) A victim named in any specification under consideration at a hearing convened under UCMJ, Article 32 will not be required to testify at the preliminary hearing (see RCM 405(i)(2)(A)(iv)).

e. Additional rights of victims of sex-related offenses.

(1) Victims of sex-related offenses who are entitled to legal assistance in accordance with 10 USC 1044, may consult with an SVC.

(2) Victims of sex-related offenses must be informed by a sexual assault response coordinator, victim advocate, SVL, VWL, military criminal investigator, government counsel, or other local responsible official that they have the right to consult with an SVC on initial contact with the victim and prior to requesting the victim to give a statement or be interviewed. A victim's request for SVC services does not preclude military criminal investigators from obtaining facts necessary to begin preliminary investigative efforts.

(3) Victims of sex-related offenses, committed in the United States, must be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. Victims alleging a sex-related offense in which there is a finding of no probable cause need not be advised of this option to express a preference. No exceptions to the consultation or documentation requirements are authorized, except for documented unavailability of the victim. In soliciting the views of the victim, the following procedures will apply:

(a) The trial counsel or special trial counsel (through the victim's SVC, when applicable), will obtain the victim's jurisdictional preference. The trial counsel or special trial counsel will memorialize this preference in MJO on the OTJAG–CLD form provided for that purpose. If the victim declines to fill out the form, the trial counsel or special trial counsel will document the refusal on the form.

(b) The convening authority or special trial counsel, as applicable, must consider the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. The victim's views are not binding on that convening authority or special trial counsel.

(c) The convening authority or special trial counsel, as applicable, should continue to consider the views of the victim as to jurisdiction until final disposition of the case.

(d) If the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the convening authority or special trial counsel, as applicable, will ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

(e) The convening authority or special trial counsel, as applicable, will ensure the victim is notified should the convening authority or special trial counsel learn of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court.

(f) For purposes of this section, convening authority means commanders in the grade of O–6 or higher who possess SPCMCA, commanders who possess GCMCA, or any other appropriate commander taking action on the case.

f. Any questions concerning victim eligibility for SVC representation should be directed to the SVC Program Manager who has authority to determine eligibility and grant exceptions.

g. SJAs will ensure that local policies and procedures are established to accord to victims the rights described above.

17–12. Medical, financial, legal, and social services

a. Medical care. Investigative or law enforcement personnel, the VWL, trial counsel, special trial counsel, or other individuals with victim/witness assistance responsibilities under this chapter will inform the victim of a crime of the place where the victim may receive emergency medical care and social service support. When necessary, these personnel will provide appropriate assistance in securing such care. Victims suffering from or indicating injury or trauma will be referred to the nearest available medical facility for emergency treatment. When required for completion of criminal investigations, examination, and treatment of civilian victims of assaults committed on Army installations may be provided without charge at the discretion of medical treatment facility (MTF) commanders (see AR 40–400). MTF commanders should construe liberally their authority to waive charges unless inappropriate in view of the unique circumstances. Recipients of transitional compensation under 10 USC 1059 may receive medical and dental care in uniformed services facilities.

b. Financial, legal, and social services. The VWL will ensure victims of crime are assisted in obtaining appropriate financial, legal, and other social service support by informing victims of public and private programs that are available to provide counseling, treatment, and other support, including available compensation through Federal, state, and local agencies. The VWL will assist the victim in contacting agencies or individuals responsible for providing necessary services and relief. Examples of assistance and services that may be available to victims, in addition to those available through MTFs, include the following:

(1) Army Community Services Program (see AR 608–1).

(2) Army Emergency Relief (see AR 930–4).

(3) Legal Assistance and SVC representation (see AR 27–3).

(4) Chaplain Services (see AR 165–1).

(5) Civilian community based victim treatment, assistance, and compensation programs.

(6) For dependents of Soldiers who are victims of abuse by a military spouse or parent, payment of a portion of the disposable retired pay of the Soldier under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059.

(7) For families of Soldiers, transportation, and shipment of household goods may be available even if the Soldier receives a punitive or other than honorable discharge (see Joint Travel Regulations, chapter 5).

(8) To ensure proper coordination of services and referral for services, VWLs will become familiar with the services, duties, and responsibilities of all supporting agencies and personnel including, but not limited to, the above listed services, law enforcement, trial counsel, special trial counsel, SVC, Sexual Assault Response Coordinator, Sexual Assault Victim Advocate, Family Advocacy Program, Domestic Violence Victim Advocates, Army behavioral health services and off-installation civilian agencies providing similar services.

c. Not eligible. When victims are not eligible for military services, or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available nonmilitary services within the civilian community.

17–13. Stages and role in military criminal justice process

Victims should be advised of stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case. This information will be set forth in a Victim Information Packet (DD Form 2701 and DD Form 2702 (Court-Martial Information for Victims & Witnesses of Crime)), and should be further amplified, as required, by the VWL, trial counsel, or special trial counsel. For example, some offenses may be tried in U.S. Magistrate or U.S. District Court, and a VWL must be able to advise a victim of the stages of a criminal investigation and trial in the Federal court system, or direct the victim to a VWL point of contact in a nearby U.S. Attorney's Office.

17–14. Notification and description of services provided to victims of crime

a. During the investigation and prosecution of a crime, the trial counsel or special trial counsel will ensure that the victim (through, or in coordination with, the SVC, when applicable) is provided the earliest possible notice of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender and about whether probable cause exists to support the allegation. In all cases where a probable cause determination is rendered but the case is not taken to trial by court-martial as a result of a non-prosecutorial decision, the trial counsel, special trial counsel, or Chief of Justice will speak directly (and in-person, unless impracticable) to the victim (and SVC, when applicable) and communicate the reasons for the non-prosecutorial decision. If a victim elects not to speak with a government counsel, the reasons for the non-prosecutorial decision will be provided to the victim's SVC or VA, if such a representative exists, and the victim's election not to meet with a government counsel will be memorialized. The government counsel will not provide written explanation of the decision not to prosecute to the victim or their representative.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under UCMJ, Article 32.

(5) The scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The opportunity to consult with trial counsel or special trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim.

(9) The result of trial or other disposition.

(10) If the sentence includes confinement, the probable date on which the offender will be eligible for parole (see AR 190–47).

(11) General information regarding the corrections process, including information about work release, furlough, probation, parole, and other forms of release from custody, and the offender's eligibility for each.

(12) The right to request, through the VWL, trial counsel, special trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters set forth in paragraph 17–14*b*.

(13) How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (see AR 15–130).

b. Upon a sentence to confinement, the trial counsel or special trial counsel will—

(1) Formally inform the victim, or when applicable, the victim's SVC, regarding post-trial procedures, to include the victim's eligibility to submit matters for consideration by the convening authority during the clemency phase of the court-martial process under the provisions of RCM 1106A, and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing the victim with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime).

(2) Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Prisoner Status), in every case, regardless of election. One copy of DD Form 2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army Corrections Command (DAPM–ACC), usarmy.pentagon.hqda-pmg.list.npe-mgt@army.mil. One copy of the form will be forwarded to the Clerk of Court, USACCA, Victim-Witness Liaison/Coordinator (VWL/C), usarmy.pentagon.hqda-otjag.list.usalsa-acca@army.mil. The DD Form 2704 should normally be typed. Email addresses may be added to the DD Form 2704 on a voluntary basis. Include the point of contact and address of the Military Service Central Repository in Section 5.

(3) Ensure that a copy of DD Form 2704 is not attached to any copy of the ROT to include the accused's copy of the ROT.

c. The appellate court VWL/C will notify victims of—

(1) Docketing and decisions of the USACCA;

(2) Docketing and decisions of the USCAAF; and

(3) Opportunities to attend oral arguments.

d. In addition to the notifications and services provided to all crime victims, trial counsel, special trial counsel, or the appellate court VWL/C, as appropriate, will notify all Servicemember victims who make unrestricted reports of sex-related offenses (through, or in coordination with, the SVC, when applicable), of each of the following events and document and maintain the notification in MJO or the Army Court-Martial Information System, as appropriate—

(1) Conclusion of the investigation.

(2) The initial disposition decision.

(3) Pre-trial confinement hearings.

(4) Preferral of charges.

(5) All court proceedings, including arraignment, motions hearings, and trial dates.

(6) Withdrawal of charges.

(7) Dismissal of charges.

(8) Post-trial hearings.

(9) Vacation hearings.

(10) Clemency submissions.

(11) Appellate filings.

(12) Appellate hearings.

(13) Appellate decisions.

17–15. Consultation with victims

a. The trial counsel or special trial counsel will ensure that the victims of crime are consulted concerning—

(1) Decisions not to prefer charges.

(2) Decisions concerning pretrial restraint of the alleged offender or their release.

(3) Pretrial dismissal of charges.

(4) Negotiations of plea agreements and their potential terms.

b. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing in this regulation limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and to prevent service-discrediting conduct.

17–16. Property return and restitution

a. In coordination with criminal investigative agents, the OSTC, and GAD, SJAs, or their designees will ensure that all noncontraband property that has been seized or acquired as evidence for use in the prosecution of an offense is safeguarded and returned to the appropriate person, organization, or entity as expeditiously as possible (see AR 195–5, or AR 190–30, as applicable). The VWL will ensure that victims are informed of applicable procedures for requesting return of their property. SOFAs or other international agreements may apply overseas.

b. Victims who suffer personal injury, property loss, or damage as a result of an offense should be informed of the various means available to seek restitution. The provisions of UCMJ, Article 139 may provide some relief if the property loss or damage is the result of a wrongful taking or willful damage by a member of the Armed Forces (care must be taken to ensure that UCMJ, Article 139 investigations are conducted in a manner that does not interfere with any ongoing criminal investigations or courts-martial proceedings). Victims should also be informed of the possibility of pursuing other remedies, such as claims, private lawsuits, or any crime victim compensation available from Federal (for example, the Transitional Compensation Program for abused family members under 10 USC 1059) or civilian sources, and of appropriate and authorized points of contact to assist them. Examples include a local claims office, legal assistance or lawyer referral service, and state victim assistance or compensation programs.

c. Court-martial convening authorities or special trial counsel, as applicable, will consider the appropriateness of requiring restitution as a term and condition in plea agreements, and court-martial convening authorities will consider whether the offender has made restitution to the victim when taking post-trial action. The Army Clemency and Parole Board will also consider the appropriateness of restitution in clemency and parole actions.

17–17. Safe-to-Report

a. Policy. Safe-to-Report prescribes policy for the identification and treatment of alleged minor and non-minor collateral misconduct by Servicemember victims of sexual assault, including cadets at the United States Military Academy (USMA), regardless of who receives the victim's report of sexual assault or whether the investigation and/or prosecution is handled by military or civilian authorities.

b. Collateral misconduct defined. Collateral misconduct is defined as a victim's misconduct that might be in time, place, or circumstance, associated with the victim's sexual assault.

c. Special court-martial convening authority determination. A sexual assault victim's commander in the grade of O–6 and above who possesses SPCMCA will assess alleged collateral misconduct against aggravating and mitigating circumstances. Such commanders retain discretion to make the final determination of whether the alleged collateral misconduct is minor or non-minor based on their analysis of aggravating and mitigating circumstances. Commanders will consult with their servicing SJA in reaching these determinations.

(1) *Aggravating Circumstances.* The existence of aggravating circumstances does not automatically result in a determination that the alleged collateral misconduct is non-minor. Aggravating circumstances include, but are not limited to, whether the alleged collateral misconduct intentionally or unintentionally:

(a) Resulted or imminently threatened to result in failure of a specified military mission or objective.

(b) Threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the subject(s) of an investigation of sexual assault.

(c) Resulted in significant damage to government property, or to the personal property of others, except when such damage was the collateral result of an assault and/or resulted from an act of self-defense.

(2) *Mitigating Circumstances.* Mitigating circumstances include, but are not limited to:

(a) The victim's age and military experience level.

(b) Whether the subject is in a position of authority over the victim or a higher grade than the victim.

(c) Whether the subject engaged in actions to stalk, harass, haze, coerce, and/or otherwise influence the victim to engage in sexual behavior.

(d) Whether the alleged collateral misconduct was known to command prior to the report of sexual assault, and if not known, the likelihood that the alleged collateral misconduct would have otherwise been discovered, but for the victim disclosing or reporting the sexual assault.

(e) The victim engaging in misconduct after the sexual assault, which may be related to symptoms of trauma (for example, the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms).

d. Determination of Non-Minor Collateral Misconduct. If the commander determines a victim's collateral misconduct is non-minor, the commander retains discretion on whether to discipline.

(1) Commanders have discretion to defer action on alleged non-minor collateral misconduct until final disposition of the sexual assault case.

(2) Commanders should consider the trauma to the victim and respond appropriately to encourage reporting of sexual assault and continued victim cooperation while balancing the right to speedy trial and statute of limitations concerns.

e. Determination of Minor Collateral Misconduct. If a commander, after consultation with the servicing JA, determines a victim's collateral misconduct is minor, safe-to-report protections are triggered. The victim will not be subject to discipline for minor collateral misconduct. Examples of collateral misconduct that should generally be considered minor include, but are not limited to:

(1) The victim was drinking underage at the time of the assault.

(2) The victim was engaged in an unprofessional relationship with the subject at the time of the sexual assault. An "unprofessional relationship" is a relationship that violated law, regulation, or policy in place at the time of the sexual assault.

(3) The victim was in violation of lawful orders establishing curfews, off-limit locations, school standards, barracks/dormitory/berthing policies, or similar matters at the time of the reported sexual assault. Safe-to-report protections do not preclude the commander from fulfilling certain administrative requirements, for example, referral to substance abuse screening if the minor collateral misconduct involves any kind of substance abuse, referral to behavioral health or medical providers for a fitness for duty determination, or temporary suspension of access to critical positions (such as positions in the Personnel Reliability Program).

Section IV

Witness Services

17–18. Notification and description of services provided to witnesses

a. The trial counsel or special trial counsel will ensure that witnesses and representatives of witnesses who are minors (to include legal guardians, foster parents, or other persons in lawful custody of minors or incompetent individuals), when applicable, are notified at the earliest opportunity of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral (or the filing in a civilian court) or dismissal of charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a UCMJ, Article 32 preliminary hearing.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial or other disposition.

(9) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(10) General information regarding the corrections process, including information about work release, furlough, probation, the offender's eligibility for each, and the witness' right to be informed of changes in custody status.

b. Witnesses should be advised of the stages in the military criminal justice system, the role that they can be expected to play in the process, and how to obtain additional information concerning the process and the case. This information will be set forth in a Victim and Witness Information Packet (DD Form 2701, DD Form 2702 (Court-Martial Information for Victims & Witnesses of Crime), and DD Form 2703) and should be further amplified, as required, by the trial counsel, special trial counsel, VWL, or designee.

c. Upon a sentence to confinement, the trial counsel, special trial counsel, or other representative of the Government will—

(1) Formally inform those witnesses adversely affected by the offender regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing DD Form 2703. Appropriate cases include, but are not limited to, cases where the life, well-being, or safety of the witness has been, is, or in the future reasonably may be, jeopardized by participation in the criminal investigative or prosecution process.

(2) Ensure the witness' election regarding notification is recorded on DD Form 2704 in every case, regardless of election. One copy of DD Form 2704 will be given to the witness. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the DAPM–ACC. One copy of the form will be forwarded to the Clerk of Court, USACCA, VWL/C, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. The DD Form 2704 should normally be typed. Email addresses may be added to the DD Form 2704 on a voluntary basis. Include the point of contact and address of the Military Service Central Repository in Section 5.

(3) Ensure that a copy of DD Form 2704 is not attached to any copy of the ROT to include the accused's copy of the ROT.

d. The appellate court VWL/C will notify witness of—

(1) Docketing and decisions of the USACCA.

(2) Docketing and decisions of the USCAAF.

(3) Opportunities to attend oral arguments.

17–19. Limitations

a. The trial counsel or special trial counsel, in conjunction with a VWL, or other government representative, will determine, on a case-by-case basis, the extent to which witnesses are provided the services set forth in sections IV and V of this chapter. For example, it may be unnecessary to provide some or all of these services to AD military witnesses or to expert or character witnesses. Trial counsel, special trial counsel, or designee will apprise a witness' chain of command of the necessity for the witness' testimony (and the inevitable interference with and absence from duty). Ordinarily, however, doubt about whether to provide the foregoing information or services should be resolved in favor of providing them, especially when services have been requested by the witness.

b. Overseas, status of forces, and other international agreements may limit the availability of such services to victims or witnesses residing in the host country without SOFA status.

Section V

Other Services

17–20. Protection of victims and witnesses

a. Victim/witness intimidation. The SJA or special trial counsel, as applicable, will ensure that victims and witnesses are advised that their interests are protected by administrative and criminal sanctions. In the criminal context, for example, 18 USC 1512 and 18 USC 1513 make tampering with or retaliation against a victim or witness punishable under Federal law; intimidation and threats to victims or witnesses who report criminal offenses or who make protected communications may be punishable under UCMJ, Article 92 and UCMJ, Article 132. Obstruction or attempted obstruction of justice and subornation of perjury are also offenses under the UCMJ. Victims and witnesses should be further advised that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities (for example, a commander, an SJA, CID, a trial counsel, special trial counsel, or a VWL), that their complaints will be promptly investigated, and that appropriate action will be taken. In the administrative context, the commander may provide victim protection by issuing a written order to the suspect not to contact the victim except when supervised by a member of the chain of command, or by revoking the suspect's pass privileges. Commanders should normally use DD Form 2873 (Military Protective Order (MPO)),

when issuing a written no-contact order. Commanders should consult with their servicing JA before taking administrative measures to protect a victim.

b. Victim/witness protection. In cases where the life, well-being, or safety of a victim or witness is jeopardized by their participation in the criminal investigation or prosecution process, the SJA or special trial counsel, as applicable, will ensure that appropriate law enforcement agencies are immediately notified. Commanders, in conjunction with the law enforcement agency concerned, will promptly take, in appropriate circumstances, those measures necessary to provide reasonable protection for the victim or witness. These measures may include temporary attachment or assignment, or permanent reassignment, of military personnel, or in some cases the provision of state, other Federal or foreign protective assistance. The trial counsel will ensure that Commanders are immediately notified whenever a victim or witness expresses genuine concern for their safety. The trial counsel, special trial counsel, or Commander, as applicable, should contact CID for all victim and witness requests to be in the Federal Witness Protection Program, and for fear of life transfers.

c. Separate waiting area. At courts-martial and preliminary hearing proceedings, victims, and government witnesses should, to the greatest extent possible, be afforded the opportunity to wait in an area separate from the accused or defense witnesses to avoid embarrassment, coercion, or similar emotional distress. In a deployed environment, victims, and government witnesses should be afforded a separate waiting area to the greatest extent practicable.

d. Arranging witness interviews. Within the guidelines of RCM 701 and UCMJ Article 6b(f), and at the request of the witness, a VWL or designee may act as an intermediary between a witness and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial. The VWL's role in arranging witness interviews is to ensure that witnesses are treated with courtesy and respect and that interference with their lives and privacy is kept to a minimum. This paragraph is not intended to prevent the defense or the government from contacting potential witnesses not previously identified or who have not requested a VWL to act as an intermediary.

17–21. Notification to employers and creditors

On request of a victim or witness, the VWL, will inform an employer that the victim's or witness' innocent involvement in a crime or in the subsequent prosecution may cause or require their absence from work. In addition, if a victim or witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, suffers serious financial hardship, a government representative will assist the victim or witness in explaining to creditors the reason for such hardship, as well as ensuring that legal assistance is available to Soldiers, retired Soldiers, and their Family members for this purpose.

17–22. Witness fees and costs

Witnesses requested or ordered to appear at preliminary hearings under UCMJ, Article 32 or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Article 47 and chapter 5 of this regulation. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witness fees and related costs. In this regard, coordination should be made with local finance offices for establishing procedures for payment after normal duty hours if necessary.

17–23. Civilian witness travel to proceedings overseas

a. When a civilian witness, other than a DoD employee, is located in the United States and is scheduled to testify in courts-martial or other legal proceedings overseas, a representative of the convening authority or special trial counsel, as applicable, may request that the Clerk of Court, USACCA issue invitational travel orders (ITOs) and arrange for transportation. The witness request should be faxed as follows: Overseas Witness Liaison, Clerk of Court, U.S. Army Court of Criminal Appeals, (facsimile (703) 806–0124; DSN 223–0124).

b. Requests should be timely submitted to ensure receipt by the Clerk of Court, USACCA at least 10 days before the desired arrival date, particularly if passports must be obtained for the witness. Otherwise, the request must be accompanied by a brief explanation of the delay. Each request will include the following information numbered according to the subparagraphs below—

(1) Name and date of birth of the witness.

(2) Name of the case or other proceedings (include grade and complete name of the accused).

(3) Type of court, preliminary hearing, or board, including general nature of the charges.

(4) Date proceedings are to begin.
(5) Desired arrival date of witness, destination, or city, and estimated duration of stay.
(6) Address of witness, including name of address occupant if different from that of witness.
(7) Witness' day and evening telephone numbers.
(8) Whether witness already has been contacted concerning attendance, by whom, and with what result.
(9) Whether witness is known to possess a current U.S. passport.
(10) Relationship of the witness to the proceedings (for example, victim, prosecution witness other than victim, relative of the accused, defense witness not related to the accused).
(11) If the witness is a minor or disabled, the information required by paragraphs 17–23*b*(6) through 17–23*b*(9), as to the witness' parent, guardian, or other escort.
(12) Name, title, and telephone number of counsel requesting the witness and name, location, and telephone number of the VWL.
(13) Fund citation to be used in ITOs and any limitation as to the amount available. (Early citation of funds is essential to issuing ITOs.)
(14) Lodging information should include the name, address, and telephone number of the facility where reservations have been made for the witness.

c. When the Office of the Clerk of Court, USACCA is arranging a witness' travel, any proposed change by local authorities in the travel arrangements or itinerary must be coordinated first with that office.

d. If the requirement is cancelled after the witness has been contacted and agreed to proceed overseas, an explanation to be given the witness will be provided to the Clerk of Court, USACCA.

17–24. Local services

The trial counsel, special trial counsel, VWL, or designee will ensure that victims and witnesses are informed of, and provided appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators or interpreters.

17–25. Transitional compensation

The Transitional Compensation Program provides financial support for Family members of Soldiers who are discharged or sentenced to total forfeitures by court-martial or administrative separation proceedings for charges that include dependent abuse offenses. VWLs, SVLs, and all JAs will be familiar with transitional compensation procedures and benefits for victims as described in AR 608–1, DoDI 1342.24, and 10 USC 1059. The VWLs/SVLs and JAs will inform victims of their potential eligibility for this program. VWLs/SVLs may help victims apply for transitional compensation or refer them to Army Community Services victim advocates for information and assistance. JAs will advise transitional compensation approving officials on the standards for certifying transitional compensation applications (section II, block 10 of DD Form 2698 (Application for Transitional Compensation)). JAs will not conduct an independent legal review of the underlying basis for the transitional compensation and will not serve as approving officials for purposes of DD Form 2698.

17–26. Uniformed Services Former Spouses' Protection Act

a. The Uniformed Services Former Spouses' Protection Act (10 USC 1408(h)) applies in cases where retirement-eligible Servicemembers are no longer eligible to receive retired pay as a result of misconduct involving abuse of a spouse or dependent child. This statute authorizes a civil court to award a portion of the retirement pay the spouse or former spouse would have received if the Servicemember's eligibility for retired pay had not been terminated. The statute also entitles a spouse or former spouse and dependent child to receive medical and dental care and other benefits in the same manner as if the Servicemember was entitled to retired pay. VWLs and SVLs will be familiar with this statute and refer eligible spouses or dependent children to Legal Assistance for legal advice.

b. Overseas, such services and benefits may be limited by status of forces and other international agreement unless the spouse or child continues to have SOFA status.

17–27. Requests for investigative reports or other documents

Victims' and witnesses' requests for investigative reports or other documents will be processed under applicable Freedom of Information Act or Privacy Act procedures. Eligible victims will be provided a copy of a ROT in accordance with RCM 1112 at no cost. In other cases, the SJA may authorize release of a ROT

to a victim when necessary to ameliorate the physical, psychological, or financial hardships suffered as a result of the criminal act.

Section VI

Confinement Facilities and Central Repository

17–28. Confinement facilities

a. On entry of an offender into confinement, the commander of the confinement facility to which the offender is assigned will ensure receipt of DD Form 2704 and determine whether the victim and/or witness requested notification of changes in confinement status in the offender's case. If the DD Form 2704 is not available, the commander will make inquiry of the trial counsel, special trial counsel, or central repository to obtain the form.

b. If the victim and/or witness requested notification on DD Form 2704, the commander of the confinement facility will—

(1) Advise the victim and/or witness of the offender's place of confinement and the offender's projected minimum release date.

(2) Provide the victim and/or witness with the earliest possible notice of the following:

(a) The escape, work release, furlough, emergency, or special temporary home parole, or any other form of release from custody of the offender.

(b) The transfer of the offender from one facility to another—this includes temporary custody by state or Federal officials for the purpose of answering additional criminal charges.

(c) The scheduling of a clemency or parole hearing for the offender.

(d) The release of the offender from supervised parole.

(e) The death of the offender, if the offender dies while in confinement.

(3) In cases involving escape of a confinee, emergency leave, or temporary home release, confinement facilities will make immediate efforts to notify victims and witnesses. The following will constitute reasonable effort:

(a) Attempted telephonic notification.

(b) Email notification, if possible.

(c) Written notification by overnight mail.

c. Methods used and attempts made will be recorded (including date, time, and person notified). The DD Form 2705 (Notification to Victim/Witness of Prisoner Status) may be used for this purpose.

d. On transfer of the offender, the commander of the confinement facility will notify the gaining confinement facility of the victim's and/or witness' request by forwarding the completed DD Form 2704 with an information copy to the central repository.

e. Annually, no later than 31 January, the commander of the confinement facility will report to the DA central repository the number of victims and witnesses who were notified of changes in confinement status during the reporting period, and the total number of confinees on whom notification is required.

17–29. Reporting requirements and responsibilities

a. The Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager is the Army's central repository for tracking notice of the status of offenders confined in Army confinement facilities and for tracking the following information:

(1) Number of victims and witnesses who were issued DD Form 2701 or DD Form 2702 from law enforcement or criminal investigative personnel.

(2) The number of victims and witnesses who were informed (as recorded on DD Form 2704 or otherwise) of their right to be notified of changes in confinee status.

(3) The number of victims and witnesses who were notified by confinement victim and witness assistance officials, using DD Form 2705, of changes in confinee status.

(4) The number of confinees, by Service, in Army confinement facilities as of 31 December of each year, about whom victim and witness notifications must be made.

b. Annually, no later than 15 February, the central repository will report to OTJAG–CLD, cumulative figures for the previous calendar year on the notification and reporting requirements in paragraph 17–29*a*. DD Form 2706 (Annual Report on Victim and Witness Assistance) will be used for this purpose.

c. Annually, no later than 15 February, the SJA of each command having GCM jurisdiction will report, through major ACOM channels, to OTJAG–CLD, cumulative information on the following:

(1) The number of victims and witnesses who received DD Form 2701 or DD Form 2702 from trial counsel, special trial counsel, VWL, or designee.

(2) The number of victims and witnesses who received DD Form 2703 from trial counsel, special trial counsel, VWL, or designee.

d. SJAs will obtain data for their reports from subordinate commands attached or assigned to their GCM jurisdiction for military justice purposes, including supported RC units. Negative reports are required. The DD Form 2706 will be used for this purpose. The Chief, OTJAG–CLD will prepare a consolidated report on DD Form 2706 for submission to the DoD (Under Secretary for Personnel and Readiness, Legal Policy Office).

17–30. Evaluation of Victim/Witness Liaison Program services

a. Each victim and witness in an incident prosecuted at a SPCM or GCM, or for which a preliminary hearing is held in accordance with UCMJ, Article 32 in those cases not disposed of by SPCM or GCM, will receive a victim/witness evaluation form. These forms may also be provided to other victims and witnesses.

b. DA Form 7568 will be used for this purpose.

c. Evaluation forms will be reviewed locally by the SJA or special trial counsel, as applicable, and copies forwarded quarterly to the Victim/Witness Coordinator, OTJAG–CLD, and the OSTC by email.

d. The evaluation form may be provided to victims and witnesses by hand, by mail, through a link to an anonymous internet survey, or otherwise, but must be returned in an anonymous manner, for example, by providing a drop box away from the military justice section, or by providing a pre-addressed envelope or other anonymous means of return. The recipients of the evaluation form must be advised that the form will be returned in an anonymous manner and cannot be accepted in any other manner. The evaluation form will be accompanied by a cover letter, in a hard copy or digital format, under the signature of the SJA or LSTC. The cover letter will thank the victim/witness for assisting in the prosecution, and emphasize the need for a response and the anonymous nature of the response.

Chapter 18
Military Justice Training for the U.S. Army

18–1. General

This chapter describes required and optional military justice training. It also sets forth general instructions and information about military justice courses for AD commissioned officers, officer candidates, enlisted personnel in the U.S. Army, cadets of the USMA, and the Senior Reserve Officers' Training Corps (SROTC).

18–2. Training organization

a. TJAG is responsible for technical supervision of training in military justice.

b. The CG, U.S. Army Training and Doctrine Command (TRADOC) is responsible for instruction of required and optional military justice training during initial entry training and institutional and SROTC training.

c. The Superintendent, USMA is responsible for instruction of required and optional military justice training for cadets at USMA.

d. The CG, TJAGLCS is responsible for military justice courses in the curriculum of TJAGLCS and is also responsible for developing military justice training materials for the Army service school system.

e. The Commandant, Academy of Health Sciences is responsible for instruction of required and optional military justice training in the curriculum of Academy of Health Sciences.

f. Unit commanders are responsible for refresher and optional individual training in military justice. All such training will be coordinated in advance with the servicing JA (see para 18–8).

18–3. Curriculum courses

In addition to the military justice instruction taught in Army service schools, training centers, and SROTC programs, military justice courses may be presented in the curricula of Warrant Officer Training System

schools, NCO Education System schools, USAR, and ARNG schools and extension courses, and in other USAR and ARNG training. Military justice training in accordance with this paragraph will be coordinated in advance with the servicing JA (see para 18–8).

18–4. Required military justice training for enlisted Soldiers

a. Enlisted Soldiers will receive training in military justice in accordance with UCMJ, Article 137—

(1) On or within 6 days of the Soldier's initial entrance on AD or initial entrance into a duty status with an RC.

(2) After the Soldier has completed 6 months of AD or, in the case of an RC Soldier, after completing basic or recruit training.

(3) At the time of each enlistment.

b. The HQDA may prescribe additional courses in military justice subjects of special significance to enlisted personnel.

18–5. Required military justice training for commissioned officers, officer candidates, and cadets

Commissioned officers, officer candidates, and cadets will receive military justice training in accordance with UCMJ, Article 137, through—

a. Officer basic courses. These courses will contain the following learning objectives:

(1) How to conduct a preliminary inquiry and determine or recommend disposition of offenses. The officer will learn—

(a) How to evaluate evidence of suspected offenses.

(b) The concept of and authority for military jurisdiction.

(c) How to determine when the military has jurisdiction over the person of the accused and over the offense.

(d) The basis for, and how to advise a suspect of, the UCMJ, Article 31b rights, and the right to counsel before questioning.

(e) The characteristics, effects, and requirements of nonpunitive disciplinary measures (including corrective training, reprimands, and administrative discharges) as well as those of available punitive measures.

(f) How to determine or recommend disposition of offenses, including the role and authority of special trial counsel over covered, known, and related offenses.

(2) How to order restraint, if warranted, before disposition of an offense. The officer will learn—

(a) When pretrial confinement is appropriate.

(b) The steps necessary to place an accused in pretrial confinement.

(c) How to apprehend, and when and how to place a Soldier under restriction or arrest.

(3) How to authorize searches, inspections, and inventories. The officer will learn—

(a) To be familiar with the Fourth Amendment of the U.S. Constitution, its application to military actions, and its enforcement in court.

(b) To understand the commander's authority to search, how to determine probable cause, and how to authorize and conduct a search based upon probable cause.

(c) What a consent search is and the necessity for voluntariness in consent searches.

(d) The scope and limits of a search incident to apprehension.

(e) The scope and limits of searches based on exigent circumstances.

(f) The rules governing the purposes, limits, and procedures for inspections and inventories.

(4) How to initiate and process court-martial charges. The officer will learn—

(a) To draft and review court-martial charges and specifications, and to review DD Form 458.

(b) To prefer court-martial charges and formally notify the accused of court-martial charges.

(c) To initiate and process actions and reports when required by a SOFA or regulations.

(d) To understand speedy trial requirements.

(5) How to administer NJP. The officer will learn—

(a) The purpose of NJP, the policies governing its use, and its relationship to other punitive and nonpunitive measures.

(b) Who may impose NJP and on whom it may be imposed.

(c) The rights of the Soldier and the imposition and appeal procedures for NJP.

(6) How to avoid UCI.

b. Officer advanced courses. These courses will teach the same material outlined in paragraphs 18–5*a*(1) through 18–5*a*(6), but will reflect the wider military experience of officer advanced course students. The courses will also stress the purpose, structure, and development of the military justice system.

c. Precommissioning courses. These courses will teach the same material outlined in paragraphs 18–5*a*(1) through 18–5*a*(6). In addition, the courses will provide an overview of the purpose, structure, and development of the American military justice system.

18–6. Military justice training for commanders and convening authorities

a. Officers with authority to convene courts-martial or impose NJP will receive annual training from their servicing OSJA regarding the purposes and administration of the UCMJ. Completion of TJAGLCS' Senior Officer Legal Orientation course or General Officer Legal Orientation course, or other specifically designed command courses, such as the Pre-Command Course, satisfies the annual training requirement.

b. The servicing OSJA will document compliance with the training requirement in paragraph 18–6*a* for all current commanders and convening authorities.

18–7. Optional military justice training

The CG, TRADOC; the Superintendent, USMA; the Commandant, Academy of Health Sciences; and other commanders may prescribe additional military justice training for officers, cadets, and enlisted Soldiers in their respective commands on an as needed basis. Commanders will coordinate with a JA before presenting optional military justice training (see para 18–8). The CG, TJAGLCS, may prescribe military justice training courses to be taught in the curriculum of TJAGLCS.

18–8. Course development and instruction

a. Military qualifications standards for military justice training will conform with this regulation.

b. SJAs and command JAs will provide technical assistance and supervision in the development of military justice course programs of instruction not otherwise prescribed by higher authority.

c. JALS personnel will provide technical assistance as needed in all other military justice instruction prescribed by this regulation.

Chapter 19
Complaints Pursuant to UCMJ, Article 138

Section I

General

19–1. Article 138 complaints generally

a. Purpose. This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to UCMJ, Article 138 by a member of the Armed Forces against a commanding officer.

b. Applicability. This chapter applies to members of all U.S. Army components. Complaints from members of the ARNG and USAR are limited to matters concerning their Federal service (Title 10 duty status).

19–2. Definitions

This chapter uses the following terms*:*

a. Complainant. The Soldier making the complaint is the complainant.

b. Respondent. The commanding officer against whom the Soldier is complaining is the respondent.

19–3. Duties and responsibilities

a. The general court-martial convening authority. The principal responsibility for acting on an Article 138 complaint lies with the GCMCA of the command with jurisdiction over the respondent at the time of the alleged wrong, either organically or as a result of an attachment, area jurisdiction, or a similar basis. If there is no such officer below HQDA, the complaint will be referred to the CG, U.S. Army Forces Command (FORSCOM) to serve as the GCMCA responsible for acting on the complaint. If the CG, FORSCOM is prohibited from taking action on the complaint, the complaint will be forwarded to the CG, TRADOC to serve as the responsible GCMCA.

b. Commanders and respondents. A Soldier has a statutory right to submit a complaint pursuant to UCMJ, Article 138. Commanders will not restrict the submission of such complaints or retaliate against a Soldier for submitting a complaint.

c. Complainant. The complainant may be asked to testify, provide additional information, or otherwise assist in resolving the complaint. A Soldier who submits an Article 138 complaint does not have a right to participate in any ensuing procedures pursuant to this regulation.

19–4. Limitations on Article 138 complaints

a. Limitation based on status of complainant. Complaints may only be made by a member of the Armed Forces.

b. Limitation based on status of respondent. A complaint pursuant to Article 138 may be made only against a commanding officer of the complainant. At the time of the alleged wrong, the commanding officer must have been an officer in the complainant's chain of command, up to and including the first officer exercising GCM jurisdiction over the complainant. The commanding officer must have been authorized to impose NJP on the complainant (whether or not the authority to impose NJP or to exercise GCM jurisdiction has been limited or withheld by a superior commander).

c. Limitation on subject matter of the complaint. Complaints pursuant to Article 138 must allege that the complainant has been wronged. A wrong is a discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally and that is—

(1) In violation of law or regulation.

(2) Beyond the legitimate authority of that commanding officer.

(3) Arbitrary, capricious, or an abuse of discretion.

(4) Materially unfair.

d. Limitation based on timing. Complainants must deliver the complaint within 90 days of discovery of the wrong. The following periods are excluded when calculating whether the complaint was timely submitted:

(1) Any period during which the initial request for redress was with the respondent.

(2) If the GCMCA returns the complaint to the complainant as deficient, the days the complaint was in military channels between submission by and return to the complainant.

(3) When the complainant mails the complaint, the complaint will be considered to have been submitted on the date the complaint is received by the first superior commissioned officer.

(4) Any period of time excluded by the GCMCA for good cause.

19–5. Legal advice

a. Advice of a military lawyer. A member who desires to submit an Article 138 complaint may consult a military lawyer for advice and assistance in drafting the complaint. Such advice will include whether, under the circumstances, an Article 138 complaint is authorized and appropriate. The member should also be advised of any other laws or regulations under which the member may seek redress. In connection with Article 138 complaints, a military lawyer will be provided only for such consultation and advice, but not to represent the member in any ensuing Article 138 proceedings.

b. Civilian Counsel. A member who desires to submit an Article 138 complaint may consult or retain other legal counsel at no expense to the government. Such counsel may attend any proceedings pursuant to this regulation open to members of the public, but may not participate in such proceedings.

Section II

Prerequisites for Filing a Complaint

19–6. Initial request for redress

Before filing an Article 138 complaint, the complainant must first seek relief from the respondent commanding officer. The initial request for redress must—

a. Be in writing and signed by the complainant. An email will satisfy this requirement.

b. Clearly identify the relationship between the complainant and the respondent (see para 19–4*b*).

c. Clearly identify the date and nature of the alleged wrong (see para 19–4*c*).

d. Clearly identify the specific redress desired. Redress is an authorized action by an officer in the complainant's chain of command to effect the revocation of a previous official action or otherwise to restore to the complainant any rights, privileges, property, or status lost as a result of a wrong.

e. Be submitted through command channels to the respondent commanding officer. If the respondent commanding officer is no longer in command, the initial request for redress must be submitted to the successor-in-command. The successor-in-command, upon receipt of the initial request for redress, is the respondent commanding officer.

19–7. Response by the commanding officer to an initial request for redress

a. Alleged wrongs involving senior officials. When a respondent commander is a senior official as defined by AR 20–1, the senior official's command must first contact the Department of the Army Inspector General's (DAIG) Investigations Division in order to report any allegations of senior official impropriety and misconduct, before further action is taken pursuant to Article 138. Where the DAIG declines to investigate the alleged wrongs, the respondent commander should respond to the initial request for redress, if made, and the respondent commander's GCMCA should separately review any formal complaint made pursuant to Article 138.

b. Legal advice. A commanding officer who receives a request for redress, or against whom an Article 138 complaint is submitted, may obtain legal advice from the commanding officer's servicing legal advisor.

c. Form of response. The respondent commanding officer who receives an initial request for redress pursuant to paragraph 19–6 will respond to the complaint in writing. An email will satisfy this requirement.

d. Timing of response.

(1) *Regular Army.* An RA commander will serve a response on the complainant within 15 days after having received the initial request for redress. If a final response within 15 days is not possible, an interim response will be provided that indicates the estimated date of a final response.

(2) *Reserve Component.* RC commanders who are not on AD must respond to an initial request for redress within 60 days from receipt.

e. Content of response. A final response must specifically address what redress the commander is granting or otherwise state why redress is denied.

f. Failure to provide a response. A complainant who, through no fault of their own, has not received a final response within 15 days (or 60 days from an RC commander), or an interim response containing the date of a final response that does not unreasonably delay the final response, may elect to treat that as a denial of redress.

Section III

Form, Submission, and Transmittal of a Complaint

19–8. Article 138 complaint requirements

a. General. If the attempt to resolve a perceived wrong through an initial request for redress is unsuccessful, the complainant may submit an Article 138 complaint to the GCMCA of the command with jurisdiction over the respondent at the time of the alleged wrong.

b. Form of the complaint. The following list identifies the required form and content of an Article 138 complaint. An Article 138 complaint must:

(1) Be in writing and signed by the complainant. An email will satisfy this requirement.

(2) Be addressed to the GCMCA with jurisdiction over the respondent at the time of the alleged wrong.

(3) Clearly identify the complainant's current military organization and address.

(4) Clearly identify the complainant's military organization at the time of the wrong.

(5) Clearly identify the commanding officer who the Soldier believes committed the wrong.

(6) Indicate the date a written initial request for redress was submitted to that commanding officer, and the date of the respondent commanding officer's response or lack thereof.

(7) Specifically state that it is a complaint submitted pursuant to the provisions of UCMJ, Article 138 and this regulation.

(8) Clearly and concisely describe the specific wrong or wrongs complained of. When not readily apparent, state the reason the complainant considers it a wrong.

(9) State the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers the redress appropriate.

(10) Have attached to it—

(a) The complainant's initial request for redress and the commanding officer's response, if any.

(b) Any supporting information or documents the complainant desires to be considered.

19–9. Submission and transmittal of an Article 138 complaint

a. Submission. A complainant will submit an Article 138 complaint to any superior commissioned officer.

b. Transmittal. A superior commissioned officer in receipt of an Article 138 complaint pursuant to paragraph 19–9*a* will promptly forward the complaint, through their chain of command, to the GCMCA of the respondent commanding officer at the time of the alleged wrong. The superior commissioned officer receiving the complaint, or any commander through whom it is forwarded, may add pertinent material to the file or grant any redress within that officer's authority. If either action is taken, it will be noted in the transmittal documents. The complaint will be forwarded to the GCMCA even if the complainant's requests for redress are fully granted.

c. Withdrawal. The complainant may withdraw the complaint at any time before final action. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant. Withdrawal must be in writing. An email will satisfy this requirement.

Section IV

Action on the Complaint

19–10. Determination of sufficiency

a. Sufficiency review. Once the appropriate GCMCA receives an Article 138 complaint, the GCMCA will determine whether the complaint is sufficient. A complaint is not sufficient unless—

(1) The complainant first submitted to the respondent an initial request for redress pursuant to paragraph 19–6.

(2) The complaint meets all of the requirements in paragraphs 19–4 and 19–8.

b. Review by legal advisor. The GCMCA may have their legal advisor conduct a review of the complaint to identify its sufficiency.

c. Action on deficient complaints. Unless specifically waived pursuant to paragraph 19–10*d*, a GCMCA may not examine into, take action on, or make any determination as to the merits of a deficient complaint. If a complaint is deficient in one or more respects the GCMCA will return the complaint to the complainant with a statement explaining why the complaint is deficient and how it may be corrected.

d. Waiver. For good cause, the GCMCA may waive certain deficiencies in a complaint. A complaint in which all deficiencies have been waived is a "sufficient" complaint. The GCMCA may waive any deficiency in a complaint, except—

(1) When the complainant is not a member of the armed forces (see para 19–4*a*).

(2) When the complaint does not allege a wrong (see para 19–4*c*).

(3) When the complaint does not identify the commanding officer of the complainant who is alleged to have committed the wrong.

(4) A failure to specifically state the redress the complainant seeks from the GCMCA.

19–11. Determination of appropriate and inappropriate subject matter

a. In general. Where a GCMCA determines a complaint is sufficient pursuant to this chapter, a GCMCA must next determine if each of the alleged wrongs made in the complaint is or is not an appropriate matter for further examination and action pursuant to Article 138, UCMJ.

b. Inappropriate alleged wrong defined. An alleged wrong is inappropriate when other adequate processes exist for addressing the wrong alleged in the complaint. An action is an inappropriate matter for resolution pursuant to Article 138 procedures when—

(1) Review is provided specifically by the UCMJ, or the action is otherwise reviewable by a court authorized by the UCMJ or by a military judge.

(2) It is taken pursuant to the recommendation of a board authorized by Army regulation at which the complainant was afforded substantially the rights of a respondent (see AR 15–6).

(3) Army regulations specifically authorize an administrative appeal or similar redress.

(4) It is a commander's recommendation or initiation of an action included in paragraph 19–11*b*(1), 19–11*b*(2), or 19–11*b*(3).

c. Examples of inappropriate alleged wrongs. Examples of actions for which a review pursuant to UCMJ, Article 138 is inappropriate include—

(1) Matters relating to courts-martial, NJP, and similar actions taken pursuant to the UCMJ, the MCM, or military criminal law regulations. However, an alleged wrong concerning a vacation of suspended NJP is reviewable pursuant to UCMJ, Article 138, procedures, because there is no review by an authority superior to the officer vacating the punishment.

(2) Officer or enlisted elimination actions (see AR 600–8–24 and AR 635–200).

(3) Whistleblower reprisal allegations reported pursuant to 10 USC 1034.

(4) Withdrawals of flying status (see AR 600–105).

(5) Appeals from findings of pecuniary liability (see AR 37–104–4 and AR 735–5).

(6) Appeals from administrative reductions in enlisted grades (see AR 600–8–19).

(7) Appeals from OERs or NCOERs (see AR 623–3).

(8) Filing of adverse information (for example, administrative reprimand) in official personnel records (see AR 600–37).

d. Review by Army Board for Correction of Military Records and Army Discharge Review Board. The fact that adverse action alleged to have a causal relationship to the wrong complained of could be redressed by the ABCMR (AR 15–185) or ADRB (AR 15–180) does not by itself make UCMJ, Article 138 procedures inappropriate.

e. Examination into inappropriate alleged wrongs. Upon receipt of a facially inappropriate alleged wrong, the examination by the GCMCA will be limited to determining whether the other channels or procedures are, in fact, adequate, and available for resolving the alleged wrong. If the GCMCA determines the other channels or procedures are inadequate or unavailable, then the GCMCA should conduct a full examination as provided in paragraph 19–12, and otherwise treat the complaint as appropriate subject matter for resolution pursuant to Article 138.

f. Action on inappropriate alleged wrong. If the GCMCA determines the alleged wrong is an inappropriate subject for resolution pursuant to Article 138 and determines that other channels or procedures are adequate and available for resolving the alleged wrong, then the GCMCA will so inform the complainant. A decision that the complaint is an inappropriate subject for resolution pursuant to Article 138 and to leave the matter to be processed in alternate channels must be conveyed to the complainant, and such notice constitutes "proper measures for redressing the wrong complained of" within the meaning of UCMJ, Article 138. The complainant will be notified that—

(1) The alleged wrong is already being considered in other official channels, if that is the case; or

(2) A more appropriate official channel is available to redress the alleged wrong. The officer will specify that channel, any applicable regulation under which the complainant may proceed, and any Army assistance available to the complainant in using that channel.

g. Forwarding. Action on an inappropriate alleged wrong will be forwarded and disposed of in accordance with paragraph 19–14.

19–12. Examination into the complaint

a. Examination required. Where a GCMCA determines a complaint is both sufficient and contains one or more alleged wrongs appropriate for potential redress pursuant to this chapter, the GCMCA will examine into the complaint.

b. Method for examining the complaint. Except as provided in paragraph 19–12*e*, the nature and method of the examination is discretionary with the GCMCA.

c. Delegation. The examination into the complaint may be delegated but not to a person subordinate to the respondent in the chain of command nor, except for good cause, explained in the correspondence forwarding the complaint, to a person junior in grade to the respondent. Examinations so delegated will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

d. Presumption. If the evidence made available by the examination does not establish the validity of a complaint, a respondent is presumed to have acted properly.

e. Findings. The final report of the examination into the complaint will include specific findings regarding each alleged wrong determined to be appropriate for potential redress pursuant to this chapter and will

describe the factual basis and reasoning for each finding. The specific findings must address whether the act or omission complained of was—

(1) In violation of law or regulation.

(2) Beyond the legitimate authority of the respondent.

(3) Arbitrary, capricious, or an abuse of discretion.

(4) Materially unfair.

19–13. Action on the complaint

a. Personal action required. The GCMCA must act personally on the Article 138 complaint. This authority may not be delegated.

b. Legal review required. Before taking action on the complaint, the legal advisor to the GCMCA will conduct a legal review of the proposed action.

c. Actions. After examination into the complaint is completed, the GCMCA will take the first of the following actions that applies to the particular complaint.

(1) If no redress is appropriate, the GCMCA will deny the redress.

(2) The GCMCA will grant whatever redress is appropriate and is within such officer's authority to provide.

(3) If the GCMCA determines that appropriate redress is beyond such officer's authority to provide, but that another Army commander or agency could provide appropriate redress, such officer will forward the following to the commander or agency with the necessary authority:

(a) The documents described in paragraphs 19–14*a*(1) through 19–14*a*(3).

(b) An explanation of why the GCMCA considers redress appropriate.

(c) The GCMCA's specific recommendations as to what redress should be granted.

(d) A request that, upon completion of the action, the file be forwarded to HQDA in accordance with paragraph 19–14.

19–14. Forwarding and final disposition of the complaint

a. Forwarding to Office of The Judge Advocate General. Upon completion of action on the complaint, the GCMCA will forward the complaint packet to OTJAG, Administrative Law Division (DAJA–AL), usarmy.pentagon.hqda-otjag.mbx.al-law@army.mil. All actions taken pursuant to paragraph 19–13, including determinations that a complaint is an inappropriate matter for resolution pursuant to Article 138, must be forwarded to OTJAG–AL. The complaint packet will include—

(1) The complaint, the initial request for redress, the response of the commanding officer, and any supporting materials submitted by the complainant.

(2) The results of the examination into the complaint, together with any supporting documentation.

(3) A copy of the notice to the complainant.

(4) A legal review of the GCMCA's action.

(5) An endorsement or memorandum of transmittal—

(a) Indicating that the GCMCA personally acted on the complaint.

(b) Describing the GCMCA's action, and the reasons therefore.

(c) Explaining any waiver of deficiencies in the complaint or inadequacy or unavailability of established channels.

b. Review by The Judge Advocate General. The action of the GCMCA is reviewed by TJAG (or that officer's designee) on behalf of the Secretary of the Army. TJAG, or TJAG's designee, may, in that officer's discretion, return the file for additional information or investigation or for other action. The file will be forwarded to OTJAG–AL. Upon receipt, the Chief, OTJAG–AL will review the file.

c. Final action. Unless the GCMCA is otherwise notified by the Chief, OTJAG–AL within 90 days of forwarding the file to OTJAG–AL, the GCMCA's action on the Article 138 complaint is considered final. The GCMCA is responsible for notifying the complainant of any final action.

Chapter 20
Military Justice in the Reserve Components

Section I

General

20–1. Purpose

a. This chapter prescribes policies and procedures for implementing 10 USC 802. It also prescribes policies and procedures for implementing RCM 202(a), which addresses persons subject to the code; RCM 204, which details jurisdiction over certain RC personnel; RCMs 707(a)(3) and (b)(1), on speedy trials; and RCM 1003(c), on punishments in the RC.

b. The provisions of this chapter supplement the policies and procedures pertaining to the administration of military justice set out in other parts of this regulation, including the training requirements of paragraph 18–4.

20–2. Policy

a. USAR Soldiers will be subject to the UCMJ whenever they are in a Title 10 duty status. Examples of such duty status are AD; AD for training (ADT); AT; Active Guard Reserve (AGR) duty; and IDT. IDT normally consists of weekend drills by troop program units but may also include any training authorized by appropriate authority. All USAR Soldiers are subject to the provisions of the UCMJ from the date scheduled to report to AD, ADT, and annual training (AT), including authorized travel days to and from such duty, until the date the Soldier is released from that status.

b. Reserve Soldiers reporting to IDT are subject to the UCMJ during travel to and from the IDT site, pursuant to orders or regulations; intervals between consecutive periods of IDT on the same day, pursuant to orders or regulations; and intervals between IDT on consecutive days, pursuant to orders or regulations. The use of sign-in and sign-out rosters during IDT for personal accountability, pay purposes, or other reasons during breaks in periods of IDT does not affect personal jurisdiction established by UCMJ, Article 2(a)(3)(B).

c. All ARNG Soldiers will be subject to the UCMJ when in Federal service as Army National Guard of the United States (ARNGUS) pursuant to 10 USC (Title 10), and when otherwise called into Federal service. ARNG Soldiers are not subject to the UCMJ while in state service pursuant to 32 USC (Title 32).

d. RC commanders, or any RC Soldier acting on behalf of an RC commander, must be in a Title 10 duty status (see para 20–2*a*) whenever they take action such as offering or imposing NJP, preferral, or referral of court-martial charges, conducting open hearings pursuant to UCMJ, Article 15, or vacating suspended sentences pursuant to UCMJ, Article 15. However, RC commanders may forward charges pursuant to RCM 401, initiate, or forward requests for involuntary AD pursuant to RCM 204, or act on UCMJ, Article 15 appeals pursuant to paragraph 3–30, anytime, even when not in a Title 10 duty status. Regardless of their status, an RC commander may not prefer, refer, forward, or otherwise dispose of offenses over which a special trial counsel has exercised authority and has not deferred pursuant to RCM 401A.

e. Costs associated with disciplining USAR Soldiers by USAR commanders will normally be paid from Reserve Personnel, Army, appropriations. However, costs (to include pay and allowances, and all authorized travel) associated with disciplining USAR Soldiers, when involuntarily ordered to AD or involuntarily extended on AD by an RA commander, will be paid from Military Personnel, Army, and Operations and Maintenance, Army appropriations, as appropriate.

Section II

Involuntary Active Duty and Extension on Active Duty

20–3. Involuntary active duty

a. Any RC Soldiers, including those in a retired status, who are not serving on AD are subject to UCMJ jurisdiction for offenses allegedly committed while serving in a Title 10 duty status (see paras 20–2*a* and 20–2*b*), and involuntary orders may be issued for the purpose of—

(1) Preliminary hearing pursuant to UCMJ, Article 32.

(2) Trial by court-martial.

(3) Proceedings pursuant to UCMJ, Article 15.

b. An involuntary order to AD for an RC Soldier, including an AGR Soldier, for the reasons in paragraphs 20–3*a*(1) through 20–3*a*(3) may be issued only by an RA GCMCA or an RC commander specifically designated as a GCMCA pursuant to UCMJ, Article 22(a)(8) and Article 23(a)(7) who has all the internal resources necessary to involuntarily order an RC Soldier to AD and to conduct any necessary proceeding, including court-martial. No other authority is required to approve the order to AD. For offenses over which a special trial counsel has exercised authority and has not deferred, the RC commander or GCMCA will coordinate with the special trial counsel before issuing an involuntary order to AD (see Appendix K). No Soldier ordered to AD may be confined or deprived of liberty (to include pretrial confinement or restriction) until the involuntary order to AD is approved or ratified by the Secretary of the Army or the Secretary of the Army's designee (secretarial approval). The ASA (M&RA) is the Secretary of the Army's designee for this purpose. Requests for secretarial approval or ratification of involuntary orders to AD will be forwarded through OTJAG–CLD, to the Office of the ASA (M&RA). The request should include the initial request for the order to AD, including the information specified in paragraph 20–3*h*, documentation of coordination with special trial counsel, as applicable, and the order to AD issued by the RA or specifically designated RC GCMCA. The Chief, OTJAG–CLD will notify the forwarding GCMCA and special trial counsel of the decision on the request.

c. Pursuant to paragraph 20–3*b,* not all involuntary orders to AD require the Secretary of the Army or secretarial approval. An RA GCMCA may issue an involuntary order to AD and process a Soldier for any purpose in paragraphs 20–3*a*(1) through 20–3*a*(3), without secretarial approval, provided no confinement or deprivation of liberty occurs. For example, a Soldier may be ordered involuntarily to AD, charged with an offense pursuant to the UCMJ, and then granted a discharge in lieu of court-martial pursuant to chapter 10, AR 635–200 for enlisted personnel or RFGOS in lieu of GCM pursuant to chapter 3, AR 600–8–24 for officers, without secretarial approval. For those cases where pretrial confinement, arrest, or restriction in lieu of arrest is contemplated, or where sentences to confinement or deprivation of liberty are anticipated, the request for secretarial approval should be made sufficiently in advance of the deprivation of liberty or confinement. This is to prevent a delay in the execution of the deprivation of liberty or confinement.

d. The RC unit commanders who become aware of misconduct committed by RC members while serving on AD and consider it appropriate to request an involuntary recall to AD will coordinate with special trial counsel if the alleged misconduct involves an allegation of a covered, known, or related offense before forwarding a request through command channels. These channels include the appropriate state Adjutant General, the unit directly reporting to the USARC with one or more full-time JAs assigned, any other USARC subordinate unit designated in writing by the USARC Commander or USARC Commander's designee, or U.S. Army Human Resources Command–Fort Knox (AHRC–PD–R) to an appropriate RA GCMCA. Any RA commanders who become aware of misconduct by RC members who are no longer on AD will forward requests for involuntary recall to AD to an appropriate RA GCMCA.

e. Ordinarily, the appropriate RA GCMCA authorized to involuntarily order a reserve member to AD is either of the following:

(1) The RA GCMCA specified in appendix K of this regulation, with area of support or responsibility; or

(2) The RA GCMCA for the RA Component unit where the member performed duty when the offense occurred.

f. Not all misconduct committed by RC personnel before departure from AD requires involuntary recall. Commanders should consider the gravity of the alleged misconduct, including coordination with special trial counsel if the alleged misconduct involves an allegation of a covered, known, or related offense, the ability to prosecute the case, the effect on good order and discipline of an involuntary recall, and other factors listed in the discussion to RCM 306 and appendix 2.1, MCM, 2024. Before a request for involuntary recall is made, commanders will consult with servicing RA and RC OSJA personnel, including special trial counsel, as applicable. Normally, commanders should not request an involuntary recall to AD solely for the purpose of administering NJP pursuant to UCMJ, Article 15. In such cases, commanders should normally administer NJP during the member's next period of inactive training or AD. However, there may be cases where an involuntary recall solely to administer NJP is appropriate, and that determination is left to the discretion of the commander with the advice from the servicing SJA.

g. Preferral of charges is not necessary before an involuntary order of a RC Soldier to AD is issued. However, preferral must be contemplated. A Soldier may not be involuntarily recalled to AD pursuant to this provision solely for the purpose of investigating an offense. In those cases where charges are

preferred prior to the order to AD, great care should be exercised to avoid triggering the speedy trial provisions of RCM 707.

h. Requests for an order to AD pursuant to this paragraph should include the following:

(1) Complete identity of the accused including grade, full name, SSN, current military status of the accused to include component to which assigned, unit to which assigned and its location, and home address of the accused at the time of the request.

(2) Detailed summary of the contemplated charges and specifications or a copy of a preferred charge sheet.

(3) Prior convictions and NJP if known.

(4) Summary of the evidence of the case and a copy of the report of investigation, if available.

(5) Analysis of the evidence demonstrating the need for and likelihood of successful prosecution at trial by court-martial or the need for imposition of NJP through involuntary order to AD.

(6) Indication of where the accused should be ordered to AD and why the order is advisable.

i. Any RA GCMCA who involuntarily orders a Soldier to AD will immediately inform the ASCC and FORSCOM commanders, the state Adjutant General, the Commander, USARC, and the Chief, NGB, as appropriate, of the initiation of UCMJ action against the RC Soldier.

20–4. Extending Reserve Component Soldiers on active duty

a. The requirements for RA GCMCA activation and/or secretarial approval in paragraph 20–3, do not apply to RC Soldiers on AD. Any RC Soldiers serving on AD, ADT, or AT in a Title 10 duty status may be extended on AD involuntarily, so long as action with a view toward prosecution is taken before the expiration of the AD, ADT, or AT period (see AR 635–200). Any such extensions must be completed pursuant to the provisions of AR 135–200. The RA GCMCAs will make every attempt to complete administrative measures to be taken against a Soldier prior to release from AD.

b. A RC Soldier who is suspected or accused of an additional offense after being ordered to AD for any of the purposes in paragraph 20–3*a*, may be retained on AD pursuant to RCM 202(c)(1).

c. Costs associated with disciplining USAR Soldiers by USAR commanders will normally be paid from Reserve Personnel, Army, appropriations. However, costs (to include pay and allowances, and all authorized travel) associated with disciplining USAR Soldiers, when involuntarily ordered to AD or involuntarily extended on AD by an RA commander, will be paid from Military Personnel, Army, and Operations and Maintenance, Army appropriations, as appropriate.

20–5. Preservation of jurisdiction and punishment

a. All RC Soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a Title 10 duty status (see para 20–2) notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (see RCM 204(d)). Retired RC Soldiers are subject to recall to AD for the investigation of UCMJ offenses they are alleged to have committed while in a Title 10 duty status, for trial by court-martial, or for proceedings pursuant to UCMJ, Article 15, so long as the recall is in accordance with the procedures set out in paragraph 20–3.

b. Ordinarily, all lawful punishments remaining unserved when RC Soldiers are released from AD, ADT, AT, or IDT, including any uncollected forfeitures of pay, are carried over to subsequent periods of AD, ADT, AT, or IDT. However, any punishment imposed pursuant to UCMJ, Article 15 involving deprivation of liberty (for example, correctional custody, restriction, or extra duty) takes effect on the date imposed and continues for consecutive calendar days not duty days (such as IDT periods). Such punishments involving deprivation of liberty may only be interrupted where the Soldier so requests after a decision to appeal and pending the decision on the appeal. An RC Soldier may not be held beyond the end of a normal period of IDT for trial, or service of any punishment, nor may IDT be scheduled solely for the purpose of UCMJ action. Involuntary activation pursuant to paragraph 20–3*a* is authorized only in accordance with the procedures set out in paragraph 20–3*c*.

Section III

Nonjudicial Punishment Pursuant to UCMJ, Article 15 and Courts-Martial

20–6. Nonjudicial punishment (Article 15)

a. The provisions of chapter 3 that are not otherwise inconsistent with this chapter are applicable to the administration of NJP in the RC. In particular, commanders are reminded of the policy in paragraph 3–2, that nonpunitive or administrative remedies should be exhausted before resorting to NJP.

b. All RC Soldiers may receive NJP pursuant to UCMJ, Article 15, while serving in a Title 10 duty status on AD, ADT, AT, or IDT. The RC Soldiers may be punished pursuant to UCMJ, Article 15 while serving on IDT, provided that the proceedings are conducted and any punishment administered is served during normal IDT periods. Prior to taking such actions, RC commanders should consult with their supporting RC or RA SJA or command JA.

c. Either RC or RA commanders may punish RC enlisted Soldiers of their commands (see para 3–8).

d. Unless further restricted by higher authority (see para 3–7*c*), punishment for RC officers is reserved to the RA or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or to CGs in the RC officer's chain of command.

20–7. Summary courts-martial

a. RC Soldiers may be tried by SCM while serving in a Title 10 duty status (AD, ADT, AT, or IDT). RC Soldiers may be tried by SCM while serving on IDT, provided that the trial is conducted and punishment is served during normal IDT periods (see Discussion, RCM 204(b)(2)).

b. Either RC or RA SCMCAs may refer charges against RC Soldiers to trial by SCM. For offenses over which a special trial counsel exercises authority, an RC or RA SCMCA may only refer charges against RC Soldiers to trial by SCM after deferral by a special trial counsel. An RC SCMCA may refer charges to SCM while on IDT. However, UCMJ, Article 25 requires that the summary court officer must be on AD at the time of trial.

c. Commanders of MSCs should attach all Soldiers without an intermediate commander authorized to exercise NJP or SCM authority pursuant to UCMJ, Articles 15 and 24, to an appropriate subordinate commander for such purposes.

20–8. Special and general courts-martial

a. RC Soldiers may be tried by SPCM or GCM only while serving on AD.

b. For offenses over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may refer charges against an RC Soldier to trial by SPCM or GCM. For offenses over which a special trial counsel does not exercise authority, an AD convening authority will ordinarily refer charges against an RC Soldier to a SPCM or GCM. Special and general courts-martial of RC Soldiers will normally be conducted at the installation of the supporting RA GCMCA, as designated in appendix K of this regulation, or based upon an agreement of the supporting RA GCMCA, a different RA GCMCA, and the general officer in command of the RC unit. Authority for USAR commanders to convene SPCM or GCM is withdrawn, for USARC officers qualified as a GCMCA or SPCMCA, except for those specifically designated pursuant to UCMJ, Articles 22(a)(8) or 23(a)(7), or those designated in an exception to policy by TJAG or TJAG's designee.

c. Authority to convene SPCMs is withheld from USARC convening authorities to the Commander, USARC. The USARC commander or designee has the discretion to delegate SPCMCA on a case-by-case basis or as otherwise appropriate, so long as such delegation extends only to units with one or more full-time JA officers assigned. All such delegations, if any, should be in writing, signed by the USARC commander or designee.

d. This withholding of the authority to convene a SPCM or GCM does not deprive USAR officers who are otherwise qualified convening authorities of any other regulatory responsibilities or authorities, not involving the convening of courts-martial, tied to the SPCMCA or GCMCA.

20–9. Forfeitures

a. Consistent with DoD 7000.14–R, forfeitures imposed on RC Soldiers pursuant to UCMJ, Article 15 or court-martial will be calculated in whole dollar amounts. Forfeitures are calculated by converting the stated amount of forfeiture to a percentage using the base pay for an RA Soldier of the same grade and

time in service on the date the forfeiture sentence is approved. Apply the resulting percentage to the Soldier's pay for every period of duty the Soldier actually performs during the stated time period of the forfeiture. For example—

(1) A Soldier (SPC or CPL) over 2 years of service (for pay purposes) receives a sentence (either NJP or court-martial sentence) that includes a forfeiture of $500 a month for 2 months, for a total of $1,000.

(2) Next, determine the Soldier's monthly rate of base pay. In this example, it is $2,248.

(3) Then, convert the original forfeiture to a percentage: 500/2,248 = 22.24 percent.

(4) So, for each period of duty performed during the stated period of the sentence, collect 22.24 percent of the Soldier's pay from the Soldier's AD and IDT pay.

b. The forfeiture sentence is satisfied by collecting from the pay the Soldier receives for periods of duty the Soldier performs during the stated period of forfeiture. If a Soldier performs duty without forfeiture collections, the amount of forfeitures not collected becomes an amount due to the U.S. government.

c. The forfeiture sentence is satisfied by collection from pay for duty performed only during the stated period of forfeiture (for example, forfeitures are imposed for 2 months, then collections may only be made for 2 months, with the two-month period beginning on the date the forfeitures are imposed). If a Soldier performs no duty, or the Soldier's pay is insufficient to satisfy the forfeiture in full during the stated period of the forfeiture, no further collection action is authorized.

d. This paragraph applies only when the RC Soldier receives forfeitures from a court-martial or from NJP and the forfeitures are carried over to subsequent periods of IDT or ADT. If the RC Soldier receives forfeitures from a court-martial or from NJP in an AD status and does not revert to an inactive duty status during the execution of the punishment, then forfeitures are to be based upon the base pay for an RA Soldier of the same grade and time in service.

Section IV

Support Personnel and Responsibilities

20–10. Support personnel

a. For offenses over which a special trial counsel does not exercise authority, the SJA of the RA command designated in appendix K to support a USAR command will supervise prosecutions of USAR Soldiers. For offenses over which a special trial counsel has exercised authority and has not deferred, the SJA of the RA command designated in appendix K to support a USAR command will assist with prosecutions of USAR Soldiers as requested by the special trial counsel. The SJA of the RA command will coordinate personnel support when the RA commander convenes a court-martial against a USAR Soldier. RA JAs will serve as special trial counsel or as trial counsel. USAR JAs may supplement these prosecutions when feasible. When a USAR JA provides support, the SJA or special trial counsel, as applicable, will inform the USAR JA's immediate commander of that decision.

b. The USATDS office servicing the RA command will detail either RA or RC defense counsel in accordance with guidelines established by the Chief, USATDS.

c. The senior military judge designated to support the RA GCM jurisdiction supporting the RC command will detail RA or RC military judges in accordance with guidelines established by the Chief, U.S. Army Trial Judiciary.

20–11. Support responsibilities for Regular Army general court-martial convening authorities

The RA GCMCAs designated in appendix K of this regulation will support RC commands in accordance with this paragraph. When questions arise as to which RA command is responsible pursuant to appendix K because the USAR command consists of a widely dispersed subordinate command structure, the HQ of the USAR geographic or functional command will serve as the designated location, unless the interested RA GCMCAs agrees that another RA command is better suited to provide support. The RA GCMCA will—

a. Order RC Soldiers to AD for the purposes set out in paragraph 20–3. The orders will cite 10 USC 802(d) for authority. For offenses over which a special trial counsel has exercised authority and has not deferred, the RA GCMCA will coordinate with the special trial counsel before issuing an involuntary order to AD.

b. Forward requests for involuntary AD orders requiring secretarial approval in accordance with paragraph 20–3.

c. Coordinate the allocation of personnel, funds, and other resources to support the administration of military justice in the supported RC command.

d. Inform the MSC or state Adjutant General; Commander, USARC; or the Commander, FORSCOM as appropriate, of USAR actions pursuant to the provisions of the UCMJ involving USAR Soldiers assigned to USAR units located in the CONUS.

e. Inform the commander of the concerned ASCC of RC actions pursuant to the UCMJ involving RC Soldiers assigned to RC units located OCONUS.

f. When appropriate, order pretrial confinement for RC Soldiers in accordance with RCM 305 following involuntary AD approved in accordance with paragraph 20–3.

g. Make appropriate disposition of charges against RC Soldiers.

h. Arrange for orders placing RC Soldiers on AD status for duty as witnesses, counsel, military judges, court members, or other personnel of the court-martial.

20–12. Multiple component units

a. Commensurate with their positions and subject to restrictions found elsewhere in this regulation, RA, and USAR officers will exercise UCMJ authority over RA and USAR Soldiers assigned to their multiple component units (MCUs).

b. Authority and responsibility for military discipline over ARNG Soldiers not in Federal status rests with each state. Every ARNG element will have a designated state chain of command for purposes of military justice. Non-ARNGUS MCU commanders will forward recommendations for disciplinary action of ARNG Soldiers to the designated ARNG commander from the state of the respective ARNG element. The ARNGUS MCU commanders whose MCU includes ARNG elements from outside their own state, will forward recommendations for disciplinary action pertaining to such ARNG Soldiers to the designated ARNG commander from the state of that element.

c. For RA and USAR Soldiers assigned to an MCU with an ARNGUS commander, the RA and USAR will attach these Soldiers on orders for purposes of UCMJ administration to the nearest appropriate RA or USAR command. The ARNGUS unit commander will forward recommendations for disciplinary action pertaining to USAR or RA Soldiers to special trial counsel for offenses over which a special trial counsel has exercised authority and has not deferred and to the designated USAR or RA commander for offenses over which a special trial counsel does not exercise authority.

Chapter 21
United States Army Trial Counsel Assistance Program

21–1. General

This chapter governs the operations of TCAP. It sets forth information, policies, and procedures applicable to the support of trial counsel throughout the Army.

21–2. Mission

For offenses over which a special trial counsel exercise authority, the OSTC is responsible for the daily supervision and training of special trial counsel. For offenses over which special trial counsel do not exercise authority, the SJA and the chief of military justice are responsible for the daily supervision and training of trial counsel. TCAP's mission is to provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by trial counsel. TCAP provides publications and references for chiefs of military justice and trial counsel and conducts periodic advocacy and substantive legal training. TCAP can also assist the OSTC or an SJA office in the prosecution of specific cases. For offenses over which a special trial counsel does not exercise authority, the program serves as the liaison between chiefs of military justice and GAD concerning potential government appeals pursuant to UCMJ, Article 62.

21–3. Organization

TCAP functions as a part of GAD and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of TCAP is exercised by the Chief, GAD, for the Assistant Judge Advocate General for Military Law and Operations. Command functions other than operational control are provided

by the Commander, USALSA. The office is composed of a chief, deputy chief, and training and litigation officers, as necessary.

21–4. Training

a. TCAP conducts and facilitates advocacy and substantive legal courses as determined by the Chief, TCAP. The Chief, TCAP is responsible for the content of this training. TCAP staff will conduct on-site training when requested and when resources allow, and coordinate training offered by other agencies.

b. All new trial counsel will attend TCAP's Trial Advocacy Level 1 Courses (New Prosecutor's Course and Basic Trial Advocacy Course) unless granted an exception to policy by the trial counsel's SJA. Trial Advocacy Level 2 (Intermediate Trial Advocacy Course) will be offered annually by TJAGLCS. Other TCAP courses focusing on specialized issues will be offered for practitioners of all levels.

c. TCAP provides training through regular updates for chiefs of military justice and trial counsel. These updates inform counsel of time-sensitive decisions of appellate military courts, address specific problem areas of interest to trial counsel, and inform trial counsel on other related matters to develop litigation proficiency.

21–5. Technical assistance

a. Chiefs of military justice may request technical assistance or guidance from the TCAP and the GAD. Trial counsel may initiate such requests after coordination with the chief of justice, the Deputy SJA, or the SJA. Such requests may be telephonic or by electronic means by email at usarmy.pentagon.hqda-otjag.list.usalsa-tcap@army.mil. Such requests should describe the military justice matter at issue with reasonable specificity, identify any relevant suspense dates, and provide a telephone number.

b. TCAP counsel and GAD counsel are available for on-site assistance in unique or difficult cases. SJAs may request such assistance through the Chief, TCAP; the Chief, GAD; and the Assistant JAG for Military Law and Operations. The request should specify the name of the case, the unique factors requiring TCAP or GAD assistance, the period of time involved, and the extent of assistance desired. When the requesting unit requests that TCAP fund TDY and other associated expenses of providing the assistance, the Chief, TCAP will determine whether TCAP assistance will be provided and the extent of such assistance. The Chief, TCAP, and the requesting SJA will coordinate such assistance, including the specific involvement of TCAP or GAD counsel, and will notify the Assistant JAG for Military Law and Operations of the assistance. SJAs requesting TCAP or GAD technical assistance will fund all TCAP travel connected with the request. Exceptions to these funding rules may be made by the Assistant JAG for Military Law and Operations.

Chapter 22
United States Army Defense Counsel Assistance Program

22–1. General

This chapter governs the operations of DCAP. It sets forth information, policies, and procedures applicable to the support of defense counsel throughout the Army.

22–2. Mission

The RDC and SDC are responsible for the daily supervision and training of defense counsel. DCAP provides training, resources, and assistance for Army defense counsel worldwide. The program assists the Chief, USATDS on the development of USATDS policy and strategic initiatives.

22–3. Organization

DCAP functions as part of USATDS HQ and is an activity of TJAGLCS, a field operating agency of TJAG. Operational control and supervision of DCAP is exercised by the Chief, USATDS. Command functions other than operational control are provided by the Commander, TJAGLCS. The office is composed of a chief, deputy chief, training officers, a legal administrator, a paralegal NCO, two civilian attorney advisors, and other personnel as authorized by TJAG.

22–4. Training

a. As required by paragraph 6–6, the Chief, USATDS, is responsible for developing programs and policies to enhance the professional qualifications of defense counsel.

b. DCAP conducts training on substantive criminal law, leadership, professional responsibility, USATDS policy, trial strategy, and advocacy for each USATDS circuit. The Chief, DCAP is responsible for the content of this training. DCAP plans mandatory conferences for each RDC, SDC, CLDC, USATDS counsel, CLDPs, and defense investigators from CONUS and OCONUS circuits. In addition, DCAP will facilitate defense counsel attendance at training courses offered by other agencies.

c. DCAP provides training and practical resources through periodic legal updates, deskbooks, and online libraries containing motions, information papers, expert pages, and new developments in the law that are pertinent to the practice of a defense counsel.

d. Servicing SJAs, convening authorities, OSTC, and military judges will deconflict military justice requirements with USATDS training requirements unless impracticable.

22–5. Technical assistance

a. Defense counsel may request technical assistance or guidance from DCAP. Such requests may be telephonic, by electronic means, or in writing.

b. The Chief, USATDS is the approval authority for a defense counsel assigned to DCAP to be detailed as a defense counsel for any matter. The program's primary role is assistance to defense counsel with legal issues that may arise in their cases.

c. DCAP may assist USATDS counsel with responding to orders for an affidavit from USACCA when counsel's conduct at trial has been challenged on appeal.

d. DCAP also serves as the liaison between trial defense counsel and DAD concerning extraordinary writs.

22–6. Policy and strategic initiatives

The DCAP reviews, develops, and recommends changes to legislation, executive orders, Army regulations, Army pamphlets, and other policy and procedures that deal with trial defense support, including the UCMJ; the MCM, 2024; this regulation; and the USATDS standard operating procedures for Chief, USATDS.

Chapter 23
Prosecution of Criminal Offenses in Federal Courts

23–1. Scope

a. This chapter contains policies and procedures for prosecutions in U.S. District Court before either a district judge or a magistrate judge for violations of Federal law committed on Army installations or violations that involve Army interests or property. This chapter does not apply to military courts-martial.

b. An individual (whether civilian or military) who violates Federal law can be prosecuted in U.S. District Court or the Magistrate Division. These prosecutions can include, but are not limited to, the following situations: The violation of Federal law on a military installation by a civilian not subject to the UCMJ, or the commission of a serious offense by a Soldier where the DOJ seeks a Federal indictment and prosecution despite existing UCMJ jurisdiction. Routine traffic violations, whether the offender is military or civilian, are referred to the local U.S. Magistrate Division.

23–2. Authority

The following authorities apply to this chapter:

a. 18 USC 3401, which covers trials by U.S. magistrate judges.

b. 28 USC 515, which details authority for legal proceedings; commission, oath, and salary for special attorneys.

c. 28 USC 543, on the appointment of special attorneys by the Attorney General.

d. Rule 58, Federal Rules of Criminal Procedure, which covers procedures for petty offenses and other misdemeanors.

e. AR 190–45, which prescribes policy on misdemeanors and uniform notices referred to the U.S. magistrate or district courts.

23–3. Felony prosecution programs

a. General. The DOJ is responsible for prosecuting Federal offenses in U.S. District Court, whether before a district or a magistrate judge. It is often beneficial to both the Army and DOJ, however, to prosecute offenses in which the Army has an interest through a felony prosecution program, whereby one or more Army attorneys are appointed Special Assistant U.S. Attorneys (SAUSAs). A felony prosecution program can promote rapid and efficient prosecution of offenses in which the Army has an interest.

b. Authorization. If an installation SJA or legal advisor believes a felony prosecution program would be in the Army's best interest, the SJA or legal advisor will seek the views of the appropriate U.S. Attorney. If the U.S. Attorney agrees, the installation SJA or legal advisor will draft a mutually agreeable MOU. The SJA will forward the MOU and a request to begin the program to OTJAG–CLD.

23–4. Appointment of attorneys as Special Assistant U.S. Attorneys

a. General. Prosecutions in Federal court are a DOJ responsibility. SJAs or legal advisors often find it beneficial, however, to have one or more JA or DA Civilian attorneys appointed as SAUSA pursuant to 28 USC 543 to prosecute crimes in which the Army has an interest.

b. Procedure. The appropriate U.S. Attorney must agree to the appointment of an Army attorney as a SAUSA. The U.S. Attorney may find such an appointment to be in their best interest, as the U.S. Attorney gains an additional prosecutor at no additional expense to DOJ. If the U.S. Attorney agrees, they will forward the request for appointment to the U.S. Attorney General for approval (see 28 USC 543).

c. Supervision. Army attorneys acting as SAUSAs will be supervised in that role primarily by the U.S. Attorney's office. The SAUSAs will perform their duties consistent with the MOU between the U.S. Attorney and the SJA or legal advisor. SJAs and legal advisors will monitor prosecutions conducted by SAUSAs and will, if necessary, provide additional supervision.

d. Civil litigation. Any SAUSAs appointed to prosecute criminal cases will not undertake representation of the United States in civil litigation unless authorized by the Chief, Litigation Division.

23–5. Misdemeanors

a. General. Any individual, whether military or civilian, who commits a misdemeanor or infraction on a military installation or on Federal property can be prosecuted before a magistrate judge. The magistrate system is particularly well-adapted to dispose of traffic cases. Army attorneys appointed as SAUSAs can represent the United States before a magistrate judge.

b. Petition to U.S. District Court. If no magistrate judge has been designated to try misdemeanors committed on an installation, the SJA or legal advisor should request that the U.S. Attorney petition the U.S. District Court to designate a magistrate judge for that purpose. OTJAG–CLD should be notified of any unsuccessful attempts to have a magistrate judge designated.

c. Complaints, warrants, and citations. A magistrate judge has authority to issue arrest warrants based upon complaints filed with the court. Assistant U.S. Attorneys and SAUSAs prepare complaints and warrants in accordance with local court rules and procedures. As a rule, petty offenses committed in the presence of a police officer may be prosecuted on a citation or violation notice, but SAUSAs should consult local state law for exceptions.

d. Consent to be tried. A person charged with a misdemeanor may elect to be tried before a district judge rather than before a magistrate judge (see 18 USC 3401). The defendant must be informed of this right and should complete the U.S. Courts Administration Office Form 86A (Defendant Consent and Waiver). If permitted by MOU, an Army SAUSA may prosecute misdemeanors before a district judge when a defendant declines to consent to be tried by the magistrate judge.

e. Procedure. Attorneys designated to prosecute cases before a magistrate judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure.

f. Memorandum of understanding and request for authorization. The SJA or legal advisor should execute an MOU with the U.S. Attorney covering responsibilities and procedures for trials in magistrate court. Installations with a felony prosecution program should also include specific procedures for district court in the MOU governing that program. If the installation only has a Magistrate Court Program, then an MOU should be prepared and forwarded to OTJAG–CLD for approval of the program.

23–6. Witness expenses

SAUSAs will follow the procedures outlined in the *Justice Manual* (available at https://www.justice.gov/jm/justice-manual) for obtaining witnesses and funding for their travel. In misdemeanor

prosecutions, however, witness expenses that would be funded from the DA witness travel account if the case were a felony prosecution, are the responsibility of the installation prosecuting the case.

Chapter 24
Requirements for Processing Reports of Sex-Related Offenses, including Sex Offender Registration

24–1. General
This chapter implements 34 USC 20901 *et seq*., and DoDI 1325.07, which require military officials to notify state officials upon release of Soldiers or transfer of unconfined Soldiers who are convicted at SPCMs or GCMs of sexual offenses and offenses against minor victims. Soldiers convicted of either an offense requiring registration as a sex offender as set forth in Appendix 4 to Enclosure 2 of DoDI 1325.07 or of a civilian offense that requires sex offender registration are designated as "military sexual offenders" in this chapter. This chapter requires military sexual offenders to register with the provost marshal. Failure to register with the installation provost marshal as described in this chapter and in AR 190–45 may be punished for violating the UCMJ, Article 92. A military sexual offender whose conviction of an offense requiring registration as a sex offender is reversed on appeal will be removed from military sexual offender registrations and not required to register at new duty locations even if retrial is pending. The chapter provides additional guidance on the processing of sex-related offenses referenced in AR 600–37. This chapter also implements Section 535 of the FY19 NDAA by requiring completion of DD Form 3114 for every report of sexual assault involving a Soldier-subject and an adult victim regardless of the action taken.

24–2. Offenses requiring registration as a sex offender and sexually violent offenses
a. All of the offenses listed in Appendix 4 to Enclosure 2 of DoDI 1325.07 and 34 USC 20901 *et seq.* are both "offenses requiring registration as a sex offender" and "sexually violent offenses" for purposes of this regulation and other Army Regulations, including: AR 135–175, AR 135–178, AR 600–8–24, AR 601–100, AR 614–100, AR 601–210, AR 614–200, and AR 635–200.

b. A Soldier who is convicted at a SPCM or GCM of any of the offenses listed in Appendix 4 to Enclosure 2 of DoDI 1325.07 or 34 USC 20901 *et seq*., must register with the appropriate authorities in the jurisdiction (any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, or Indian Tribes) in which he or she will reside, work, or attend school upon leaving confinement, or upon conviction if not confined. Generally, this registration must take place within 3 days of release from confinement or within 3 days of conviction if not confined.

c. This paragraph also applies to Soldiers who are convicted by foreign governments of an equivalent or closely analogous offense to an offense requiring registration as a sex offender (see 34 USC 20911(5)(B) and U.S. DOJ, Office of the Attorney General, The National Guidelines for Sex Offender Registration and Notification, Final Guidelines, 73 Fed. Reg. 38030 (July 2, 2008)).

24–3. Trial counsel, special trial counsel, and provost marshal responsibilities
a. Notice to the accused of requirement to register. When an accused is found guilty at a SPCM or GCM of an offense requiring registration as a sex offender but the sentence does not include confinement, the trial counsel or special trial counsel, in the presence of the defense counsel, will immediately provide notice that the military sexual offender is subject to a registration requirement as a sex offender by requiring the military sexual offender to complete the acknowledgment, DD Form 2791 (Notice of Release/Acknowledgment of Convicted Sex Offender Registration Requirements). Failure of the trial counsel or special trial counsel to notify offenders required to register will not relieve those offenders of their duty to register.

b. Notice to others of accused's requirement to register following court-martial conviction. The trial counsel or special trial counsel will immediately notify the convicted Soldier's immediate commander of the Soldier's registration requirements and ensure that copies of the DD Form 2791 are distributed as follows:

(1) To both the immediate commander and the garrison commander.

(2) Filed in the allied papers of the ROT.

(3) Provided to the installation provost marshal where the military sexual offender is assigned or will be assigned.

(4) Filed in the military sexual offender's performance portion of the Soldier's AMHRR and unit file.

(5) Forwarded to OTJAG–CLD.

(6) Forwarded to Director U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134 and emailed to usarmy.belvoir.usacrc.mbx.mailcicr@army.mil.

(7) Provided, along with a copy of the STR, to U.S. Marshal's Service, IOD/SOIB/NSOTC, Military Liaison, CGN Tower, Suite 200 Washington DC 20530–0001 or by email at iod.nsotc@usdoj.gov.

(8) For convicted USAR Soldiers, forwarded to USARC, OSJA, 4710 Knox Street, Fort Bragg, NC 28310–5010 or by email to usarmy.usarc.usarc-hq.mbx.usarc-osja-mj@army.mil.

c. Notice to the accused of requirement to register following civilian conviction. When a Soldier is convicted by a state or Federal civilian court or a foreign government of an equivalent or closely analogous offense to an offense requiring registration as a sex offender, the trial counsel or special trial counsel, within 5 days of notice of conviction, will notify the military sexual offender of registration requirements and have the Soldier complete the acknowledgment, DD Form 2791.

d. Notice to others of accused's requirement to register following civilian conviction. The trial counsel or special trial counsel will ensure that copies of the DD Form 2791 are distributed as follows—

(1) To the installation provost marshal where the military sexual offender is assigned or will be assigned.

(2) Filed in the military sexual offender's performance portion of the Soldier's AMHRR and unit file.

(3) Forwarded to OTJAG–CLD.

(4) Forwarded to Director U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134 and emailed to usarmy.belvoir.usacrc.mbx.mailcicr@army.mil.

(5) Provided, along with a copy of the STR, to U.S. Marshal's Service, IOD/SOIB/NSOTC, Military Liaison, CGN Tower, Suite 200 Washington DC 20530–0001 or by email at iod.nsotc@usdoj.gov.

(6) For convicted USAR Soldiers, forwarded to USARC, Protection Directorate/Provost Marshall, 4710 Knox Street, Fort Bragg, NC 28310–5010 or by email at usarmy.usarc.usarc-hq.mbx.usarc-osja-mj@army.mil.

e. Provost marshal. Provost marshal responsibilities are set forth in AR 190–45.

24–4. Sexual offenders

Military sexual offenders are required by this chapter and AR 190–45 to register with the installation provost marshal and with state and local officials. Violations by military sexual offenders of the registration requirement are punishable pursuant to UCMJ, Article 92. Military sexual offenders subject to registration requirements as a sex offender in any state or U.S. territory in which they reside, are employed, carry on a vocation, or are a student, are also required to register with the provost marshal at the Army installation where assigned, where they are present for duty for more than 30 days, or when they reside on or are employed on a military installation, whether, or not they are on AD.

24–5. Processing of documented sex-related offenses (assignment consideration code L3)

a. In general. The implementing procedures described in this paragraph apply to RA Soldiers only. USARC and the applicable state or territory Adjutant General will use their respective procedures to process USAR and ARNG Soldiers with documented sex-related offenses. AR 600–37 mandates filing in the performance disciplinary folder of the AMHRR documentation of a court-martial conviction, NJP, or punitive administrative action for a sex-related offense listed in that regulation (documented sex-related offense). Punitive administrative action means any adverse administrative action initiated as a result of a sex-related offense and includes, but is not limited to, separation in lieu of court-martial, and memorandums of reprimand, admonishment, or censure, from all levels of command. The Commander, HRC, assigns an ASCO of L3 for Soldiers with documented sex-related offenses.

b. Responsibility. The servicing JA for the SCMCA of the Soldier with the documented sex-related offense is responsible for assisting the SCMCA's compliance with the documented sex-related offense processing requirements in AR 600–37. The servicing JA may consult OTJAG–CLD in such a case but is not required to do so.

c. Timeliness. The processing of documentation to HRC for L3 codes will be completed within five days of the completion of the military action requiring the L3 code.

d. Documenting sex-related offenses. The servicing JA will process requests for L3 codes with required documentation as follows:

(1) *Court-martial conviction.* A completed STR that shows a conviction for a sex-related offense, with an indication on the form that the conviction warrants an ASCO of L3 is sufficient documentation of a sex-related offense. An additional memorandum documenting a court-martial conviction is not required.

(2) *Nonjudicial punishment.* A completed DA Form 2627, and any supporting documentation, showing a guilty finding for one of the sex-related offenses listed in AR 600–37, with a statement in Block 10 that the guilty finding for a sex-related offense requires an ASCO of L3, signed, and dated by a servicing JA (with name and title). Commanders must file the DA 2627 for a qualified sex-related offense in the performance folder of the AMHRR.

(3) *Punitive administrative action.* A memorandum, signed by a legal advisor (with name and title), that includes the full name, last four of the SSN, grade, and unit of the Soldier, indicating that the punitive administrative action requires an ASCO of L3 for a documented sex-related offense, with the punitive administrative action and any rebuttal matters attached.

e. Processing sex-related offenses. The servicing JA will process requests for L3 codes with the required documentation listed in paragraph 24–5*d* through MJO. The Commanding General, HRC will file the documents received by MJO in the AMHRR and add the L3 ASCO to the Soldier's record brief.

24–6. Processing of offenses that require sex offender registration (assignment consideration code L8)

a. In general. The implementing procedures described in this paragraph apply to RA Soldiers only. USARC and the applicable state or territory Adjutant General will use their respective procedures to process USAR and ARNG Soldiers with offenses requiring sex offender registration. DoDI 1325.07 requires sex offender registration for conviction of any of the offenses listed in appendix 4 to enclosure 2 of that instruction. The Commander, HRC, has designated ASCO L8 for Soldiers either convicted of an offense requiring sex offender registration under applicable state or Federal law, or one that directly correlates to an offense requiring sex offender processing under appendix 4 to enclosure 2, DoDI 1325.07, regardless of the jurisdiction in which the conviction occurred. For purposes of this rule, a civilian conviction includes an action tantamount to a finding of guilty, if sex offender registration is required.

b. Responsibility. The servicing JA for the SCMCA of the Soldier with the conviction requiring sex offender registration is responsible for assisting the SCMCA's compliance with the requirements of Appendix 4 to Enclosure 2, DoDI 1325.07, AR 614–100 for enlisted Soldiers with such convictions, and AR 614–200 for officers with such convictions. The servicing JA may consult OTJAG–CLD in such a case but is not required to do so.

c. Timeliness. The processing of documentation to HRC for L8 codes will be completed within five days of the completion of the military action requiring the L8 code, or within five days of notice that a Soldier was convicted in a civilian court for an offense requiring sex offender registration.

d. Initiation of separation. Commanders will initiate administrative separation for Soldiers convicted of an offense that requires sex offender registration but who were not sentenced to a punitive discharge or dismissal (see AR 635–200).

e. Documenting and processing offenses that require sex offender registration. The servicing JA will process requests for L8 codes through MJO to HRC with required documentation as follows:

(1) *Court-martial conviction.* A completed STR that shows a conviction for an offense requiring sex offender registration as shown in appendix 4 to Enclosure 2, DoDI 1325.07 with an indication on the form that the conviction warrants an ASCO of L8, is sufficient documentation for this purpose. An additional memorandum documenting a court-martial conviction is not required.

(2) *Civilian conviction.* The servicing JA will assist the SCMCA in obtaining a certified copy of a judgment of a U.S. or foreign criminal court showing a conviction for an offense requiring sex offender registration. A signed memorandum from a legal advisor (with name and title), containing the full name, last four of the SSN, and grade of the convicted Soldier, stating the civilian conviction is for an offense that requires an ASCO of L8, along with the certified copy of the judgment of the court, is sufficient documentation for this purpose.

24–7. Mandatory Completion of DD Form 3114

Mandatory Use. JALS personnel must complete DD Form 3114 for every report of sexual assault involving a Soldier-subject and an adult victim regardless of what type of action was taken and whether action

was taken on the sexual assault offense, action was taken on a non-sexual assault offense involved in the incident, or no action was taken. Completed forms must be uploaded into MJO after completion of the action (see para 5–23). Training regarding proper completion of DD Form 3114 is available on MilSuite. Questions regarding DD Form 3114 can be directed to CLD, OTJAG.

Chapter 25
United States Army Court Reporter Program

25–1. General
This chapter governs the training, detailing, performance standards, technology to be used, and certification of military and DoD Civilian court reporters throughout the Army.

a. The Chief, OTJAG–CLD is responsible for—

(1) Developing and implementing court reporter doctrine and policy.

(2) Establishing Army court reporter performance standards and monitoring Army court reporter productivity.

(3) Establishing guidelines for required court reporter technology.

(4) Testing and evaluating court reporter technology.

b. The CG, TJAGLCS, is responsible for—

(1) Training JAs, legal administrators, and paralegals on courtroom and court reporting technology and procedures.

(2) Developing and implementing specific guidance regarding the process for certification and decertification pursuant to this chapter.

25–2. Training court reporters
a. TJAGLCS is responsible for the training of all DA court reporters. Training is accomplished at the Basic, Advanced, and Senior Court Reporter Courses, or any other courses as determined by the CG, TJAGLCS.

b. SJAs must send court reporters to the Advanced and/or Senior Court Reporter Course, at the appropriate intervals based on the court reporter's career development needs, demonstrated abilities, potential, and any other relevant factors. SJAs are encouraged to send court reporters to any other refresher or update courses offered at TJAGLCS. Funding is the responsibility of individual commands.

c. Availability for a 2-year utilization tour (AD personnel) upon completion of the Basic Court Reporter Course is a prerequisite for attending the course.

d. Successful completion of the Basic Court Reporter Course will entitle 27Ds to the additional skill identifier (ASI) C5, in accordance with AR 611–1, AR 614–200, and DA Pam 611–21.

25–3. Detailing of court reporters and oath requirements
a. See paragraph 5–5 for additional policy concerning the detailing of court reporters.

b. See chapter 10 for administering oaths to court reporters.

25–4. Court reporter performance standards metric
a. Court reporters producing transcripts using the Eclipse speech-to-text transcription program will produce, at minimum, the following averages:

(1) Court reporters with less than 6 months of experience with the Eclipse program will produce transcripts at a rate of 8 verbatim minutes of audio per hour.

(2) Court reporters with 6 to 18 months of experience with the Eclipse program will produce transcripts at a rate of 10 verbatim minutes of audio per hour.

(3) Court reporters with 18 months or greater experience with the Eclipse program will produce transcripts at a rate of 12 verbatim minutes of audio per hour.

b. Edits and corrections applied to a transcript during the recording of court proceedings will not be included in the time required to produce verbatim minutes of audio.

c. Rating officials should take special note of court reporters who produce high-quality transcripts at a rate of 15 verbatim minutes or more of audio per hour.

d. SJAs will coordinate with regional court reporter managers to establish local standards regarding errata commensurate with a court reporter's experience level.

25–5. Reports

a. The Chief, OTJAG–CLD, is responsible for evaluating the effectiveness of policies and the efficiency of procedures related to the Army court reporting as well as collecting and maintaining data that facilitates the effective distribution of workload across all jurisdictions.

b. SJAs will ensure that all courts-martial have been properly entered into MJO by the originating unit within the GCMCA. SJAs will ensure that court reporters and Court Reporter Regional Managers submit completed monthly Court Reporting Productivity Reports and update the Court Reporter Transcription and Personnel Tracker, in electronic form on Microsoft Teams not later than the 5th business day of each month. The report will cover the previous calendar month.

c. Each court reporter will maintain a record of the number of the assigned hours of audio pending transcription and any auxiliary duties that detract from dedicated transcription time to aid them and supervisors in monitoring individual productivity, minimizing distractions from production, and facilitating the reporting requirement in paragraph 25–5*b*.

d. The Chief, OTJAG–CLD may request further reports or data as necessary.

25–6. Management of court reporters

a. SJAs will —

(1) Provide the required equipment including hardware and software to their court reporters.

(2) Ensure that court reporters comply with established standards and processes to produce transcripts.

(3) Ensure that court reporters are provided requisite dedicated transcription time to meet mission demands.

(4) Review and, if necessary, revise civilian court reporter position descriptions (series 00319) to ensure that production of transcripts using speech-to-text transcription software is listed as a performance expectation/critical element for transcript production, and that appropriate productivity standards are addressed.

(5) Support transcription and other court reporter support requests from other jurisdictions in accordance with TJAG's court reporter regionalization policy.

b. The Chief, OTJAG–CLD will collaborate with HRC on all court reporter assignments. For mentoring and professional development, newly trained court reporters will be stationed with an experienced court reporter to the maximum extent practicable.

25–7. Reserve Component court reporters

a. RC paralegal specialists who satisfy the prerequisites may attend the Basic Court Reporter Course. Funding is the responsibility of the individual's command.

b. Reserve Commands with qualified court reporters will coordinate with their respective RA partner organization for the purpose of transcribing trial audio during unit drill periods in accordance with TJAG's RA/RC partnership policy.

c. SJAs in the RA and RC may award retirement points in the form of 2 points for each 80 pages of the transcript typed (one 8-hour day) during non-drill periods, subject to the policy and procedures in AR 140–185. Such retirement points will be recorded on DA Form 1380 (Record of Individual Performance of Reserve Duty Training).

d. RC paralegal specialists and NCOs, upon assignment to a C5-designated position, must complete training to serve as a court reporter within 12 months of assignment. If not certified within the 12-month period, the Soldier will be reassigned to a non-C5 designated position.

e. RA SJAs will use USAR court reporters to support courts-martial of RC Soldiers, to the maximum extent practicable.

25–8. Removing the C5 designation

a. All recommendations for removal of ASI C5 will be forwarded by the SJA to OTJAG–CLD.

b. TJAG is the approval authority to remove the C5 designation.

c. SJAs will notify TJAG, through OTJAG–CLD, when a court reporter's performance becomes substandard to the degree that it imperils that Soldier's ASI.

d. The Chief, OTJAG–CLD will provide guidance regarding training/retraining, counseling, and methods to improve the court reporter's performance and achieve the unit mission.

e. If a court reporter has been notified of substandard performance and does not respond to rehabilitative efforts, ASI removal recommendation must be initiated and forwarded to OTJAG–CLD. Other reasons to initiate removal of the ASI include, but are not limited to—

(1) Misconduct involving courtroom/case behavior.

(2) Loss of ROT.

(3) Removal of court reporter due to other misconduct.

(4) Failure to maintain performance standards of transcription.

(5) Decertification pursuant to AR 27–1.

(6) A request by the court reporter.

f. Other circumstances may require that the installation Command/Chief Paralegal NCO notify OTJAG–CLD as soon as practical. These circumstances include—

(1) Court reporter removed from duties due to investigation.

(2) A military judge requests that a court reporter is removed from a case due to ethical issues/conduct.

(3) Court reporter on extended convalescent leave or other unplanned absence from duties.

(4) Irreversible loss of audio or exhibits which cause a case's approved sentence to be reduced by the GCMCA or USACCA.

(5) The development of physical issues that prohibit a court reporter from performing court reporter duty.

g. Supervisors will include an appropriate annotation on the rating of an NCO who has their ASI removed pursuant to paragraphs 25–8*e*(1) through 25–8*e*(5) and AR 623–3, and a copy of such report will be forwarded through OTJAG–CLD to TJAG.

25–9. Court reporting equipment

a. The Chief, OTJAG–CLD will provide regular updates concerning the technical specifications of equipment required for Army court reporters.

b. SJAs will ensure that each court reporter has the following equipment and capabilities to record and transcribe courts-martial and other hearings:

(1) *Digital recording equipment.* Digital recording means the recording of audio that is stored into digital media (such as CDs or DVDs), network storage (shared folder on local network), and/or into a computer.

(2) *Backup recording equipment.* A complete and independent backup recording system in each Army courtroom, in addition to a primary digital recording system.

(3) *Other required recording equipment.* All key components of a courtroom digital recording system including, but not limited to: a dedicated computer with appropriate recording software, a high-quality closed microphone device suitable for extended periods of use, a complete set of high-quality microphones, a high-quality digital audio mixer, compatible peripheral components, and commercial internet capability (with the proper data bandwidth and download speed to allow proper functioning of speech-to-text software, mixer software, and shared editing).

(4) *Other required transcription equipment.* All key components of a court reporter transcription system including, but not limited to: a separate, stand-alone computer with appropriate transcription software, and a processor, memory, and storage appropriate for transcription of multi-day court-martial records, an open microphone device, a compatible foot pedal, at least one high-quality monitor capable of displaying a full page of text at normal size, and speech-to-text software which converts audio and spoken words into a written format.

(5) *Eclipse.* Eclipse is an integrated development environment used by court reporters to record proceedings, create, and edit transcripts with speech-to-text software, and redact transcripts.

Chapter 26
The Military Extraterritorial Jurisdiction Act of 2000

26–1. Applicability and purpose

a. The Military Extraterritorial Jurisdiction Act (MEJA) establishes Federal criminal jurisdiction over certain persons who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year (that is, a felony offense) for civilians employed by or accompanying the Armed Forces of the United States, certain members of the Armed Forces subject to the UCMJ, and former members of the Armed Forces.

b. No action should be taken pursuant to the authority of the MEJA without referring to the appropriate provisions of the Act, to DoDI 5525.11, and to Part 153, Title 32, Code of Federal Regulations (CFR). JAs should also reference directives established by their CCDR and DCOs for procedures in handling cases under the MEJA.

26–2. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. Ordinarily, the Chief, USATDS will provide qualified military counsel from among the defense counsel assigned within the USATDS circuit supporting the CCMD or DCO where the MEJA case arises. However, when the RDC determines that the workload within that circuit temporarily exceeds the capability of the defense counsel in that circuit to perform the regular USATDS mission, the RDC will state in writing the inability of USATDS to provide such counsel and the rationale behind that decision. In such instances, SJAs have the ultimate responsibility for providing qualified military counsel.

(1) The RDC may seek assistance from other RDC or HQ, USATDS in order to provide qualified military counsel. Whenever the RDC fails to provide qualified military counsel, either from within that circuit or from another circuit, the SJA may seek the opinion of the Chief, USATDS. Whenever the Chief, USATDS, determines that the USATDS workload does not allow for USATDS to provide qualified military counsel, the SJA will provide qualified military counsel from among SJA counsel assets.

(2) Whenever USATDS counsel must incur TDY costs in order to serve as qualified military counsel, such expenses will be funded by the SJA of the supported command.

b. Any JA assigned to USATDS and certified pursuant to UCMJ, Article 27(b) may be considered qualified military counsel pursuant to DoDI 5525.11. Those qualified military counsel within the circuit supporting the CCMD or DCO's command may be considered reasonably available for any initial proceedings within their area of responsibility. The Federal magistrate appoints qualified military counsel, as necessary, to represent an individual for initial proceedings under the MEJA.

c. The Chief, USATDS will establish procedures to assist CCMD SJAs and DCO SJAs in preparing, updating as necessary, and making available to Federal magistrate judges upon request, a list of qualified military counsel who are determined to be reasonably available for the purpose of providing limited representation at initial proceedings required by the MEJA.

d. The RDC will ensure that each field and branch office under their supervision maintains or has readily available a current copy of the MEJA and DoDI 5525.11 and its implementing 32 CFR 153. The RDC will assist CCMD SJAs and DCO SJAs by ensuring that in all cases in which a qualified military counsel is provided for initial proceedings required by the MEJA, the person arrested or charged under the MEJA is informed that any qualified military counsel made available will be only for the limited objective of representing that person in any initial proceedings required by the MEJA. Such individuals will also be informed that such representation does not extend to further legal proceedings. Qualified military counsel will use an "Acknowledgment of Limited Legal Representation" form to complete this notice (see enclosure 4 to DoDI 5525.11).

e. The RDC will ensure that a copy of the "Acknowledgment of Limited Legal Representation" form is provided to the person arrested or charged under the MEJA, as well as to the qualified military counsel. The RDC will also ensure the original acknowledgment form is forwarded to the office of the DCO SJA for filing in accordance with DoDI 5525.11.

Chapter 27
Procedures Related to Civilians Subject to UCMJ, Pursuant to Article 2(a)(10)

Section I

General

27–1. Scope

The following provisions implement Section 552, Act of 17 October 2006, Public Law 109–364; and Secretary of Defense Memo dated March 10, 2008. This chapter addresses UCMJ disciplinary procedure, to include court-martial procedures for civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered pursuant to UCMJ, Article 2(a)(10)). These procedures supplement the court-martial procedures set forth in chapter 5 of this regulation.

Where a conflict exists between these procedures and those set forth in chapter 5, the provisions of this chapter will govern personnel covered pursuant to UCMJ, Article 2(a)(10).

27–2. Applicability and purpose

a. UCMJ, Article 2(a)(10) extends criminal jurisdiction to civilians serving with or accompanying the Armed Forces in the field, during time of declared war or contingency operation. Any civilian who engages in conduct that would constitute an offense punishable pursuant to the UCMJ, while serving with or accompanying the Armed Forces of the United States in the field, is subject to jurisdiction pursuant to UCMJ, Article 2(a)(10).

b. No action should be taken pursuant to the authority of UCMJ, Article 2(a)(10) without referring to the appropriate provisions of the UCMJ, RCMs, and MREs, as well as all pertinent DoD and DA issuances, and this regulation. JAs must also review any directives established by their CCDRs and other commanding officers for local procedures related to UCMJ, Article 2(a)(10) jurisdiction.

c. The exercise of jurisdiction over civilians pursuant to UCMJ, Article 2(a)(10) is generally warranted where there otherwise would be no U.S. Federal criminal jurisdiction, Federal authorities decline or are unable to exercise jurisdiction, the host nation has no local criminal jurisdiction or declines such jurisdiction or is unable to exercise jurisdiction, or when the conduct in question is adverse to a significant military interest of the United States.

d. Jurisdiction under this chapter applies to third-country nationals serving with or accompanying the force in the field. Before proceeding with a UCMJ action against a foreign national, commanders must coordinate through their SJAs with OTJAG–NSLD to determine whether notification of the foreign national's government is necessary.

e. Commanders will not initiate or proceed with court-martial actions pursuant to UCMJ authority against civilians for matters in which the DOJ has asserted jurisdiction under the MEJA, 18 USC 3261, or other extraterritorial application of Federal law. This does not preclude military authorities in deployed environments from responding to an incident, restoring safety and order, investigating offenses, apprehending offenders, or otherwise addressing the immediate needs of a situation.

27–3. Court-martial jurisdiction

a. In general, chapter 5 of this regulation is applicable to civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered pursuant to the provisions of UCMJ, Article 2(a)(10)).

b. Definitions.

(1) "Serving with" is a term that applies to those civilians serving with the Armed Forces outside the United States. This group comprises civilian employees of the DoD (including a nonappropriated fund instrumentality of DoD) and DoD contractors (including a subcontractor at any tier), employees of DoD contractors (including a subcontractor at any tier), and others working in conjunction with U.S. Forces, if they work alongside military personnel, or if the manner in which they perform their work and conduct their personal activities have a direct bearing on the efficiency, discipline, and reputation of the forces in the area in which they are operating. (See *United States v. Burney*, 21 CMR 9827 (1956)).

(2) "Accompanying an armed force" is a term that applies to those civilians accompanying an armed force outside the United States. Their presence must be connected with or dependent upon the activities of the armed forces or its personnel; a presence within a military installation may constitute "accompanying" if it is more than merely incidental. One can be accompanying a force even though the person's service or government contract has ended, because of continued presence with the force under circumstances that require the force to secure, house, feed, or exercise other pervasive military control over the civilian person. (See *Perlstein v. United States et al.*, 151 F. 2d. 167 (3rd Cir. 1945)).

(a) It excludes from its reach those civilians employed by or accompanying the Armed Forces who are nationals of the host nation or ordinarily resident in the host nation.

(b) Non-DoD Federal employees may be subject to UCMJ, Article 2(a)(10) jurisdiction if the manner in which they perform their work and conduct their personal activities fits within the definitions given in paragraphs 27–3*b*(1) and 27–3*b*(2).

(c) Third-country nationals may be subject to UCMJ, Article 2(a)(10) jurisdiction if they are DoD employees, DoD contractors or subcontractors, or employees of the same, or if the manner in which they perform their work and conduct their personal activities fits within the definitions given in 27–3*b*(1) and (2).

(3) An “armed force” is the Army, Navy, Air Force, Marine Corps, Space Force and Coast Guard (see 10 USC 101(a)(4)).

(4) “In the field” implies military operations with a view toward the enemy—not to be determined by locality in which the armed force is found, but rather by the activity in which it is engaged. (See *Hines v. Mikell*, 259 F. 28 (4th Cir. 1919) and *McCune v. Kilpatrick*, 53 F. Supp. 80 (E.D. Virginia 1943)).

(5) “Declared war” is a congressionally declared war.

(6) A “contingency operation” means a military operation as designated by the Secretary of Defense or by operation of law (see 10 USC 101(a)(13)).

c. Authority to exercise court-martial convening authority and impose NJP against personnel subject to jurisdiction under UCMJ, Article 2(a)(10) is withheld in all cases to commanders of geographic CCMDs, and those commanders assigned or attached to the CCMD who possess the authority to convene a GCM. Certain civilian personnel may be assigned to a GCMCA upon arrival into the overseas area or theater of operation. If not already assigned, a civilian subject to UCMJ, Article 2(a)(10) jurisdiction may be attached to a GCMCA and military chain of command once the alleged misconduct is discovered.

(1) Personnel subject to jurisdiction under UCMJ, Article 2(a)(10) are considered to be “of the command” of a commander if they are—

(a) Assigned to an organization commanded by that commander; or

(b) Affiliated with the command (by attachment, detail, or otherwise) under conditions, either expressed or implied, that indicate that the commander of the unit to which affiliated and the commander of the unit to which they are assigned is to exercise administrative or disciplinary authority over them; or

(c) Attached to the command. Upon discovery of allegations of misconduct by civilian personnel subject to jurisdiction pursuant to UCMJ, Article 2(a)(10), action should be taken to ensure that the person is attached to a command closest to the area where they are assigned or performed the majority of their duties. This is normally accomplished through written orders or command directives.

(2) A commander may be assigned territorial command responsibility for UCMJ, Article 2(a)(10) personnel so that all or certain civilian personnel in the geographic area will be considered to be of the command for the purpose of establishing an appropriate GCMCA authority.

(3) To determine if an individual is of the command of a particular commanding officer, refer first to those written or oral orders, directives, or contracts that affect the status of the individual. If orders, directives, or contracts do not expressly confer authority to administer UCMJ to the commander of the unit with which the individual is affiliated or present (as when, for example, they contain no provision attaching the individual “for disciplinary purposes”), consider all attendant circumstances, such as—

(a) The wording used in the orders.

(b) Where the civilian slept, ate, was paid, and performed duty, as well as the duration of the status, and other similar factors.

(4) If orders or directives include such terms as “attached for administration of military justice,” or simply “attached for administration,” the individual so attached will be considered to be of the command.

(5) If not already assigned to a GCMCA upon arrival into the overseas area or theater of operation, a civilian subject to UCMJ, Article 2(a)(10) jurisdiction may be attached to a GCMCA once the alleged misconduct is discovered. When existing circumstances do not provide for a clear chain of military command over a civilian suspected of committing a UCMJ offense, commanders may issue orders and directives attaching a civilian to a chain of command to establish the authority of that chain of command to process UCMJ actions. This attachment should be directed or ratified at the GCMCA level to avoid confusion about the appropriate chain of command for civilian suspects.

d. To determine whether an individual is subject to Article 2(a)(10) jurisdiction, command, and control relationships must be reviewed to determine their assignment, duty, and/or position. Command and control relationships often change to meet the needs of particular deployments. Therefore, what may be appropriate command and control structure during peacetime or at a person’s normal place of work may be different in the field.

(1) While overseas or in the theater of operations, personnel subject to jurisdiction under UCMJ, Article 2(a)(10) may be within the geographic area of a military chain of command.

(a) The on-site supervisory chain of command will perform the normal supervisory personnel functions for U.S. government personnel; for example, those related to performance evaluations, task assignments and instructions, and initiating and effecting recognition and disciplinary actions. Contract supervisory personnel will perform the same supervisory personnel functions for persons for whom they are responsible, as defined by the terms of the contract.

(b) Contracts specify the terms and conditions under which they are to be performed. Contracting personnel give contractors guidance and direction on routine matters of contract performance. A contractor's failure to perform the terms of the contract and any modifications made by contracting personnel would not normally be the basis for UCMJ action but may provide a basis for contractual remedies available to the government. The ranking military commander, however, may give contractors and their employees orders, whether, or not within the scope of the contract, that are enforceable under the UCMJ if reasonably necessary to protect the armed force and accomplish a military mission. Further, contractors, and their employees must comply with all general orders applicable to DoD Civilian personnel in the area of operations, as defined by the terms of the contract.

(2) Personnel subject to jurisdiction under UCMJ, Article 2(a)(10) who are DoD Civilian employees remain subject to the normal administrative disciplinary procedures within the civilian personnel system and are subject to disciplinary actions taken in accordance with the UCMJ by their supervisory chain of command.

e. The UCMJ, Article 2(a)(10) jurisdiction over civilians suspected of a UCMJ violation does not terminate when the civilian leaves the overseas area. However, the Secretary of Defense has withheld authority to exercise court-martial convening authority and impose NJP over persons subject to UCMJ, Article 2(a)(10) jurisdiction with respect to the following:

(1) Offenses committed within the "United States," which includes the several states of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States;

(2) Civilians who were not at all times during the alleged misconduct located outside the United States;

(3) Civilians who at the time court-martial charges are preferred or notice of UCMJ, Article 15 proceedings are given are located within the United States.

f. When appropriate, personnel subject to jurisdiction under UCMJ, Article 2(a)(10) may be attached to a unit, installation, or activity for court-martial jurisdiction and the general administration of military justice. This includes related civilian personnel actions.

g. Civilians serving with or accompanying the Armed Forces outside the United States who are not nationals of the United States will be informed of the jurisdiction of the UCMJ, Article 2(a)(10) when they are hired for overseas employment or on sponsorship into the overseas command, assigned to a GCMCA upon their arrival into the overseas area or theater of operation, or after being attached to a GCMCA upon the discovery of alleged misconduct, whichever event is first applicable.

(1) Such notice will also be provided during employee training and any briefings provided to these civilians when they first arrive in the foreign country in which they will be assigned, employed by, or accompanying the Armed Forces. Knowledge of UCMJ, Article 2(a)(10) jurisdiction and its potential consequences serves as a deterrent in helping preserve good order and discipline in military communities outside the United States.

(2) Failure to provide the notice, briefings, or information about the jurisdiction pursuant to UCMJ, Article 2(a)(10) pursuant to paragraph 27–3*c*(1), will not create any rights or privileges in the persons referenced, and will not operate to defeat the jurisdiction of a court-martial or any other court of the United States or provide a defense or other remedy in any proceeding arising pursuant to the UCMJ.

(3) Each GCMCA will ensure that training is provided to civilian personnel who are designated and authorized pursuant to the UCMJ and other DoD policies to make arrests outside the United States of civilians who allegedly have committed violations implicating UCMJ, Article 2(a)(10). The training, at a minimum, should include the rights of individuals subject to arrest.

27–4. Panels

A civilian accused, subject to jurisdiction pursuant to UCMJ, Article 2(a)(10), whose case has been referred to trial at a SPCM or GCM, will be tried by a court-martial consisting of a panel of officers unless the accused elects to be tried by military judge alone. The GCMCA or special trial counsel, as applicable, can refer a civilian accused to a court-martial with an existing (standing) panel, or appoint a panel specifically to hear the case of a particular civilian accused. For a civilian accused being tried pursuant to UCMJ, Article 2(a)(10), convening authorities and military judges should, if possible, exclude panel members who are junior in grade to the accused, and consider the equivalency of civilian grades to military ranks when selecting or excusing panel members (see table 27–1). When there is no method of determining equivalency of the civilian accused's status or position, the convening authority should prepare a written statement to this effect for the record at the time the court-martial is convened.

Table 27–1 Civilian and military grade equivalents—Continued
Accused civilian GS grade: Senior executive service **Military grade equivalent:** General officer
Accused civilian GS grade: GS–15 **Military grade equivalent:** COL (O–6)
Accused civilian GS grade: GS–13, GS–14 **Military grade equivalent:** LTC (O–5)
Accused civilian GS grade: GS–12 **Military grade equivalent:** MAJ (O–4)
Accused civilian GS grade: GS–10, GS–11 **Military grade equivalent:** CPT (O–3)
Accused civilian GS grade: GS–8, GS–9 **Military grade equivalent:** 1LT (O–2)
Accused civilian GS grade: GS–7 **Military grade equivalent:** 2LT (O–1)

Section II

Processing the Action

27–5. Notification

a. Commanders below the GCMCA level will expeditiously forward all allegations of misconduct that may be subject to UCMJ, Article 2(a)(10) jurisdiction to the first GCMCA in the suspect's chain of command.

b. Any military authority, including a military law enforcement agency, that receives a report of an offense committed by a civilian person potentially subject to UCMJ, Article 2(a)(10) will, at the initiation of the investigation, and during all critical stages thereof, notify special trial counsel if the alleged misconduct involves a covered offense and the OSJA for the command possessing GCMCA authority over the civilian person, the area in which the offense occurred, and/or where the person is located.

c. Upon the discovery or report of allegations of UCMJ offenses by civilians potentially subject to UCMJ, Article 2(a)(10) jurisdiction, the SJA will immediately notify the Chief, OTJAG–CLD, the Chief, OTJAG–NSLD, and the LSTC, if applicable, and provide an unclassified executive summary that includes—

(1) Name, grade, SSN, last known U.S. residence and unit or agency of employment or contractor (including subcontractor and prime contractor) that employs the accused.

(2) Offense(s) of which the accused is suspected.

(3) Date(s) of the suspected incident(s) or offense(s).

(4) Conditions of restraint, if any.

d. The GCMCA concerned, through the SJA or the special trial counsel, as applicable, must notify by email the respective CCDR of any intended disposition by courts-martial or NJP. The GCMCA, or special trial counsel, if applicable, will not allow preferral of charges or imposition of NJP against UCMJ, Article 2(a)(10) personnel prior to coordination with the CCDR.

e. For all cases in which disposition pursuant to UCMJ, Article 2(a)(10) is contemplated, the CCDR must provide notice in writing to the DOJ, Domestic Security Section, Criminal Division, at 950 Pennsylvania Ave., Washington, DC 20530–0001, or by email: criminal.division@usdoj.gov. Where the alleged offense involves an allegation of an offense over which special trial counsel has exercised authority and has not deferred, the CCDR will also coordinate with the LSTC prior to notifying the DOJ. No further UCMJ action will be taken until such time as the DOJ determines whether it will assert Federal jurisdiction (normally within 14 business days).

f. While awaiting the notice, action pursuant to RCM 306–308, and 401–406 is prohibited (see also para 27–6).

g. After initial notification under paragraph 27–5*c*, updates to OTJAG–CLD, are required until completion of any UCMJ action. Notification within legal technical channels is designed to improve

communications within the DoD while at the same time protecting the accused's right to a fair trial, free from UCI (see para 5–14).

h. The GCMCA through the SJA or the special trial counsel, as applicable, should notify the entity listed in paragraph 27–5*i,* when a civilian is—

(1) Apprehended under circumstances likely to result in confinement or trial by court-martial;

(2) Ordered into arrest or confinement;

(3) Held for trial with or without restraint; or

(4) When court-martial charges against the accused are preferred and referred for trial.

i. Employment or contracting agency to be notified.

(1) Where an offense was committed by a DoD employee (noncontractor personnel), the SJA will notify, and coordinate with, the employee's immediate supervisor as well as the applicable human resources office and/or labor and employment counsel.

(2) Where an offense was committed by a non-DoD Federal agency civilian who is otherwise subject to UCMJ, Article 2(a)(10), the SJA must notify the applicable Federal agency or parent agency of the individual suspected of misconduct.

(3) Where an offense was committed by a non-Federal civilian (that is, an employee, contractor, subcontractor at any tier, or employee thereof) who is otherwise subject to UCMJ, Article 2(a)(10), the SJA must notify the applicable contracting officer and/or contracting officer technical representative and Army Procurement Fraud Division, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(4) Where an offense was committed by a third-country national who is otherwise subject to UCMJ, Article 2(a)(10), the SJA must notify the applicable Federal agency or parent agency of the individual suspected of misconduct.

j. The SJA will notify the SDC of the servicing USATDS Field Office when—

(1) A civilian is ordered into pretrial confinement, or

(2) Court-martial charges against a civilian are preferred.

27–6. Commander's authority

Commanders have authority to disarm, apprehend, and detain civilians subject to UCMJ, Article 2(a)(10) jurisdiction suspected of committing an offense in violation of the UCMJ. Pursuant to an investigation of misconduct by personnel subject to jurisdiction under UCMJ, Article 2(a)(10), a commander may authorize a search in accordance with MRE 315.

27–7. Criminal investigations, commander's inquiries, and investigations pursuant to Army regulation 15–6

Criminal investigations, commander's inquiries, or investigations in accordance with AR 15–6 into allegations of suspected misconduct may be initiated or may continue while awaiting a response from the DOJ or the CCDR as to whether Federal jurisdiction will be asserted or whether UCMJ jurisdiction will be withheld.

27–8. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. An accused pursuant to UCMJ, Article 2(a)(10) is entitled to military defense counsel in the same manner and under the same provisions that apply to Soldiers (see chap 6 of this regulation).

b. An accused may seek to be represented by civilian defense counsel. Civilian defense counsel representation will not be at the expense of the DoD or the military departments.

c. To the extent practicable, military authorities will establish procedures by which civilians arrested or charged pursuant to UCMJ, Article 2(a)(10) may seek the assistance of civilian defense counsel by telephone. Consultation with such civilian counsel will be private and protected by attorney-client privilege.

d. Civilian defense counsel practicing in host nations do not gain DoD sponsorship, or any diplomatic status, as a result of their role as defense counsel. To the extent practicable, notice to this effect will be provided to the civilian defense counsel when the civilian defense counsel's identity is made known to appropriate military authorities.

27–9. Pretrial restraint or confinement

a. A GCMCA, or designee (brigade commander in the grade of O–6), may order the pretrial restraint, or pretrial confinement, pursuant to RCMs 304 and 305, of UCMJ, Article (2)(a)(10) personnel, within the GCMCA's area of responsibility outside the United States, who is suspected of violating the UCMJ. The

GCMCA, or designee, may determine that the personnel subject to jurisdiction under UCMJ, Article (2)(a)(10) need not be held in restraint or confinement pending the receipt of notification from the CCDR required by paragraph 27–5. All pretrial restraint or confinements must comply with the provisions of RCMs 304 and 305.

b. Personnel subject to jurisdiction under UCMJ, Article (2)(a)(10) who are apprehended for suspected UCMJ violations, pursuant to RCM 302, may be placed in pretrial confinement in military detention facilities for a reasonable period, in accordance with RCMs 304 and 305 and the regulations of the military departments responsible for the confinement facility.

c. Absent emergency or exigent circumstances, personnel subject to jurisdiction under UCMJ, Article 2(a)(10) will not be placed in pretrial confinement prior to notification of the SJA of the commander exercising GCMCA authority, who must ensure that the civilian is assigned or attached to the command prior to imposition of pretrial confinement and that the pretrial confinement is warranted and in accordance with RCM 305. The accused is entitled to representation by USATDS counsel (or a civilian counsel, as outlined in para 27–8) at all pretrial confinement hearings.

27–10. Action by convening authority after a response is received

a. If the DOJ elects to exercise Federal criminal jurisdiction over the case, neither the CCDR, a lower level convening authority, nor special trial counsel is authorized to take action to dispose of the charges by court-martial or NJP proceedings. If the DOJ asserts jurisdiction under MEJA, the procedures contained in the statute and DoD directive concerning MEJA (chap 26 of this regulation) must be followed. In cases where the DOJ asserts jurisdiction under Federal law with extraterritorial application, MEJA procedures can be used as a guide for supporting DOJ actions.

b. If the DOJ determines that the exercise of Federal criminal jurisdiction is not applicable or is not warranted, the CCDR will so notify the respective GCMCA or special trial counsel, as applicable of that determination. For offenses over which a special trial counsel does not exercise authority, the CCDR will also advise the GCMCA whether the CCDR will withhold UCMJ authority in a particular case.

c. Neither the GCMCA nor special trial counsel is required to initiate further action to dispose of the case. If it is appropriate to consider resolving the matter pursuant to the UCMJ, including preferring court-martial charges or NJP, the accused who is subject to UCMJ, Article 2(a)(10) jurisdiction will be, if not already, attached to a chain of command to include a company, battalion, and brigade commander, to the extent it is practicable. For allegations of covered offenses, a special trial counsel will make an initial determination in accordance with RCM 303A. For offenses over which a special trial counsel does not exercise authority, the company or battalion commander will receive the case and determine whether it is appropriate to prefer charges, impose NJP or take any other appropriate action. If charges are preferred, the charges will be processed in accordance with RCM 401 or RCM 401A, as applicable. For offenses over which a special trial counsel has exercised authority and has not deferred, only the special trial counsel may refer the charges to a SPCM or GCM. For offenses over which a special trial counsel does not exercise authority, the authority to refer such charges to either a SPCM or GCM is withheld to the GCMCA (see chap 5 of this regulation).

d. The convening authority's SJA or special trial counsel, as applicable, must notify OTJAG–CLD of the following information upon preferral of any cases pursuant to UCMJ, Article 2(a)(10):

(1) Name, grade, SSN, date of birth, race, and unit of the accused.

(2) The offenses with which the accused is charged.

(3) The names, sex, or ages, and military or civilian statuses of the victims.

(4) The date of preferral and referral.

(5) Whether the accused is in pretrial confinement and the date confinement began.

(6) The names of the military judge, trial counsel, special trial counsel, if applicable, and defense counsel in the case.

e. A copy of the notice must be incorporated as part of the allied papers of the court-martial ROT, if any.

27–11. Sentencing

a. With respect to personnel subject to jurisdiction under UCMJ, Article 2(a)(10), trial or special trial counsel and defense counsel may, at their discretion, present to the military judge copies of any available personnel records that reflect the past conduct and performance of the accused (see para 5–37 for examples).

b. The following punishments authorized pursuant to RCM 1003(b) are applicable in cases where jurisdiction over the accused is based on UCMJ, Article 2(a)(10). No other punishments listed in RCM 1003(b) are authorized.

(1) A fine may be imposed in all cases as a monetary penalty on personnel subject to jurisdiction under UCMJ, Article 2(a)(10), including in any case where the accused was unjustly enriched as a result of the offense to which the accused was convicted.

(2) Restriction to specified limits.

(3) Confinement.

c. NJP is also authorized and will be imposed only in accordance with UCMJ, Article 15; Part V, MCM, 2024; the guidance in the Secretary of Defense Memo dated 10 March 2008 (see appendix F); and chapter 3 of this regulation.

27–12. Post-trial procedure and review of courts-martial

The provisions of UCMJ, Articles 59 through 76, are applicable to court-martial proceedings involving personnel subject to jurisdiction under UCMJ, Article 2(a)(10).

27–13. Processing the action

See table 27–2 for steps for processing reports of civilian misconduct.

Table 27–2
Steps in processing reports of civilian misconduct—Continued

Step	Action	Actor	Notes
1	Receive report of civilian misconduct	Chain of command	Notification to special trial counsel required if the alleged misconduct involves a covered offense
2	Determine if civilian is subject to UCMJ jurisdiction pursuant to UCMJ, Article 2(a)(10)	GCMCA	In coordination with SJA
3	Initiate investigation	CID, MPI, or IO	May be conducted by law enforcement agency or by an investigating officer appointed in accordance with AR 15–6 or RCM 303
4	Notify OTJAG Criminal Law Division, OTJAG National Security Law Division, and LSTC, as applicable	SJA	nth
5a	Notify civilian employee's immediate supervisor, human resources office, and the labor and employment counsel	SJA	Only for Federal civilian employees
5b	Notify contracting officer (or contracting officer technical representative) and the Army Procurement Fraud Division	SJA	Only for contractor personnel
6	Evaluate facts after investigation, and determine if UCMJ action is appropriate	GCMCA, in coordination with SJA or special trial counsel, as applicable	Apply criteria in the Discussion, RCM 306(b) or the criteria in RCM 306A, as applicable
7	Notify CCDR if UCMJ action is being considered	GCMCA, in coordination with SJA or special trial counsel, as applicable	If there is Federal civilian jurisdiction, so advise CCDR
8	Notify DOJ through the DoD Office of General Counsel to determine if DOJ will exercise jurisdiction	CCDR and SJA in coordination with LSTC, if applicable	
9	Receive response from DOJ	CCDR and SJA in coordination with LSTC, if applicable	Through DoD Office of General Counsel
10	Receive response from CCDR	GCMCA or special trial counsel, as applicable	Indicates if DOJ will take jurisdiction and if CCDR will withhold authority, if applicable
11	Return case to companyor battalion-level command for recommendations or special trial counsel for disposition, as applicable	GCMCA or special trial counsel, as applicable	If not already assigned or attached to a chain of command, attach civilian to a unit prior to preferral of any charge

Table 27–2
Steps in processing reports of civilian misconduct—Continued

Step	Action	Actor	Notes
12	Decide whether to prefer charges	Company or battalion commander or special trial counsel, as applicable	sr which a special trial counsel does not exercise authority, if charges are preferred, the chain of command also recommends disposition (level of court-martial) in accordance with
13	Notify OTJAG Criminal Law Division	SJA or special trial counsel, as applicable	ath
14a	Appoint UCMJ, Article 32 preliminary hearing officer	SPCMCA, in coordination with TC or at the request of the special trial counsel	When considering a GCM recommendation
14b	Forward to GCMCA	SPCMCA, in coordination with TC or special trial counsel, as applicable	After UCMJ, Article 32 hearing, or when SPCM is recommended
15	Decide whether to refer charges	GCMCA in coordination with SJA, or special trial counsel, as appliable	SPCM or GCM, NJP administrative measures, or returning the case to the accused's supervisor to be handled as a civilian personnel matter

Chapter 28
Capital Litigation

28–1. Applicability and purpose

a. This chapter sets forth the policies and procedures for all Army cases in which an accused is charged, or could be charged, with an offense that may subject the accused to the death penalty, and for which there is probable cause that an aggravating factor exists as set forth in RCM 1004(c). The provisions of this chapter apply regardless of any present intention of the GCMCA or special trial counsel, as applicable, to refer charges that may subject the accused to the death penalty.

b. This chapter does not apply to cases referred capital prior to 1 January 2019. Refer to appendix L for cases referred capital prior to 1 January 2019.

28–2. Reports in capital cases

a. In general. This paragraph establishes special reporting requirements for capital offenses and courts-martial. Such reports are designed to improve situational awareness and communications with the DoD, while at the same time protecting an accused's right to a fair, complete evaluation of a case and the exercise of independent discretion. Information forwarded pursuant to this paragraph does not constitute protected attorney-client work product.

b. Initial reports of capital eligible offenses. Initial reports of all capital eligible offenses will be completed in accordance with paragraph 5–14.

c. Subsequent report. Within 30 days of either preferral or pretrial confinement, whichever is sooner, the advising SJA or special trial counsel, as applicable, will submit a more complete report detailing the allegations, potential RCM 1004(c) aggravating factors, victims, and other available information, by electronic or traditional mail, to OTJAG–CLD and OTJAG–PPTO. If USATDS has provided input regarding expected personnel requirements, budgeting estimation, facility needs, and other resourcing requirements, this input must also be included in the report.

d. Report prior to disposition decision. At least 7 days prior to determination of disposition, the SJA or special trial counsel, as applicable, must notify the Chief, OTJAG–CLD and the Executive Officer to OTJAG by email or telephone (see paragraph 28–3).

e. Requirement for updates. SJAs or special trial counsel, as applicable, will update reports made to the Chief, OTJAG–CLD involving a capital offense immediately following significant events, which include the following:

(1) Preferral of charges.
(2) Completion of the UCMJ, Article 32 preliminary hearing.
(3) Completion of the UCMJ, Article 32 preliminary hearing officer's report.
(4) Referral of charges.
(5) Arraignment.

(6) Each UCMJ, Article 39(a) session.
(7) Commencement of trial on the merits.
(8) Any action by the convening authority.
(9) The EOJ.
(10) Any decision to substitute or add counsel.
(11) Within 24 hours, any decision to dismiss any specification alleging a serious offense.

f. Report when sentence includes death. In cases in which the death penalty has been adjudged, and prior to forwarding the ROT to the Clerk of Court, USACCA, the SJA must send notice that the ROT is complete to the following: OTJAG–CLD; GAD; DAD, and OTJAG–PPTO.

28–3. Referral

For offenses over which a special trial counsel does not exercise authority, at least 7 days prior to referral of charges to a court-martial in which a sentence of death may be adjudged the SJA must consult with the Chief, OTJAG– CLD. For offenses over which a special trial counsel has exercised authority and has not deferred, the authority to refer charges to a court-martial in which a sentence of death may be adjudged is withheld to the LSTC. After an offense is referred to a court-martial in which a sentence of death may be adjudged, a copy of the referral notice must be sent to the Chief, USATDS, and the affected RDC.

28–4. Required court-martial personnel for capital courts-martial

This paragraph establishes the minimum requirements for detailing authorities to detail counsel in capital cases. As used in this chapter, the term “capital counsel” is a counsel who, in accordance with this chapter, has been determined by TJAG to be learned in the law applicable to capital cases. Capital counsel may be a civilian attorney or a JA. Civilian capital counsel will only be provided at government expense when there are no JAs so designated by TJAG available.

a. Defense counsel.

(1) *Preliminary hearing.* In any case in which—

(a) A preliminary hearing pursuant to UCMJ, Article 32 has been ordered into an offense for which death may be an authorized punishment; and

(b) The preliminary hearing officer has been detailed to consider aggravating factors pursuant to RCM 1004(c), the Chief, USATDS will detail a defense counsel qualified as capital counsel, if available. If no defense counsel qualified as capital counsel are available within USATDS, then the Chief, USATDS will request a list of qualified capital counsel from Chief, PPTO. The Chief, PPTO will provide a list of capital counsel available for detail as defense counsel to the Chief, USATDS within 30 duty days of the request.

(2) *Referral.* In any case that is referred to trial as a capital court-martial the Chief, USATDS must detail to the case at least one defense counsel qualified as capital counsel unless such counsel have been previously detailed. If no defense counsel qualified as capital counsel is available, the Chief of USATDS will immediately notify the Chief, PPTO. The Chief, PPTO will provide a list of capital counsel available for detail as defense counsel to the Chief, USATDS within 30 duty days of the request.

b. Appellate defense counsel. In any case in which—

(1) The sentence entered into judgment includes a sentence of death; and

(2) The accused is entitled to counsel pursuant to UCMJ, Article 70, the Chief, DAD must detail to the case at least one appellate defense counsel qualified as capital counsel. If no appellate defense counsel qualified as capital counsel is available, the Chief, DAD will immediately notify the Chief, OTJAG–CLD and Chief, PPTO. The Chief, PPTO will provide a list of capital counsel available for detail as appellate defense counsel to the Chief, DAD within 30 duty days of the request.

c. Trial counsel. For offenses over which special trial counsel do not exercise authority, in a case in which there is probable cause to believe an offense punishable by death has been committed by someone subject to the code, and where there is probable cause to believe that one or more aggravating factors listed in RCM 1004(c) are present, the SJA will, if available within the OSJA, detail to the case a trial counsel qualified as capital counsel. If no such counsel is available within the OSJA, the SJA will coordinate with Chief, OTJAG–CLD and Chief, PPTO to determine whether trial counsel qualified as capital counsel may be made available.

d. Special trial counsel. For offenses over which a special trial counsel has exercised authority and has not deferred, in a case in which there is probable cause to believe an offense punishable by death has been committed by someone subject to the code, and where there is probable cause to believe that one or more aggravating factors listed in RCM 1004(c) are present, the LSTC will detail to the case a special

trial counsel qualified as capital counsel. If no such counsel is available within the OSTC, the LSTC will coordinate with the Chief, OTJAG–CLD and Chief, PPTO to determine whether special trial counsel qualified as capital counsel may be made available.

e. Appellate government counsel. In any case in which the sentence entered into judgment includes a sentence of death, the Chief, GAD will detail to the case at least one appellate government counsel qualified as capital counsel, if available. If no appellate government counsel qualified as capital counsel is available, the Chief, GAD will notify the Chief, OTJAG–CLD and Chief, PPTO to determine whether appellate government counsel qualified as capital counsel may be made available.

28–5. Standards for capital counsel

a. In general.

(1) TJAG will determine when a counsel's training, experience, and temperament qualify the counsel as capital counsel. The determination by TJAG will be made without a view toward whether the counsel should be detailed to a particular case.

(2) Detailing authorities will consider the merits and challenges of each case and the talents and experience of each counsel prior to detailing counsel to a capital case. A TJAG determination that a counsel is qualified as capital counsel does not obviate the need for individualized consideration.

b. Recommendation by Chief, Personnel, Plans, and Training Office. The Chief, PPTO will screen and select counsel for TJAG determination as capital counsel and make recommendations to TJAG.

c. Considerations. Prior to submitting a counsel to TJAG for a determination, the Chief, PPTO may consider—

(1) The in court observations of counsel performance by senior supervising JAs.

(2) Writing samples.

(3) Recommendations from judges before whom the counsel has appeared.

(4) Information from attorneys, supervisors, and former clients who are familiar with the counsel's professional abilities.

(5) The Professional Development Proficiency Code Level of the counsel concerned.

(6) Information submitted by the counsel.

(7) Any other information the Chief, PPTO determines is appropriate.

d. Quantitative criteria. The Chief, PPTO will only recommend to TJAG attorneys as capital counsel who meet the minimum screening criteria in paragraphs 28–5*d*(1) through 28–5*d*(4).

(1) JAs being considered as capital counsel must be certified by TJAG as competent under UCMJ, Article 27(b) to perform the duties as counsel at a GCM.

(2) Counsel being considered as capital counsel will have at least five years of criminal litigation experience, at least three years of which includes experience litigating courts-martial under the UCMJ.

(3) Counsel being considered as capital counsel will have served as lead counsel or first assistant counsel in no fewer than five contested panel GCMs.

(4) Counsel being considered as capital counsel must have prior experience as the lead counsel in a contested panel GCM.

e. Qualitative criteria. The Chief, PPTO will forward to TJAG the names of counsel such that each capital accused within the Army receives high-quality legal representation. Accordingly, the Chief, PPTO will submit the names of counsel for approval so that the pool of capital counsel includes a sufficient number of attorneys who have demonstrated, or having received specialized training, possess—

(1) Substantial knowledge and understanding of the relevant UCMJ provisions, both procedural and substantive, and relevant Federal statutes and case law governing capital cases.

(2) Skill in the management and conduct of complex negotiations and litigation.

(3) Skill in legal research, analysis, and the drafting of litigation documents.

(4) Skill in oral advocacy.

(5) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, such as fingerprints, ballistics, forensic pathology, and DNA evidence.

(6) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status.

(7) Skill in the investigation, preparation, and presentation of mitigating evidence.

(8) Skill in the elements of trial advocacy, such as panel selection, cross-examination of witnesses, and opening and closing statements.

f. Exception. In the case of a JA who has demonstrated exceptional prior performance, to include prior exceptional performance as the lead or assistant counsel in a capital case, TJAG may waive the requirements of this paragraph.

28–6. Administrative and logistical support for trial

a. Prosecution support. SJAs will ensure that prosecution teams are resourced. The SJA will use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with the OSTC, TCAP, PPTO, and OTJAG–CLD.

b. Defense support. SJAs will ensure that defense teams are resourced. In any case after preferral in which an offense punishable by death under the UCMJ is charged, the defense may submit a request in writing to the servicing SJA for support greater than that required by paragraph 6–4, including but not limited to: paralegals (with criminal law experience), legal administrator, investigative support, office administrative resource support (as defined by the defense team), security managers, interpreters, translators, and other specialized expertise as may be required. The SJA will use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with USATDS, DCAP, PPTO, and OTJAG–CLD.

(1) Office administrative resource support may include support such as private, lockable office space, SIPRnet capability, computers authorized to handle classified information and documents, separate defense witness waiting room under the control of the defense team, desktop computers with double monitors, copiers, printers, case management software, projectors, routine office supplies, textbooks, and reference materials, and full access to installation network and internet. This list is not to be interpreted as exhaustive, but rather illustrative.

(2) The SJA must make reasonable efforts to provide the additional support within 30 days of the request or deny the request by stating the reasons in writing within the same period.

(3) The requesting counsel will forward all denied requests through the defense technical chain to Chief, USATDS. The Chief, USATDS will make reasonable efforts to fill the request internally. The Chief, USATDS will forward all unfilled requests for personnel to PPTO within 15 days of receipt stating the reasons that USATDS is unable to support the request. Assets provided by USATDS will be funded in accordance with paragraph 6–5.

(4) Nothing in this paragraph should be interpreted to create a substantial right or remedy of the accused; rather this section provides a system of accountability to ensure proper resources and support are provided.

28–7. Training for capital counsel

a. Initial requirements. Capital counsel will attend specialized training within one year of being determined by TJAG as capital counsel. Counsel who have attended specialized training within a year of having been determined to be capital counsel are not required to attend initial training.

b. Reports of training. The Chief, PPTO will maintain a roster of persons determined by TJAG to be capital counsel. Capital counsel will notify PPTO after completing the specialized training required by this paragraph.

c. Minimum requirement. Capital counsel may not be detailed as capital counsel to a capital case unless they have attended specialized training within two years prior to detailing. Any counsel who has not attended specialized training for three years will no longer be considered to be capital counsel.

d. Specialized training.

(1) “Specialized training” under this paragraph refers to advanced training for experienced criminal litigators as determined by Chief, PPTO in consultation with the LSTC, Chief, OTJAG–CLD; Chief, DAD; Chief, GAD; Chief, TCAP; and Chief, USATDS. When available, counsel will attend training that is focused entirely on the litigation of capital cases. However, counsel who have already attended a particular training program are not expected to attend the same training program every year in order to maintain status as capital counsel. Decisions on which training to attend should be made by considering the needs of each individual, rather than expediently meeting the training requirement of this paragraph.

(2) A determination by TJAG that a person is qualified as capital counsel under this chapter and has met the minimum requirements for such a determination should not be substituted for an individualized determination by a detailing authority as to whether a specific capital counsel should be detailed to a specific case. Detailing authorities should assess the qualities of each counsel and the nature of a case and

consider whether additional training is appropriate prior to (or closely after) detailing a capital counsel to a particular case.

28–8. Funding responsibilities

Requests for funding of fee requests for expert services and related purposes in capital cases should be made to the appropriate authority: the commander presently exercising GCMCA over the accused or appellant. The GCMCA will carefully consider all such requests, coordinate with other agencies and departments, if necessary, and respond in a timely fashion, in writing. Requests for review of such denials will be submitted to the court before which the case is pending (a trial court after referral but before the EOJ; after EOJ the USACCA or USCAAF, as appropriate). Neither TJAG nor the Commander, USALSA, will approve or consider the merits of requests for funds to obtain expert services or for related purposes.

Chapter 29
Definitions Pertaining to Prohibited Activities with Military Recruits or Trainees

29–1. General

This chapter provides definitions pertaining to UCMJ, Article 93a, regarding prohibited activities with military recruits or trainees by persons in positions of special trust. This chapter does not prohibit the issuance of general orders or general regulations that impose additional restrictions on inappropriate conduct with military recruits and trainees. This chapter does not create or change Army policy as it relates to the Sexual Harassment/Assault Response and Prevention program.

29–2. Terms

a. Training program for initial career qualification. For the purposes of UCMJ, Article 93a(d)(1)(C) and UCMJ, Article 93a(d)(2)(A), the term “training program for initial career qualification” includes all initial entry training. Initial entry training is the mandatory training that each member of the U.S. Army must complete upon initial entry in the service to qualify in a military specialty or branch. The term encompasses the completion of basic training and specialty or branch qualification while serving on AD or ADT. It includes completion of initial AD for training, OBC, the warrant officer candidate school, and the warrant officer basic course. Entry-level training includes students both in training status and in holding status.

b. Applicant for military service. For the purposes of UCMJ, Article 93a(d)(3), an “applicant for Military Service” includes—

(1) Any person who has expressed, to a military recruiter, an interest in enlisting or receiving an appointment in a Military Service and who appears to possess, or who may in the future possess, the potential and qualifications for enlistment or appointment in Military Service.

(2) Any person who has agreed to process for enlistment or appointment in a Military Service.

(3) Any person who has initiated a DD Form 1966 (Record of Military Processing–Armed Forces of the United States) or comparable form. This includes, but is not limited to, applicants to the USMA and U.S. Military Preparatory School, applicants to the Junior or Senior Reserve Officer Training Corps, and individuals in the Delayed Entry Program (Future Soldiers Program), Delayed Training Program, Recruit Sustainment Program, or similar programs.

(4) Any person who, for one year after expressing their loss of interest to recruiting personnel, previously met one of the definitions of paragraphs 29–2*b*(1) through 29–2*b*(3), but subsequently lost interest in service. A person ceases to be “an applicant for military service” one year from the date he or she expresses their loss of interest to recruiting personnel, or ceased all contact with recruiting personnel, provided he or she has not reattempted to begin processing for enlistment or appointment.

c. Military recruiter. For the purposes of UCMJ, Article 93a(d)(4), a “military recruiter” is a person, subject to the UCMJ, performing a direct recruiting function that supports the accomplishment of the recruiting mission. This includes—

(1) Soldiers holding the primary MOS 79R.

(2) DA select recruiters.

(3) Recruiting officers.

(4) Recruiting warrant officers.

(5) A commander of a recruiting company, battalion, or brigade.

(6) Soldiers assigned to MOS-immaterial recruiting offices.

d. Prohibited sexual activity. For the purposes of UCMJ, Article 93a(d)(5), the term "prohibited sexual activity" includes—

(1) Any sexual act as defined by UCMJ, Article 120.

(2) Any sexual contact as defined by UCMJ, Article 120.

(3) Any attempt to commit a sexual act or sexual contact, or any solicitation to commit a sexual act or sexual contact.

Chapter 30
Office of Special Trial Counsel

30–1. General
This chapter establishes policy for the OSTC and implements, in part, Sections 531–539C, of the NDAA for Fiscal Year 2022 and Sections 541–542 of the NDAA for Fiscal Year 2023. The LSTC supervises the OSTC and oversees the OSTC mission.

30–2. Mission
The mission of the OSTC is to provide expert, specialized, independent, and ethical representation of the United States, under the supervision of the LSTC, in the investigation and trial-level litigation of covered offenses as defined by UCMJ, Article 1(17) and other offenses over which a special trial counsel exercise authority.

30–3. Organization and Personnel
a. The Judge Advocate General. TJAG will provide legal support and technical assistance as deemed necessary by the Secretary of the Army or the LSTC. TJAG is responsible for identifying, certifying, and assigning special trial counsel to the OSTC.

b. Lead Special Trial Counsel. The OSTC operates under the supervision of an LSTC, who reports directly to the Secretary of the Army, without intervening authority. The LSTC is responsible for the overall supervision and oversight of the activities of all special trial counsel. The LSTC will—

(1) Be a JA, in a grade no lower than O–7, with significant experience in military justice;

(2) Serve for a specified fixed term of not less than 3 years with an option for the term to be renewed for a subsequent fixed term or terms of any length; an LSTC may be relieved of duty prior to the end of their term of service if they leave AD or are promoted or in accordance with the procedures delineated in AR 623–3;

(3) Report directly to the Secretary of the Army without intervening authority and be rated by the Secretary of the Army;

(4) Not be assigned any additional duties, with the exception of serving on an officer promotion selection board, provided such additional duty is favorably endorsed by the LSTC and permission is granted by the Secretary of the Army.

c. Deputy Lead Special Trial Counsel. A field grade JA certified as a special trial counsel who is responsible for oversight and management of the OSTC mission. Each Deputy Lead Special Trial Counsel will—

(1) Supervise OSTC personnel at the Headquarters level or across multiple circuits.

(2) Draft, implement, and execute OSTC policies and standard operating procedures.

(3) Supervise, manage, and rate specified Chief Circuit Special Trial Counsel (CCSTC).

(4) Review decisions not to prosecute in specified cases.

(5) Refer charges and specifications to trial by GCM or SPCM as permitted by the LSTC.

(6) Enter into plea agreements with the accused, as permitted by the LSTC.

(7) Defer, withdraw, or dismiss alleged offenses or charges and specifications, as permitted by the LSTC.

d. Circuit. The circuit is the major subordinate supervisory and control element of the OSTC. It encompasses a geographical area designated by TJAG.

e. Chief Circuit Special Trial Counsel. A field grade JA certified as a special trial counsel who is responsible for oversight and management of the OSTC mission within a circuit. Each CCSTC will—

(1) Supervise all OSTC personnel within the assigned circuit.

(2) Track and manage special trial counsel detailed to courts-martial referred by special trial counsel.

(3) Review all determinations of no probable cause and decisions not to prosecute in specified cases.

(4) Refer charges and specifications to trial by GCM or SPCM as permitted by the LSTC.

(5) Enter into plea agreements with the accused, as permitted by the LSTC.

(6) Defer, withdraw, or dismiss alleged offenses or charges and specifications, as permitted by the LSTC.

f. Field Office. The OSTC field office is the installation-level operating element of a circuit. Each OSTC field office covers a specified installation, multiple installations, or a geographical area as determined by the LSTC.

g. Field Office Officer in Charge. A JA certified as a special trial counsel who is responsible for oversight and management of the OSTC mission on a specified installation, across multiple installations, or in a geographical area as determined by the LSTC. Each Field Office OIC will—

(1) Supervise all OSTC field office personnel.

(2) Track and manage all reports of covered offenses and offenses over which special trial counsel exercise authority and have not deferred.

(3) Review all determinations of no probable cause.

(4) Serves as special trial counsel GCM or SPCM where charges and specifications are referred by special trial counsel.

h. Special Trial Counsel. A special trial counsel will be a commissioned officer who is a member of the bar of the highest court of a State and is certified to be qualified by reason of their education, training, experience, and temperament for duty as a special trial counsel by TJAG.

(1) *Education.* Special trial counsel must possess a Juris Doctor; be licensed and in good standing to practice law before the highest court of the licensing State, Territory, Commonwealth, or the District of Columbia; and be qualified and certified by TJAG to perform duties under UCMJ, Article 27(b). Special Trial Counsel who begin their duties in the grade of Major or above must possess a Master of Laws (LL.M.) degree.

(2) *Training.* All special trial counsel must have completed the Basic Trial Advocacy Course or equivalent course and must successfully complete the Special Trial Counsel Certification Course. The Special Trial Counsel Certification Course includes training on criminal law and procedure and specialized training in trauma-informed prosecution, domestic violence, sexual assault, and child abuse cases. Certification of special trial counsel under UCMJ, Article 24a(b)(1)(B) is contingent upon successful completion of the Special Trial Counsel Certification Course. The LSTC will determine, oversee, and approve additional training requirements for personnel assigned to the OSTC.

(3) *Experience.* Special Trial Counsel must possess prior criminal litigation experience. This includes time spent in positions substantially devoted to the investigation, trial, or appellate litigation of alleged violations of the UCMJ. All Captains assigned to the OSTC should have prior litigation experience either within the Army JAG Corps or through prior civilian experience. Criminal litigation experience for Field Grade positions will be commensurate with assignment policies established by TJAG.

(4) *Temperament.* Special trial counsel must possess the ability to exercise sound judgment, independence, initiative, and discretion. They must demonstrate civility, maturity, composure, open-mindedness, patience, and freedom from bias. Special trial counsel are expected to work collaboratively with peers and supervisors, while leading and mentoring subordinates. They must also exhibit competence in oral and written advocacy and a strong commitment to justice. Appropriate temperament will be assessed through observation, references, supervisor feedback, performance evaluations, and/or interviews.

(5) *Term length.* Special trial counsel will be assigned to the OSTC for a fixed term of no less than 3-years. Special trial counsel assignments may be renewed for subsequent fixed terms of any length with a recommendation from the LSTC and approval from TJAG. Special trial counsel may be released prior to the end of their fixed term if they leave AD, or at the direction or with the permission of the LSTC with notice to TJAG.

(6) *Rating and Supervision.* Special trial counsel will be rated and supervised only by personnel assigned to the OSTC. No one other than a member of the OSTC will prepare a performance evaluation for a special trial counsel, even during periods where special trial counsel are detailed to a case that does not fall under the authority of OSTC.

30–4. Administrative and Logistical Support

Installation Support. Special trial counsel are assigned to the OSTC with duty at specified locations. OSTC personnel will not be further attached or assigned to any other unit without the written permission

of the LSTC. OSTC circuit and field offices are tenant units on the installation and are entitled to administrative and logistical support to meet mission requirements, to the greatest extent feasible and authorized. Such support includes, but is not limited to—

a. Permanent or temporary quarters for each special trial counsel/Special Victim Noncommissioned Officer (SVNCO) and the special trial counsel's/SVNCO's Family members to the same degree as are provided regularly assigned officers/Soldiers of like grade and similar responsibility. Special trial counsel will not share quarters.

b. Assistance and maintenance of military personnel records, finance records, officer/Soldier qualification records, and all other personnel requirements.

c. Private office space appropriate for the grade and position.

d. Office furniture to include, but not limited to, an appropriate desk, chairs, carpeting, equipment, and supplies.

e. Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

f. Private long-distance telephone line, facsimile machine, digital scanner, wireless email service, and email accessibility.

g. Modern computer hardware (to include a high-quality desktop or laptop computer and laser printer), software, networking, and telecommunications equipment (to include a high-quality smartphone, and a computer wireless internet aircard) that meets standards established for JAGCNet, and connection with a local area network that will permit access to email and the internet.

h. Army transportation resources, including aircraft, as far as is necessary.

30–5. Duties of Special Trial Counsel

a. Independence. Special trial counsel operate independently of the military chains of command of both the victims and the accused in cases involving covered, known, and related offenses. Special trial counsel will not be assigned additional duties without prior approval from the LSTC.

b. Definitions.

(1) *Covered Offense.* The term covered offense has the meaning provided in UCMJ, Article 1(17).

(2) *Known Offense.* If a special trial counsel exercises authority over a covered offense, special trial counsel may also exercise authority over any offense or charge alleged to have been committed by the suspect of the covered offense (see RCM 303A(d)).

(3) *Related Offense.* If a special trial counsel exercises authority over a covered offense, special trial counsel may also exercise authority over any reported offense or charge related to a covered offense, whether alleged to have been committed by the suspect of the covered offense or by anyone else subject to the UCMJ (see RCM 303A(c)).

c. Initial determination. Special trial counsel have exclusive authority to make the initial determination whether a reported offense is a covered, known, or related offense. Special trial counsel will exercise authority over covered offenses and may exercise authority over known or related offenses (see UCMJ, Article 24a(c)(2)). Any determination to prefer or refer charges does not disqualify the special trial counsel as an accuser.

d. Investigations. To the extent practicable, the OSTC field office and the installation OSJA will each identify at least one JA with the duty for and responsibility to track and manage investigations alleging violations of the UCMJ. The special trial counsel will track and manage all investigations alleging offenses over which the special trial counsel has exercised authority and has not deferred. The OSJA will track and manage all investigations involving other alleged violations of the UCMJ. The special trial counsel and OSJA will coordinate at regular intervals as necessary.

e. Procedures. Special trial counsel at the field office level will operate in coordination with and under the supervision of circuit OSTC offices staffed with experienced special trial counsel.

(1) *Deferral.* Deferral of an offense means an election by the special trial counsel not to prefer charges for an offense or not to refer charges to court-martial (see RCM 103(10)). Once a special trial counsel defers an offense, a commander will exercise authority over that offense within the scope of their authority (see RCM 306A and RCM 306).

(2) *Preferral.* Preferral is the act by which a person subject to the UCMJ accuses another person subject to the UCMJ of an offense (see RCM 307). For offenses over which a special trial counsel has exercised authority and has not deferred, the special trial counsel and trial counsel will coordinate with the appropriate commander to accomplish preferral of charges and notification to the accused of the preferred

charges. For offenses over which a special trial counsel does not exercise authority, commanders will consult with a JA in making their determination whether to prefer charges.

(3) *UCMJ, Article 32 Preliminary Hearing.* If a UCMJ, Article 32 Preliminary Hearing is required, the special trial counsel will request a hearing officer and a hearing officer will be provided by the convening authority with jurisdiction over the accused. A special trial counsel may serve as government counsel at an UCMJ, Article 32 Preliminary Hearing involving offenses over which a special trial counsel has exercised authority and has not deferred. In coordination with the OSJA, special trial counsel may detail other trial counsel as government counsel for the UCMJ, Article 32 Preliminary Hearing (see RCM 405(e)).

(4) *Special Trial Counsel Written Determination in accordance with UCMJ, Article 34.* For offenses over which a special trial counsel has exercised authority and has not deferred, referral of charges to a SPCM or GCM must be accompanied by special trial counsel's written determination that:

(a) Each specification under a charge alleges an offense;

(b) There is probable cause to believe that the accused committed the offense charged;

(c) A court-martial would have jurisdiction over the accused and the offense.

(5) *Appeals Pursuant to UCMJ, Article 62.* The LSTC has exclusive authority to determine whether to file a UCMJ Article 62 appeal, in consultation with appellate government counsel, for offenses over which a special trial counsel has exercised authority and has not deferred. Appellate government counsel will litigate UCMJ Article 62 appeals on behalf of the United States and are responsible for the substance and content of submissions to the appellate courts.

(6) *Referral.* A special trial counsel will have exclusive authority to refer charges and specifications for trial by a SPCM or GCM for any offense over which a special trial counsel has exercised authority and has not deferred.

(7) *Detailing.* For each general and SPCM for which charges and specifications were referred by special trial counsel, a special trial counsel will be detailed as government counsel. In the case of a court-martial requiring the detailing of a special trial counsel, the presence of a special trial counsel is required unless a special trial counsel determines otherwise and another trial counsel, who is qualified according to Article 27(b), UCMJ, is also present.

(8) *Plea Agreements.* A special trial counsel will have exclusive authority to enter into a plea agreement on behalf of the Government for any offenses over which a special trial counsel has exercised authority and has not deferred.

(9) *Dismissal.* A special trial counsel will have exclusive authority to withdraw or dismiss charges and specifications on behalf of the Government for any offenses over which a special trial counsel has exercised authority and has not deferred.

(10) *Rehearing.* A special trial counsel will have exclusive authority to determine if an ordered rehearing is impracticable for any offense that was referred to trial by a special trial counsel. A special trial counsel will dismiss the charges if the special trial counsel determines a rehearing is impracticable.

30–6. Duties of Commanders

a. Commander Disposition Authority. The determination of a special trial counsel to refer charges to a court-martial is binding on the convening authority. However, Commanders can dispose of covered offenses deferred by the special trial counsel, but they cannot refer charges and specifications alleging a covered offense to trial by SPCM or GCM. Commanders retain disposition and referral authority for offenses where the special trial counsel does not exercise authority.

b. Input. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the Commanders of the victim and of the accused can provide input to the special trial counsel regarding case disposition, but the input is not binding on the special trial counsel. SJAs retain the responsibility to brief the convening authority on the status of offenses over which a special trial counsel has exercised authority and has not deferred.

c. Cross-notification. Upon receipt of any allegation of a covered offense, the immediate commander of the accused will report such allegation to a special trial counsel within 48 hours. If the accused is unknown at the time of the report, the immediate commander of the victim will report such allegation to a special trial counsel within 48 hours. Notification to the special trial counsel does not relieve the commander of the duty to report alleged UCMJ violations to the appropriate law enforcement agency in accordance with AR 195–2, Appendix B.

d. Preliminary Hearing officer. The convening authority with jurisdiction over the accused will detail a preliminary hearing officer, as requested by the special trial counsel, for any UCMJ, Article 32 Preliminary

Hearing involving offenses over which a special trial counsel has exercised authority and has not deferred.

e. Preliminary Hearing report. After the conduct of a preliminary hearing where the hearing officer was provided at the request of special trial counsel, the hearing officer will submit a copy of the written report, including the items listed in UCMJ, Article 32(c), to both the special trial counsel and to the convening authority who detailed the preliminary hearing officer.

f. Courts-martial responsibilities. Special trial counsel will try cases before panels convened by the GCM or SPCM convening authority over the accused (see chapter 11).

(1) The convening authority will fund all courts-martial. Funding includes, but is not limited to:

(a) Witness travel, lodging, and expenses for witnesses appearing before a UCMJ, Article 32 Preliminary Hearing (see para 5–24);

(b) Witness travel, lodging, and expenses during the court-martial;

(c) Victim support personnel travel, lodging, and expenses during the court-martial;

(d) Approval for and payment of expert witnesses and consultants, in consultation with the SJA;

(e) Bailiff(s) to support the court-martial;

(f) Escorts to support the court-martial;

(g) Pre-trial confinement of the accused, as applicable.

(2) The convening authority will select a panel in accordance with UCMJ, Article 25 and will make panel members available to the military judge for all cases referred to trial by SPCM or GCM, including those involving offenses over which a special trial counsel has exercised authority and has not deferred and those referred by a convening authority.

(3) The convening authority retains the authorities delineated in UCMJ, Articles 60 and 60a.

30–7. Duties of Staff Judge Advocates

a. Office of the Staff Judge Advocate duties. The OSTC requires administrative and logistical support from assets within the OSJA for the proper administration of military justice. Close coordination between the OSTC and the OSJA is required to manage allegations of covered, known, and related offenses. OSJA personnel, including but not limited to SJAs, brigade JAs, command JAs, and MJAs, remain the primary legal advisors to commanders. The SJA remains the primary legal advisor to the Commander regarding offenses over which a special trial counsel does not exercise authority.

b. Cross-notification. Upon receipt of any allegation of a covered offense, the SJA must report such allegation to special trial counsel within 48 hours.

c. Detail of trial counsel. A special trial counsel will be detailed to each SPCM and GCM for which charges and specifications were referred by a special trial counsel. In coordination with the SJA, special trial counsel may detail other trial counsel as assistant trial counsel to provide an opportunity for trial counsel to gain experience (see UCMJ, Article 27(e)).

(1) The trial counsel will as practicable support the special trial counsel throughout the investigation of alleged offenses over which a special trial counsel has exercised authority and has not deferred.

(2) The trial counsel will support the special trial counsel in meeting the Government's discovery obligations.

(3) The trial counsel may assist the special trial counsel as assistant trial counsel. In the case of a court-martial requiring the detailing of a special trial counsel, the presence of a special trial counsel is required unless a special trial counsel determines otherwise and another trial counsel, who is qualified according to Article 27(b), UCMJ, is also present.

(4) Additional trial counsel may be detailed, as necessary.

d. Detail of Special Trial Counsel. For offenses over which a special trial counsel does not exercise authority, the SJA may request a special trial counsel be detailed to a case. Such request must be made to the LSTC who has exclusive and unreviewable authority to grant or deny the request.

e. Victim and Witness Services. The SJA retains primary responsibility for victim and witness services (see chapter 17).

f. Logistical support of courts-martial. The SJA will provide support to special trial counsel for the following:

(1) Pretrial restraint and pretrial confinement of the accused. Pretrial restraint of the accused may be directed by the individual identified in RCM 304(b). Pretrial confinement of the accused may be directed by the individual identified in RCM 305(b). If a person who is alleged to have committed an offense over which special trial counsel has exercised authority and has not deferred is placed under, or released

from, restraint as defined in RCM 304(a) or is ordered into pretrial confinement, or released from pretrial confinement, in accordance with RCM 305, the individual ordering restraint or confinement, or authorizing release, will notify a special trial counsel within 24 hours of the imposition of restraint, the order to confinement, or the decision to authorize release, as applicable.

(2) Witness lodging and transportation. The SJA will coordinate lodging and transportation for all witnesses, as necessary. The SVL will not be responsible for coordinating witness lodging and transportation, even in cases involving offenses over which a special trial counsel has exercised authority and has not deferred.

(3) Panel selection and member notification. The SJA remains responsible for assisting the convening authority with the requirements of selecting a panel in accordance with UCMJ Article 25, issuing court-martial convening orders, and notifying panel members when they are scheduled to appear before any court-martial, including a court-martial where offenses were referred by a special trial counsel (see chapter 11 and appendix G). The SJA will also take appropriate measures to affirm that panel members confirm their attendance and process all requests for excusal.

(4) Bailiffs and escorts. The SJA will coordinate with the appropriate Commander to ensure that bailiffs and escorts are tasked to support courts-martial, including a court-martial where offenses were referred by a special trial counsel.

(5) Court reporters will be detailed in accordance with chapter 5, Section II. The provisions of chapter 25 are applicable to cases involving offenses referred by special trial counsel and cases involving offenses referred by a convening authority.

(6) Courtroom facilities, maintenance, security, and equipment will be maintained by the SJA in coordination with the senior commander and the convening authority with jurisdiction over the accused.

(7) Post-trial processing requirements (including, but not limited to, preparation of the STR, any transcript required, the ROT, and any convening authority action) remain the responsibility of the OSJA (see chapter 5, Sections VI and VII).

g. Administrative actions. The SJA will provide support to special trial counsel for the following:

(1) NJP proceedings in accordance with UCMJ, Article15 (see chapter 3).

(2) AD enlisted administrative separations in accordance with AR 635–200 and officer discharges in accordance with AR 600–8–24 (see para 5–25 and para 5–26).

(3) Administrative reprimands in accordance with AR 600–37 (see para 3–3 and para 5–1).

(4) Military protective orders issued in accordance with DoDI 6400.06 (see para 17 –20).

30–8. Duties of Noncommissioned Officers

Special trial counsel noncommissioned officer primary duties are those that directly support the mission of OSTC. Special trial counsel noncommissioned officers report directly to and are supervised by special trial counsel at the headquarters, circuit, and field office levels. Special trial counsel noncommissioned officers will not be tasked with or assigned additional responsibilities or duties from the OSJA, with the exception of specified requests favorably endorsed by special trial counsel at the field office level and approved by special trial counsel at the circuit level.

30–9. Duties of Special Victim Liaisons

a. Primary duties. The SVL's primary duties are those that directly support the mission of OSTC. SVLs report directly to and are supervised by special trial counsel at the field office level. SVLs will not be tasked with or assigned additional responsibilities or duties from the OSJA.

b. Victim care. SVLs are vital to victim-focused care and the overall successful disposition of covered, known, and related offenses. SVLs serve as a liaison for the military justice process. Their duties include, but are not limited to, the following functions:

(1) Liaising with DoD, DA, and local agencies in support of victim care and investigative activity.

(2) Facilitating continuity of care for non-DoD victims.

(3) Enhancing victim engagement, to include arranging for victim interviews, on behalf of the special trial counsel and prosecution team.

(4) Liaising with DoD, DA, and local agencies on behalf of the special trial counsel.

(5) Assisting the special trial counsel with issues related to victim care and cooperation.

(6) Facilitating information flow between victims and DoD, DA, or local agencies, such as the Sexual Assault Response Coordinator, Sexual Harassment/Assault Response and Prevention (Program), Family Advocacy Program, VAs, Behavioral Health, Sexual Assault Nurse Examiner/Sexual Assault Medical

Forensic Examiner, SVCs, the special trial counsel, and local other victim service providers (both on and off the installation).

(7) Assisting with case strategy, communication, and trial assistance throughout the investigation and prosecution of cases involving offenses over which a special trial counsel has exercised authority and has not deferred.

c. Rating. SVLs work directly for the field office special trial counsel and will be rated only by OSTC personnel.

Chapter 31
National Instant Criminal Background Check System Firearms Prohibitions

31–1. General

Title 18, United States Code, Section 922 prohibits certain individuals from possessing, purchasing, and transferring personal firearms and ammunition. Only the prohibition for a conviction of a misdemeanor crime of domestic violence prohibits a Soldier from possessing a government firearm (see 18 USC 922(g)(9)). Soldiers with qualifying prohibitors are entered into the National Instant Criminal Background Check System (NICS) database. The NICS database is a federal law enforcement database that facilitates required background checks prior to the purchase of firearms by a Federal Firearms Licensed (commonly referred to as an "FFL") dealer. The eight prohibitors identified in Section 922 and paragraph 31–2 as defined by the Federal Bureau of Investigation, apply to all Soldiers.

31–2. Definitions

The following definitions establish the prohibitors in Section 922 as applied to U.S. Army Soldiers.

a. A "felony conviction" is a conviction at a GCM of an offense punishable by more than one year in confinement, regardless of the approved sentence.

b. A "fugitive from justice" is a Soldier processed for a warrant by the installation Directorate of Emergency Services when there is sufficient evidence that the Soldier fled the State with the intent to avoid prosecution for a crime after court-martial charges were preferred or a law enforcement investigation opened.

c. An "unlawful user of a controlled substance" and "user addicted to a controlled substance" is a temporary prohibitor that extends one year from the later date of the date of a positive urinalysis, admission of use or possession, evidence of use of possession, or the date of adjudication of a drug offense through NJP under UCMJ, Article 15 or a court-martial for a Soldier with a positive urinalysis result for a controlled substance when one of the following conditions are met:

(1) The use is deemed illegitimate use by a Medical Review Officer pursuant to AR 600–85;

(2) The Soldier is indexed for an offense that is a violation of UCMJ, Article 112a in a law enforcement report; or

(3) The Soldier is found guilty at a court-martial or UCMJ, Article 15 proceeding for a violation of UCMJ, Article 112a.

d. A Soldier adjudicated as "mental defective" means a Soldier who was found lacking mental responsibility for any offense charged, lacking capacity to stand trial, or found not guilty only by reason of lack of mental responsibility pursuant to UCMJ, Article 50a or UCMJ, Article 76b and RCM 706 and RCM 909. It does not include a Soldier committed to a mental health facility by a commander or medical personnel voluntarily or involuntarily.

e. A Soldier "discharged from the armed forces under dishonorable conditions" is a Soldier with an executed DD or a dismissal. It does not apply to a Soldier with a BCD or to Soldiers or officers administratively separated or eliminated from military service.

f. A Soldier "subject to a civilian court domestic violence protective order" is a Soldier-subject to a civilian court domestic violence protective order that restrains the Soldier from harassing, stalking, or threatening an intimate partner or their child, or engaging in conduct that would place an intimate partner in reasonable fear of bodily injury or bodily injury to their child. The order must be issued by a civilian court after a hearing at which the Soldier had notice and an opportunity to participate and that includes a judicial finding that that the Soldier represents a credible threat to the physical safety of the intimate partner or child or explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child. It does not include a Military Protective Order. Civilian courts will report qualifying domestic violence protective orders directly to NICS.

g. A “conviction of a misdemeanor crime of domestic violence,” is the only prohibitor that prohibits a Soldier from possessing both personal and government firearms. A Soldier with a conviction for a misdemeanor crime of domestic violence means a Soldier—

(1) Convicted of a qualifying crime of domestic violence at a SPCM (see 18 USC 922(g)(9));

(2) Convicted of a qualifying domestic violence offense with a maximum punishment of one year or less of confinement at a GCM; or

(3) Convicted by a civilian court of a misdemeanor crime of domestic violence.

h. A Soldier “indicted on a felony offense” is a Soldier with at least one court-martial charge for an offense punishable by more than one year of confinement referred to a GCM. It does not include charges referred to a SPCM or SCM. The indictment on a felony offense prohibitor only prohibits the purchase of new firearms or ammunition and does not prohibit the possession of currently owned personal firearms or ammunition. The indictment on a felony offense prohibitor is temporary and only applies until the Soldier is either convicted of a felony (at which time the permanent prohibitor for felony conviction will apply) or acquitted at a court-martial or charges are dismissed (at which time the prohibitor will be removed).

31–3. Responsibilities

a. Soldiers identified by their Commander as having a weapons disqualification will divest possession of any personal firearms and ammunition.

b. Commanders will ensure Soldiers within their units who have a weapons disqualification are counseled utilizing DA Form 4856 (Developmental Counseling Form) pursuant to HQDA EXORD 240–18, paragraph 3.C.

c. SJAs or special trial counsel, as applicable, will ensure the date of referral of charges to a GCM is entered within 24 hours of referral into MJO.

d. OTJAG–CLD will transmit the PII of Soldiers with weapons disqualifications for a felony conviction, a conviction of a misdemeanor crime of domestic violence, an executed DD, indictment on a felony offense, and adjudication as a mental defective within three days of occurrence and as reported in MJO to the U.S. Army Crimes Records Center (CRC) for entry into NICS.

e. Upon receipt of disqualification information, the CRC will immediately update and transmit this information into the NICS database.

f. Appeals of entries are processed by CLD, OTJAG. Upon receipt of information that a disqualification is no longer valid, the CRC, in conjunction with CLD, OTJAG will remove the Soldier from NICS.

Appendix A

References

Section I

Required Publications

Unless otherwise indicated, all Army publications are available on the Army Publishing Directorate website at https://armypubs.army.mil/. DoD issuances are available on the Executive Services Directorate website at https://www.esd.whs.army.mil. United States Codes are available at https://uscode.house.gov/.

AR 15–6
Procedures for Administrative Investigations and Boards of Officers (Cited in para 3–14*a*.)

AR 15–130
Army Clemency and Parole Board (Cited in para 5–64*d*.)

AR 15–180
Army Discharge Review Board (Cited in para 19–11*d*.)

AR 15–185
Army Board for Correction of Military Records (Cited in para 3–43*e*.)

AR 25–22
The Army Privacy and Civil Liberties Program (Cited in para 3–43*d*.)

AR 25–98
Information Management Control Requirements Program (Cited in para 5–14*d*(4).)

AR 27–1
Judge Advocate Legal Services (Cited in para 6–11*b*(2).)

AR 27–3
The Army Legal Assistance Program (Cited in para 17–12*b*(3).)

AR 27–26
Rules of Professional Conduct for Lawyers (Cited in para 3–18*g*(1).)

AR 27–52
Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice (Cited in para 5–1*a*.)

AR 135–175
Separation of Officers (Cited in para 24–2*a*.)

AR 135–178
Enlisted Administrative Separations (Cited in para 24–2*a*.)

AR 135–200
Active Duty for Missions, Projects, and Training for Reserve Component Soldiers (Cited in para 20–4*a*.)

AR 190–30
Military Police Investigations (Cited in para 8–10*c*.)

AR 190–45
Law Enforcement Reporting (Cited in para 5–14*d*(4).)

AR 190–47
The Army Corrections System (Cited in para 3–19*b*(1).)

AR 190–53
Interception of Wire and Oral Communications for Law Enforcement Purposes (Cited in para 7–4*c*(4).)

AR 195–2
Criminal Investigation Activities (Cited in para 30–6*c*.)

AR 195–5
Evidence Procedures (Cited in para 8–10*b*.)

AR 220–5
Designation, Classification, and Change in Status of Units (Cited in para 3–7*a*(4).)

AR 360–1
The Army Public Affairs Program (Cited in para 7–7*d*(2)(*e*).)

AR 600–8–2
Suspension of Favorable Personnel Actions (Flag) (Cited in para 3–20.)

AR 600–8–10
Leaves and Passes (Cited in para 12–13*a*.)

AR 600–8–19
Enlisted Promotions and Reductions (Cited in para 3–3*a*.)

AR 600–8–24
Officer Transfers and Discharges (Cited in para 5–26*a*.)

AR 600–8–29
Officer Promotions (Cited in para 3–7*c*(1).)

AR 600–8–104
Army Military Human Resource Records Management (Cited in para 3–6*c*.)

AR 600–8–105
Military Orders (Cited in para 11–4*e*.)

AR 600–20
Army Command Policy (Cited in para 3–3*a*.)

AR 600–37
Unfavorable Information (Cited in para 3–3*c*(2).)

AR 600–85
The Army Substance Abuse Program (Cited in para 31–2*c*(1).)

AR 601–100
Appointment of Commissioned and Warrant Officers in the Regular Army (Cited in para 24–2*a*.)

AR 601–210
Regular Army and Reserve Components Enlistment Program (Cited in para 24–2*a*.)

AR 608–18
The Army Family Advocacy Program (Cited in para 17–7*a*.)

AR 614–100
Officer Assignment Policies, Details, and Transfers (Cited in para 24–2*a*.)

AR 614–200
Enlisted Assignments and Utilization Management (Cited in para 24–2*a*.)

AR 635–200
Active Duty Enlisted Administrative Separations (Cited in para 5–25*a*.)

AR 637–1
Army Compensation and Entitlements Policy (Cited in para 5–61*a*(4).)

AR 638–8
Army Casualty Program (Cited in para 17–2*c*.)

DA Pam 27–7
Guide for Summary Court-Martial Trial Procedure (Cited in para 5–13.)

DA Pam 600–8–105
Military Orders (Cited in para 11–4*c*.)

DoD 7000.14–R
Department of Defense Financial Management Regulation (DoD FMR) (Cited in para 3–19*b*(6)(*a*).) (Available at https://comptroller.defense.gov/fmr/.)

DoDI 1030.02
Victim and Witness Assistance (Cited in para 17–1.)

DoDI 1325.07
Administration of Military Correctional Facilities and Clemency and Parole Authority (Cited in para 5–42*b*(3).)

DoDI 5505.11
Fingerprint Reporting Requirements (Cited in para 5–14*b*.)

DoDI 5505.14
DNA Collection and Submission Requirements for Law Enforcement (Cited in para 5–42*b*(2).)

DoDI 5525.11
Criminal Jurisdiction over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members (Cited in para 26–1*b*.)

NGR 27–12
Judge Advocate Cross Jurisdictional Practice of Law for Legal Defense Services (Cited in app F–1*d*.) (Available at https://www.ngbpmc.ng.mil/.)

10 USC 802
Art. 2. Persons subject to this chapter (Cited in para 20–1*a*.)

10 USC 972
Members: effect of time lost (Cited in para 3–19*b*(1).)

10 USC 1034
Protected communications; prohibition of retaliatory personnel actions (Cited in para 19–11*c*(3).)

10 USC 1044e
Special Victims' Counsel for victims of sex-related offenses (Cited in para 17–7*c*.)

10 USC 1059
Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits (Cited in para 17–12*a*.)

10 USC 1408
Payment of retired or retainer pay in compliance with court orders (Cited in para 17–12*b*(6).)

10 USC 1565
DNA identification information: collection from certain offenders; use (Cited in para D–2*b*(3).)

10 USC 1565a
DNA samples maintained for identification of human remains: use for law enforcement purposes (Cited in para 7–4*c*(3).)

10 USC 7013(d)
Secretary of the Army (Cited in para 1–4*a*.)

10 USC 7013(g)
The Secretary of the Army may(Cited in para 17–7*c*.)

18 USC 871
Threats against President and successors to the Presidency (Cited in para 2–6.)

18 USC 922(g)(1)
Unlawful acts (Cited in para 5–42*b*(4).)

18 USC 922(g)(9)
Unlawful acts (Cited in para 31–1.)

18 USC 1512
Tampering with a witness, victim, or an informant (Cited in para 17–20*a*.)

18 USC 1513
Retaliating against a witness, victim, or an informant (Cited in para 17–20*a*.)

18 USC 2510(8)
contents (Cited in para 5–17*c*.)

18 USC 2510(12)
electronic communication (Cited in para 5–17*c*.)

18 USC 2510(15)
electronic communication service (Cited in para 5–16*b*.)

18 USC 2703
Required disclosure of customer communications or records (Cited in para 5–17*d*.)

18 USC 2703(d)
Requirements for Court Order (Cited in para 5–17*f*(1).)

18 USC 2711(2)
remote computing service (Cited in para 5–16*b*.)

18 USC 3261
Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Cited in para 27–2*e*.)

18 USC 3401
Misdemeanors; application of probation laws (Cited in para 23–2*a*.)

18 USC 3481
Competency of accused (Cited in para 9–7*b*.)

18 USC 6001–6005
Definitions, Immunity generally, Court and grand jury proceedings, Certain administrative proceedings, and Congressional proceedings (Cited in para 2–4*c*.)

28 USC 515
Authority for legal proceedings; commission, oath, and salary for special attorneys (Cited in para 23–2*b*.)

28 USC 543
Special attorneys (Cited in para 23–2*c*.)

32 USC
National Guard (Cited in para 20–2*c*.)

34 USC 20901
Declaration of purpose (Cited in para 5–42*b*(3).)

Section II

Prescribed Forms

Except where otherwise indicated, the following forms are available on the Army Publishing Directorate website at https://armypubs.army.mil. DD Forms are available on the Executive Services Directorate website at https://www.esd.whs.mil/dd.

DA Form 2627
Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–6*c*.)

DA Form 2627–1
Summarized Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–7*a*(2).)

DA Form 2627–2
Record of Supplementary Action Under Article 15, UCMJ (Prescribed in para 3–23*d*.)

DA Form 3496
Military Judge's Oath (Prescribed in para 10–3.)

DA Form 3497
Counsel's Oath (Prescribed in para 10–4*a*.)

DA Form 3499
Application for Relief from Court-Martial Findings and/or Sentence Under the Provisions of Title 10, United States Code, Section 869 (Prescribed in para 13–3*a*.)

DA Form 3744
Affidavit Supporting Request for Authorization to Search and Seize or Apprehend (Prescribed in para 8–7*d.*)

DA Form 3745
Search and Seizure Authorization (Prescribed in para 8–7*d.*)

DA Form 3745–1
Apprehension Authorization (Prescribed in para 8–7*d*.)

DA Form 4916
Certificate of Service/Attempted Service (Prescribed in para 12–11*d*.)

DA Form 4917
Advice as to Appellate Rights (Prescribed in para 12–5*c*.)

DA Form 4918
Petition for Grant of Review in the United States Court of Appeals for the Armed Forces (Prescribed in para 12–5*c*.)

DA Form 4919
Request for Final Action (Prescribed in para 12–5*c*.)

DA Form 5109
Request to Superior to Exercise Article 15, UCMJ, Jurisdiction (Prescribed in para 3–5*b*.)

DA Form 5110
Article 15–Reconciliation Log (Prescribed in para 3–39.)

DA Form 5111
Summary Courts-Martial Rights Notification/Waiver Statement (Prescribed in para 5–34*f*.)

DA Form 5112
Checklist for Pretrial Confinement (Prescribed in 8–5*b*(2).)

DA Form 7568
Army Victim/Witness Liaison Program Evaluation (Prescribed in para 5–53*c*.)

DD Form 453
Subpoena to Testify and/or Produce or Permit Inspection of Items in a Court Martial (Prescribed in para 5–16*a*.)

DD Form 454
Warrant of Attachment (Prescribed in para 5–33*b*.)

DD Form 457
Preliminary Hearing Officer's Report (Prescribed in para 14–1*d*(2)(*b*).)

DD Form 458
Charge Sheet (Prescribed in para 5–22*a*.)

DD Form 490
Certified Record of Trial (Prescribed in para 5–53*e*.)

DD Form 491
Summarized Record of Trial (Prescribed in para D–11*c*.)

DD Form 2329
Record of Trial by Summary Court-Martial (Prescribed in para 5–53*f*.)

DD Form 2330
Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review) (Prescribed in para 12–6*a*(1).)

DD Form 2331
(Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of The Judge Advocate General) (Prescribed in para 12–6*a*(1).)

DD Form 2701
Initial Information for Victims and Witnesses of Crime (Prescribed in para 17–8*b*.)

DD Form 2702
Court-Martial Information for Victims and Witnesses of Crime (Prescribed in para 17–13.)

DD Form 2703
Post-Trial Information for Victims and Witnesses of Crime (Prescribed in para 17–14*b*(1).)

DD Form 2704
Victim/Witness Certification and Election Concerning Prisoner Status (Prescribed in para 17–14*b*(2).)

DD Form 2705
Victim/Witness Notification of Prisoner Status (Prescribed in para 17–28*c*.)

DD Form 2706
Annual Report on Victim and Witness Assistance (Prescribed in para 17–29*b*.)

DD Form 2707
Confinement Order (Prescribed in para 5–21*c*.)

DD Form 2791
Notice of Release/Acknowledgment of Convicted Sex Offender Registration Requirements (Prescribed in para 24–3*a*.)

DD Form 3056
Search and Seizure Warrant Pursuant to 18 USC 2703 (Prescribed in para 5–17*d*.)

DD Form 3057
Application for Search and Seizure Warrant Pursuant to 18 USC 2703 (Prescribed in para 5–17*d*.)

Appendix B

Points of Contact

B–1. ARBA
Army Review Boards Agency, 251 18th Street S., Suite 385, 4th floor, Arlington, VA 22202, Email: army.arbainquiry@army.mil.

B–2. Army Corrections Command
Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310–0150, Email: usarmy.pentagon.hqda-pmg.list.npe-mgt@army.mil.

B–3. ARNG TDS
U.S. Army National Guard Trial Defense Service, 111 South George Mason Drive, Arlington, VA 22204.

B–4. CID
HQ, U.S. Army Criminal Investigations Command (CIOP–ZC), 27130 Telegraph Road, Quantico, VA 22134.

B–5. Court Reporter Training
The Judge Advocate General's Legal Center and School, Chief, Court Reporter Training Department, 600 Massie Rd., Charlottesville, VA 22903.

B–6. Crime Records Center
U.S. Army Crime Records Center, 27130 Telegraph Rd., Quantico, VA 22134, Email: usarmy.belvoir.usacrc.mbx.mailcicr@army.mil.

B–7. DAD
Defense Appellate Division (JALS–DA), 9275 Gunston Rd., Suite 3200, Fort Belvoir, VA 22060, Email: usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil.

B–8. DOJ Domestic Security Section
Department of Justice, Domestic Security Section, Criminal Division, 950 Pennsylvania Ave., Washington, DC 20530, Email: nsd.public@usdoj.gov.

B–9. DOJ Witness Immunity Unit
Department of Justice, Witness Immunity Unit, 1301 New York Ave., 10th floor, Washington, DC 20530, Email: nsd.public@usdoj.gov.

B–10. GAD
Government Appellate Division (JALS–GA), 9275 Gunston Rd., Suite 2000, Fort Belvoir, VA 22060, Email: usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil.

B–11. HRC
U.S. Army Human Resources Command, 1600 Spearhead Ave., Dept. 420 (AHRC–PD–R), Fort Knox, KY 40122–5420, Email: usarmy.knox.hrc.mbx.perms-records@army.mil.

B–12. OTJAG–AL
Office of The Judge Advocate General, Administrative Law Division (DAJA–AL), HQDA, 2200 Army Pentagon, Washington, DC 20310–2200, Email: usarmy.pentagon.hqda-otjag.mbx.al-law@army.mil.

B–13. OTJAG–CLD
Office of the Judge Advocate General, Criminal Law Division (DAJA–CL), 2200 Army Pentagon, Room 3D548, Washington, DC, 20310–2200, Email: usarmy.pentagon.hqda-otjag.mbx.cl@army.mil.

B–14. OTJAG–NSLD
Office of the Judge Advocate General, National Security Law Division (DAJA–NSL), 2200 Army Pentagon, Room 3B548, Washington, DC, 20310–2200, Email: usarmy.pentagon.hqda-otjag.mbx.international-and-ops-law@army.mil.

B–15. OTJAG–PPTO
Office of the Judge Advocate General, Personnel, Plans, and Training Office (DAJA–PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200, Email: usarmy.pentagon.hqda-otjag.mbx.ppto@army.mil.

B–16. USACCA
U.S. Army Court of Criminal Appeals, Office of the Clerk of Court (JALS–CCZ), 9275 Gunston Rd., Fort Belvoir, VA 22060, Email: usarmy.pentagon.hqda-otjag.list.usalsa-acca@army.mil.

B–17. USACIL
U.S. Army Criminal Investigation Laboratory, 4930 North 31st Street, Forest Park, GA 30297, Email: usarmy.gillem.dfsc.list.usacil-headquarters@army.mil.

B–18. USALSA
U.S. Army Legal Services Agency, 9275 Gunston Rd., Fort Belvoir, VA 22060, Email: usarmy.pentagon.hqda-otjag.list.usalsa--admin@army.mil.

B–19. USARC
U.S. Army Reserve Command, Office of the Staff Judge Advocate, Chief Military Law Division, 4710 Knox St. Fort Bragg, NC 28310.

B–20. USDB
U.S. Disciplinary Barracks, Office of the Command Judge Advocate, 1301 North Warehouse Rd., Fort Leavenworth, KS 66027.

B–21. U.S. Marshals
U.S. Marshal Service, Military Liaison, CGN, West Tower, Suite 200, Washington, DC 20310.

Appendix C

Script for Conduct of Nonjudicial Punishment Proceedings

C–1. General

a. This guide is designed to ensure that the proceedings conducted pursuant to UCMJ, Article 15 comply with all legal requirements. It contemplates a three-step process conducted in the presence of the Soldier, consisting of the following:

(1) Notification.

(2) Hearing (that may be omitted if the Soldier admits guilt).

(3) Imposition of punishment (if the findings result in determination of guilt by a preponderance of the evidence).

b. This guide may be tailored for formal and summarized NJP proceedings. The script for the commander/implementing official is italicized.

C–2. Notification

If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note C–2*q*(4) as well as the language in parentheticals).

a. Statement of commanding officer or command representative*.*

(1) *As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code of Military Justice, and I am considering imposing nonjudicial punishment. (Your commander has disciplinary powers under Article 15 of the UCMJ and has asked me to notify you that he/she has received a report that you violated the Uniform Code of Military Justice and is considering imposing nonjudicial punishment.) This is not a formal trial like a court-martial. As a record of these proceedings, I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.*

Note. Wait for the Soldier to read items 1 and 2 of DA Form 2627. Allow him or her to retain a copy of the form until the proceedings are finished and the commander has either imposed punishment or decided not to impose it.

(2) *Do you understand item 1? Do you understand the offense(*s*) you are reported to have committed?*

b. Response of Soldier*.* Yes/No. If the Soldier does not understand the offense(s), explain the offense(s) to him/her.

c. Statement of commanding officer or command representative*. Do you understand item 2? Do you have any questions about your rights in these proceedings?*

d. Response of Soldier. Yes/No. If the Soldier does not understand their rights, explain them in greater detail. If the Soldier asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources: UCMJ, Article 15; Part V, MCM, 2024; or contact your servicing JA.

e. Statement of commanding officer or command representative. *There are some decisions you have to make—*

(1) *You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. Either I, or a special trial counsel, will then have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.*

(2) *If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence on your behalf.*

(a) Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

(b) Evidence in extenuation is circumstances surrounding the offense showing that the offense was not very serious.

(c) Evidence in mitigation is facts about you showing that you are a good Soldier and that you deserve light punishment.

(3) *You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.*

(4) *Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?*

f. Response of Soldier. Yes/No.

g. Statement of commanding officer or command representative.

(1) *If you do not demand trial by court-martial and after you have presented your evidence, if I am (the commander is) convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). (See table 3–1 for maximum punishments.)*

(2) *You should compare this punishment with the punishment you could receive in a court-martial. (If the Soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial is (sentence) for the offense(s).)*

Note. Part IV, MCM, 2024 lists for each punitive Article the punishments a court-martial may impose for violations of the various Articles of the UCMJ. The commanding officer—

(a) May inform the Soldier that referring the charges to a summary or SPCM would reduce the maximum sentence. For example, a summary court may not impose more than 1 month of confinement at hard labor. A special court may not impose more than 12 months of confinement.

(b) Should not inform the Soldier of the particular punishment you (the commander) may consider imposing until all evidence has been considered.

(3) *As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer from the Trial Defense Service is available with whom you can talk to free of charge and is located at (location). The next brief they have is at (state day and time) and that is your assigned place of duty at that time.* (Normally the unit provides an escort to confirm attendance and ensure that the correct paperwork accompanies the Soldier to the USATDS office. If the command intends to appoint an escort, inform the Soldier at this time for coordination purposes.)

h. Response of Soldier. Yes/No. If the Soldier desires to talk to an attorney, arrange for the Soldier to consult an attorney. The Soldier should be encouraged to consult the attorney promptly. Inform the Soldier that consultation with an attorney may be by telephone. The Soldier should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney. If the Soldier does not desire to talk to an attorney, this decision will be documented in a memorandum for record and attached to DA Form 2627.

i. Statements of commanding officer*. You will have 48 hours to think about what you should do in this case. You may advise me of your decision at any time within the 48-hour period and waive the remainder of the time if you so desire. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I (the commander) can continue with these Article 15 proceedings even without your consent. You are dismissed.*

Note. At this point, the proceedings should be recessed unless the Soldier affirmatively indicates that he or she has made a decision and does not need additional time or to consult with an attorney. In the event the Soldier does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, see paragraph 3–18f(4). When the commander resumes the proceedings, begin at item 3, DA Form 2627.

j. Statements of commanding officer or command representative.

(1) *Do you demand trial by court-martial?*

(2) *Response of Soldier.* Yes/No. (If the answer is yes, continue to C–2*k*(1). If the answer is no, skip to C–2*k*(2).)

k. Statements of commanding officer.

(1) *Initial block a, sign, and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. Either I, or a special trial counsel, must now decide whether to initiate court-martial proceedings against you. You will be notified of the decision. You are dismissed.*

(2) *An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, designated Soldiers of the chain of command, available witnesses, a spokesperson, if designated, and I will be present. Do you request an open hearing?*

l. Response of Soldier. Yes/No.

m. Statement of commanding officer. *Do you wish to be accompanied by a spokesperson?*

n. Response of Soldier. Yes/No.

o. Statement of commanding officer. *Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?*

p. Response of Soldier. Yes/No.

q. Statement of commanding officer. *Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.*

Note. The commanding officer will—

(1) Wait until the Soldier initials the blocks and signs and dates the form. If the answers to all the questions are "no," you may proceed to making a finding of guilty/not guilty (by a preponderance of the evidence) for each charge and, if you find the Soldier guilty of one or more of the offenses, you may proceed to impose punishment.

(2) If the answer regarding witnesses and evidence is "yes" and the Soldier is prepared to present their evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier, and destroy all copies of DA Form 2627. If you are convinced that the Soldier committed the offense(s) by a preponderance of the evidence and deserves to be punished, proceed to impose punishment.

(3) If the Soldier needs additional time to gather their evidence, give the Soldier a reasonable period of time to gather the evidence. Tell the Soldier when the proceedings will resume and recess the proceedings.

(4) If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Soldier's evidence. Ensure that the Soldier has the opportunity he or she deserves to present any evidence. Ask the Soldier, "Do you have any further evidence to present? "If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the Soldier committed the offense(s) and deserves to be punished, impose punishment.

C–3. Imposition of punishment

Statement of commanding officer: *I have considered all the evidence. I am convinced, by a preponderance of the evidence, that you committed the offense(s). I have considered any evidence in extenuation and mitigation. I impose the following punishment: (announce punishment).*

Note. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627 and sign the blank below item 6. The commanding officer will hand the DA Form 2627 to the Soldier.

C–4. Appellate advice

a. Statement of commanding officer. Read item 6, which lists the punishment I have just imposed on you. Now read item 4c, which points out that you have a right to appeal this punishment to (title and organization of next superior authority). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. You have a right to consult with a lawyer regarding an appeal. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date)*. Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving*

deprivation of liberty (correctional custody, restriction, or extra duty), at your request, may be interrupted pending the decision on the appeal. Do you understand your right to appeal?

b. Response of Soldier. Yes/No.

c. Statement of commanding officer. Do you desire to appeal?

d. Response of Soldier. Yes/No.

Note. If the answer is yes, go to note at C–4e(3). If the answer is no, continue with next statement.

e. Statements of commanding officer.

(1) *If you do not want to appeal, initial the appropriate block in item 5 and sign the blank below item 5.*

Note. Now give the Soldier detailed orders as to how you want him or her to carry out the punishments.

(2) *You are dismissed.*

(3) *Do you want to submit any additional matters to be considered in an appeal?*

f. Response of Soldier. Yes/No. (If the answer is yes, go to note at C–4*g*(2). If the answer is no, continue with next statement.)

g. Statements of commanding officer.

(1) *Initial the appropriate block in item 5 and sign the blank below item 5. I will notify you when I learn what action has been taken on your appeal. You are dismissed.*

Note. If the answer is yes, continue with next statement.

(2) *If you intend to appeal and do not have the additional matters with you, item 5 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 5 calendar days from the date punishment is imposed) and complete item 5, by initialing the box and signing the blank below. After you complete item 5, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). During this period, you will be permitted to consult with the Trial Defense Service if you so desire. Remember that the punishment will not be delayed* (unless the imposing commander sets another date)*. You are dismissed.*

Appendix D

Post-Trial Procedure and Records of Trial for Cases Referred to Trial Prior to 1 January 2019

Section I

Post-Trial Procedure

D–1. Effective dates and references

a. This appendix is applicable to all cases referred prior to 1 January 2019.

b. References to the MCM, including any RCM or MRE, or article of UCMJ contained within this appendix refer to the MCM, 2016 unless otherwise noted.

c. Post-sentencing procedures for all cases referred on or after 1 January 2019 are addressed in chapter 5 of this regulation.

D–2. Report of result of trial for special and general courts-martial

a. Preparation. At the conclusion of the court-martial, the trial counsel will prepare a DD Form 2707–1 (Department of Defense Report of Result of Trial) pursuant RCM 1101(a).

b. Contents. The DD Form 2707–1 will include the following information:

(1) The total number of days credited against confinement adjudged whether automatic credit for pretrial confinement under *U.S. v. Allen*, 17 M.J. 126 (CMA 1984), or judge-ordered additional administrative credit under RCM 304, RCM 305, *U.S. v. Suzuki*, 14 M.J. 491 (CMA 1983), or for any other reason specified by the judge, in accordance with the blocks on the form numbered 7–9;

(2) The names and SSNs of any co-accused;

(3) An indication whether DNA processing is required in accordance with 10 USC 1565;

(4) An indication whether sex offender registration is required in accordance 34 USC 20901 et seq., or DoDI 1325.07; and

(5) The effective date of any forfeiture or reduction in grade will be noted in block 5 of the form (see UCMJ, Arts. 57–58b).

c. Distribution.

(1) The trial counsel will ensure that a copy of the DD Form 2707–1 is included in allied papers accompanying the ROT.

(2) The trial counsel will ensure that a copy of the DD Form 2707–1 is expeditiously provided to the DMPO in any case involving a reduction in rank or forfeiture of pay or fine.

(3) Escorts for post-trial prisoners transferred to the USDB or other military corrections system facilities must carry a copy of the signed DD Form 2707–1 for delivery to the USDB with the prisoner.

(4) Trial counsel will provide a copy of the DD Form 2707–1 to the military law enforcement agency that investigated the case, either the servicing Provost Marshal's Office for MPI investigations; or HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134 for CID investigations.

D–3. Reassignment of post-trial Soldiers in confinement or on excess leave

For rules regarding reassignment of post-trial Soldiers in confinement or on excess leave, see paragraph 5–43.

D–4. Compliance with plea agreements

For rules regarding compliance with plea agreements, see paragraph 5–44.

D–5. Convening authority action

a. In general. In cases referred prior to 1 January 2019, the post-trial procedures (including the requirement for an SJA recommendation) contained in RCM 1107 will be used.

b. Staff judge advocate recommendation. Before a convening authority can take initial action on any GCM or any SPCM that includes a sentence to a BCD or confinement for one year, that convening authority's SJA will forward to the convening authority a recommendation in accordance with RCM 1106.

c. Convening authority action.

(1) *Who may act.* The convening authority will personally take action pursuant to RCM 1107. If it is impracticable for the convening authority to take action, that person will cause the ROT to be forwarded to

an officer exercising GCM jurisdiction over the command. The memorandum or message that causes the record to be so forwarded will contain a statement of the reasons why the convening authority who referred the charges could not act on the record, and any other matters deemed appropriate by the forwarding officer. A copy of the memorandum or message will be included in the ROT.

(2) *Required contents.* Initial action must be signed by the convening authority and will include:

(a) An accounting of all credits against a sentence to confinement, either as adjudged or as approved, regardless of the source of the credit (automatic credit for pretrial confinement under *U.S. v. Allen*, 17 M.J. 126 (CMA 1984), or judge-ordered additional administrative credit under *U.S. v. Suzuki*, 14 M.J. 491 (CMA 1983)), RCM 304, RCM 305, or for any other reason specified by the judge;

(b) Whether adjudged or automatic forfeitures in accordance UCMJ, Article 58b, were deferred or waived or both; adjudged or automatic forfeitures in accordance UCMJ, Article 58b, were deferred or waived or both.

(c) If applicable, a statement that reduction to private E–1 is required based on the approved sentence (see UCMJ, Article 58a), and if so, such reduction will be noted in the convening authority's action and is effective on the date of the action; and

(d) Whether waiver of forfeitures is approved and, if so, to whom the forfeitures are to be awarded.

d. Distribution of convening authority action.

(1) Within 24 hours of convening authority action, in cases in which the accused is in confinement or the convening authority approves confinement, the SJA serving the convening authority will notify the confinement facility in which the accused is, or will be confined, and the DMPO providing service to that confinement facility, of the action taken.

(2) A copy of the initial action will accompany the promulgating order in accordance with appendix G.

D–6. Suspension of sentence

a. Suspension of sentence pursuant to RCM 1108. The authority to suspend the execution of parts of a sentence is set forth in RCM 1108(b).

(1) No part of a sentence for which a convening authority is authorized to suspend as set forth in RCM 1108 may be suspended beyond a reasonable period. A reasonable period of suspension will be calculated from the date of the order announcing the suspension and will not extend beyond—

(a) Three months for an SCM.

(b) One year for an SPCM in which a BCD was adjudged.

(c) Two years or the period of any unexecuted portion of confinement (that portion of approved confinement unserved as of the date of action), whichever is longer, for a GCM.

(2) These limits do not include any time in which a suspension period is legitimately interrupted under RCM 1109(b)(4).

(3) These limits do not apply to military judge recommended suspension authorized by MJA 16, pursuant to RCM 1109(f), MCM, 2019.

b. Suspension of sentence pursuant to RCM 1109(f), Manual for Courts-Martial, 2019.

(1) A military judge may recommend suspension pursuant to UCMJ, Article 60a(c) in any case in which sentencing occurs on or after 1 January 2019, even if the case was referred to court-martial prior to 1 January 2019.

(2) In cases where the convening authority suspends a sentence on the basis of a military judge's recommendation in the STR pursuant to RCM 1109(f), the portion of the sentence that is to be suspended may not exceed the portion of the sentence that the military judge recommended be suspended, and the duration of the suspension may not be less than that recommended by the military judge.

D–7. Vacation of suspended sentences (cases referred prior to 1 January 2019)

a. In general. For sentences adjudged by GCM or by SPCM including a BCD, see RCM 1109(d). DD Form 455 or of a SPCM Sentence Including a BCD Under UCMJ, Article 72, and the RCM 1109 (see appendix 18, MCM, 2012) with appropriate modifications, may be used as a guide for the hearing and for recording the evidence relied on and the reason(s) for vacating the suspension. The original and two copies of any proceedings vacating a suspension will be sent to the office of the Clerk of Court, USACCA.

b. Cases involving the suspension of a dismissal. In a case of a suspended dismissal, the GCMCA over the accused, following a vacation hearing pursuant to RCM 1109(d), will forward the record of the hearing and all recommendations and a proposed action to vacate the suspension, if the GCMCA recommends vacation, to the Clerk of Court, USACCA.

D–8. Rehearing in cases in which the accused is absent without leave
For rules regarding rehearing in cases in which the accused is absent without leave, see paragraph 5–62.

D–9. Petition for new trial pursuant to UCMJ, Article 73
For rules regarding petitions for new trial pursuant to UCMJ, Article 73, see paragraph 5–63.

D–10. Clemency pursuant to UCMJ, Article 74 and other clemency authorities
For rules regarding petitions for new trial pursuant to UCMJ, Article 73, see paragraph 5–64.

Section II

Records of Trial

D–11. Preparation of records of trial
a. Records of trial will be prepared as prescribed in RCM 1103 and RCM 1305.
b. Materials regarding pretrial confinement will be included in the ROT. This includes a copy of the commander's checklist for pretrial confinement, DA Form 5112, and a copy of the magistrate's memorandum approving or disapproving pretrial confinement. Also, see paragraph 12–7 of this regulation for identification of companion cases on the covers of original records of trial. In all cases in which the convening authority approves confinement for 12 months or more, whether, or not all or part of the confinement is suspended, an additional copy of the ROT will be prepared for the Army Clemency and Parole Board for clemency review purposes and distributed under paragraph D–16. The cover of this additional copy will be marked prominently with the phrase "Clemency Copy."
c. Prepare DD Form 490 and DD Form 491 (Summarized Record of Trial). See also Appendix 14, MCM, 2016. The computation of elapsed days on the chronology sheets must be calculated in accordance with guidance from the Clerk of Court, USACCA.
(1) SJAs will indicate the number of days from the initiation of the investigation of the most serious arraigned offense to the date of arraignment in the remarks section of the DD Form 490 and DD Form 491. No delays will be deducted, but an explanation for significant delays, such as additional offenses, sanity board, and so forth, may be discussed in the remarks section. The Clerk of Court, USACCA will track this processing time for each GCM jurisdiction.
(2) The "cumulative elapsed days" column in item No. 7 will reflect only those delays listed in block No. 6. That portion of block No. 6 titled, "delay at request of defense," should be interpreted to mean only those delays that would be defense delays on speedy trial motions or those approved by the convening authority or the military judge in writing or on the record (see *United States v. Carlisle,* 25 M.J. 426 (CMA 1988)). Specific explanations of all delays listed in block No. 6 should be provided in the remarks section of the chronology sheet. For post-trial processing the only delays that may be deducted are extensions of time granted pursuant to RCMs 1105(c)(1), 1106(f)(5), and 1110(f)(1) or periods where action by the convening authority is expressly deferred pending the accused's testimony in another case, cooperation with an investigation, restitution of the victim, or similar contingency. Delays for the latter reasons should be documented by a granted defense request or explanatory memorandum in the accompanying papers. The number of days extension must be reflected by a negative number inserted immediately before the final total in the "cumulative elapsed days" column for delays pursuant to RCM 1105 and RCM 1106, and immediately after the final total in the "cumulative elapsed days" column for delays pursuant to RCM 1110. This should be accompanied by an entry in the remarks section. For example, "defense delay, RCM 1105(c): 6 days (31 March-5 April 2018)." Other post-trial delays, such as the time required for authentication of the record or time consumed in sending a record or recommendation to a distant defense counsel, may be noted in the remarks section, if desired, but no deduction will be made.
d. The SJA will include in the remarks section of the Chronology Sheet of DD Form 490 and DD Form 491 a statement showing the confinement facility, PCF, or other command to which the accused has been transferred, or whether the accused remains assigned to the unit indicated in the initial promulgating order (see para 12–13*b* for other requirements).
e. In GCM and SPCM cases in which a summarized ROT is authorized (see RCM 1103(b)(2)), DD Form 491 will be used to prepare the summarized report (see appendix 13, MCM, 2016). If a reporter was detailed and actually served in that capacity throughout the trial, the convening or higher authority may

direct that the proceedings be reported verbatim as prescribed by RCM 1103(b)(2)(B) and 1103(c)(1) and as indicated in Appendix 14, MCM, 2016.

f. If the proceedings have resulted in an acquittal of all charges and specifications or in termination before or after findings, the ROT will be prepared under RCM 1103(e). In addition, the record will include a summary of the trial proceedings up to the disposition of the case and all documentary exhibits and allied papers. The DD Form 491 may be modified and used as a binder for the ROT.

g. In the event a Soldier is tried in absentia, the SJA will ensure that the documents used to notify the Deserter Control Point are included among the allied papers submitted with the ROT.

D–12. Readability of contents of records of trial and attachments

For rules regarding the readability of contents of records of trial and attachments, see paragraph 5–54.

D–13. Retention of trial notes or recordings

For rules regarding the retention of trial notes or recordings, see paragraph 5–55.

D–14. Authentication of records of trial

a. Records of trial will be authenticated under RCM 1104(a).

b. The ROT of a SPCM will be authenticated in the same manner as that of a GCM.

c. Records of trial should not be authenticated until all known administrative corrections have been made.

d. For purposes of authentication by the military judge, "record of trial" means the written transcript of all courtmartial sessions and all prosecution and defense exhibits which were marked for identification or referred to on the record, regardless of whether received into evidence, and all appellate exhibits.

D–15. Service of record of trial on the accused and trial victims of sex-related offenses

a. Accused.

(1) Records of trial will be served under RCM 1104 (a) and (b), and RCM 1305(d). Under the provisions of RCM 1104(a)(1) "[s]ervice of an authenticated electronic copy of the record of trial *with a means to review the record of trial* satisfies the requirement of service under RCM 1105(c) and RCM 1305(d)." (Emphasis added.) A prisoner who is not provided with the equipment necessary to review an authenticated electronic ROT to the same extent that the prisoner would be able to review a printed ROT does not have a reasonable "means to review the ROT." Similarly, an unconfined accused without access to the necessary equipment to privately review an electronic ROT does not have a reasonable "means to review the ROT." Absent an express written waiver, service of an electronic ROT on an accused without a reasonable means to review the ROT does not satisfy the requirements of service under RCM 1105(c) and RCM 1305(d).

(2) Copies of the JA's review under RCM 1112 will be attached to the original and all copies of the ROT. After the officer exercising GCM jurisdiction has taken final action, the accused will be notified of the action and the accused will be provided with a copy of the JA's review. A certificate of service, attached to the ROT, would be appropriate when the accused is served personally; otherwise receipt of service is required.

b. Victims of sexual assault. In a general or SPCM, unless declined, a copy of the ROT will be given free of charge to a victim who has suffered a direct, physical, emotional, or pecuniary harm as a result of matters set forth in a charge or specification and is in named in a specification under UCMJ, Articles 120, 120b, 120c, 125, or any attempt to commit such offense in violation of UCMJ, Article 80.

(1) *Notice.* Trial counsel will cause each qualifying victim, as defined in subparagraph D–15*b*, above, to be notified of the opportunity to receive a copy of the ROT no later than authentication of the ROT. A victim entitled to the ROT may decline receipt of such documents in writing and any written declination will be attached to the original ROT.

(2) *Scope.* In a general or SPCM, a copy of the ROT will be given free of charge to a victim as defined in subparagraph D–15*b*, above, for a specification identified in subparagraph D–15*a*, above, that resulted in any finding under RCM 918(a)(1). If a victim is a minor, a copy of the ROT will instead be provided to the parent or legal guardian of the victim.

(3) *Additional requirements.* Notice requirements and documents that are to be provided to qualifying victims are set forth in RCM 1103.

D–16. Forwarding of records of trial after initial action

a. General and special courts-martial.

(1) In GCM cases (including proceedings ending in acquittal or termination (see RCM 1103(e))) and in SPCM cases in which a BCD or confinement for 1 year has been approved, where the accused has not waived appellate review under RCM 1110, the ROT will be forwarded to the Clerk of Court, USACCA. See paragraph 12–7 for identification of companion cases. In cases in which an additional ROT is prepared for the Army Clemency and Parole Board, the record will be sent directly to ARBA.

(2) In cases requiring review pursuant to RCM 1112(a), (including those in which the accused withdraws appellate review), the ROT will be forwarded to a JA for review. Review under RCM 1112 may be done either by a JA in the OSJA of the convening command or by a JA otherwise under the technical supervision of the SJA, if available. In the event no JA is available, the SJA may request that their higher technical chain appoint a JA to conduct this review. Following JA review, those records of trial that are required to be forwarded under RCM 1112(g) (1) or (2), will be transmitted to the Clerk of Court, USACCA. Records of trial not required to be forwarded under RCM 1112(g)(1) or (2) will be filed pursuant to paragraph D–17.

b. Sealed exhibits and closed hearings. When a record contains sealed matter, the sealed matter will be kept separate from that part of the record that took place in open court. In a case with sealed exhibits or closed hearings, each exhibit and each transcript of any closed hearing will be placed in its own envelope and a military judge-initiated sealing order explaining the nature of the material contained therein and the reason it was sealed will be affixed to each envelope. When necessary, more than one record volume may be used.

c. Capital cases. In cases in which the death penalty has been adjudged, there are special reporting requirements before the ROT is forwarded (see paragraph 28–2).

d. Number of copies. In addition to the original ROT, the e-ROT or two non-electronic copies of the ROT (copy 1 and 2) are required for all courts-martial described in paragraph D–16*a*.

e. Electronic records of trial. e-ROTs will be uploaded to the respective installation e-ROT library, located on the USACCA webpage at https://www.jagcnet.army.mil/acca. Audio recordings or digital media, sealed exhibits, closed sessions, or classified matters will not be included in the e-ROT.

D–17. Disposition of records of trial

a. On completion of any required review and supplemental action, original records of trial of all GCMs and of SPCMs with approved BCDs or confinement for more than 364 days, will be sent for filing to the Clerk of Court, USACCA.

b. On completion of review and any required supplemental action, original records of trial for SPCMs without approved BCDs or confinement of more than 364 days will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

c. On completion of review and any required supplemental action, original records of trial for SCMs will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

D–18. Transmittal of records of trial

Delivery by electronic means should be used to transmit records of trial for any official purpose to recipients that permit the delivery of authenticated electronic copies of records of trial. Otherwise, certified first-class mail with return receipt requested or delivery by commercial means with return receipt requested should be used to transmit records of trial for any official purpose.

Appendix E

Preparing and Arranging Certified Records of Trial

E–1. Responsibility to certify records of trial

Pursuant to RCMs 1112, 1116, and this regulation, a court reporter is responsible for certifying records of trial prior to TJAG's transmittal to the USACCA.

E–2. Assembly of record of trial and allied papers

Final certification will only be completed after the court reporter ensures that the ROT and allied papers are arranged and bound in the sequence indicated below:

a. For pages 1 (cover page) and 2 (Chronology Sheet) of DD Form 490, MJO will calculate the dates on Chronology Sheet for you. (See para 12–7 for guidance on companion and other cases). The SJA or SJA's designee will sign the DD Form 490.

b. For substantially verbatim recording of court-martial proceedings, segregate open and closed sessions of the court-martial in accordance with RCM 1113 and the following guidance (see also para E–2*z*, this appendix):

(1) All audio recordings forwarded pursuant to this Appendix will be in the native for the record format.

(2) Ensure that each closed session of the court-martial is recorded on a separate CD marked CLOSED SESSION, placed in its own envelope marked CLOSED SESSION, and sealed.

(3) Label all CD(s) and envelopes with the information on page 1.

(4) Mark all CDs and envelopes with "1 of X," as necessary (for example, the second CD of six CDs and its envelope should be marked, 2 of 6). All CDs of open sessions may be in one envelope.

(5) Mark all CDs with their beginning and ending timestamps. The timestamps for closed sessions should match those shown on the Index.

c. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate review under RCM 1115, if applicable.

d. All transfer orders, confinement orders, and excess leave orders or a copy of DA Form 31.

e. Briefs of counsel submitted after trial, if any.

f. EOJ and all attached documentation, including STR.

g. Signed advice of SJA or legal officer (when required) or written determination of the special trial counsel, together with all clemency papers, including clemency recommendations by court members.

h. Any requests for copies of the court-martial record pursuant to RCM 1106 or 1106A (attach written requests, and any certificates of service).

i. Matters submitted by the accused and/or victim under RCM 1106 or 1106A, or any written waiver of the right to submit such matters.

j. Any deferment request and the action on it (including any request to waive automatic forfeitures under Article 58b).

k. Conditions of suspension and proof of service on probationer under RCM 1107, if any.

l. Copy of convening order and any amending order (unless included in the transcript).

m. DD Form 458 (unless included at the point of arraignment in the transcript).

n. Congressional inquiries and replies, if any.

o. DD Form 457, if a preliminary hearing was conducted. Include any other allied papers that accompanied the charges when referred for trial (including any matters submitted under RCM 405(l)), unless included elsewhere in the ROT. (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters).

p. Advice of SJA or legal officer or written determination of the special trial counsel, when prepared pursuant to UCMJ, Article 34 or otherwise.

q. Requests by counsel and action of the convening authority taken thereon (for example, requests concerning delay, witnesses, and depositions).

r. Records of former proceedings (UCMJ, Article 30a) and/or trials, (for example, electronic/digital record of former proceeding, including audio recording and any scanned documentation/transcripts, CD/DVD format). (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters).

s. Printed transcript of the court-martial proceedings in the following order:

(1) The first page of the written transcript should begin with: “Proceedings of a [General/Special] Court-Martial. The military judge called the UCMJ, Article 39(a) session to order. The court met at [location] at [time] on [date] pursuant to CMCO [number].”

(2) The Index containing both page numbers from the transcript (if included), and timestamps from the audio recording. Timestamps do not have to be in any particular format so long as the timestamp of the audio can be quickly correlated with a court-martial event (for example, pleas, findings, sentence) listed in the Index or elsewhere in the ROT.

(3) Receipts of accused, and victim, or counsel, for copies of certified record, or certificates of service.

(4) Substantially verbatim transcript of proceedings in court, including UCMJ, Article 39(a) sessions, if any. (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters).

(5) Signed military judge authentication statement.

(6) Signed court reporter certification statement, attesting that the transcript is a true, accurate, and complete copy of the audio recording of the court-martial.

(7) A certificate of correction, if any (including any supplemental certification for additional proceedings).

(8) If a printed transcript is not required in a particular case, copy the digital version of the transcript to CDs and prepare the digital transcript in the same fashion as the audio record in paragraph E–2*b*(1) through E–2*b*(4), above, including the careful separation of open and closed sessions.

t. Action of convening authority, if any, including any action pursuant to RCM 1109(e)(3)(B). If convening authority took action, including signed copy of action.

u. Exhibits admitted in evidence (Prosecution and Defense Exhibits, in that order). (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters). Include the transcript page number and the timestamp in the audio record where the evidence was offered and admitted.

v. Exhibits offered and not admitted in evidence. Include the transcript page number and the timestamp in the audio record where the evidence was offered and not admitted. (Prosecution and Defense Exhibits, in that order). (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters).

w. Exhibits pre-marked for identification, but not offered or admitted. (Prosecution and Defense Exhibits, in that order). (See para E–2*z*, this appendix, regarding handling of closed sessions and sealed matters).

x. Appellate exhibits. Appellate exhibits include, but are not limited to:

(1) Proposed instructions.

(2) Written offers of proof or preliminary evidence (real or documentary).

(3) Briefs of counsel submitted at trial.

(4) Request to be tried by military judge alone (if any).

(5) The accused’s election of members under RCM 903 (if any).

(6) Any statement by convening authority required under RCM 503(a)(2).

y. Redaction. The following information will be redacted from the ROT prior to releasing it to any accused or victim, (including any transcript made pursuant to RCM 1114 and attached to the ROT), unless the information establishes an element of an offense, or is otherwise required:

(1) Any recordings of closed sessions, any transcripts of closed sessions, and any sealed exhibits.

(2) Names of minor victims, and names of minor witnesses; if an identifier is used, use only the initials.

(3) SSNs. If an individual’s SSN is relevant, use only the last four digits.

(4) Financial account information. If financial account numbers are relevant, use only the last four digits.

(5) Home addresses. If a home address is relevant, use only the city and state.

(6) Telephone numbers. If a telephone number is relevant, use only the last four digits.

(7) Personal email addresses. If a personal email address is relevant, use only the first two characters and domain separated by three asterisks (for example, a2***@msn.com).

(8) Dates of birth. If a named individual’s date of birth is relevant, use only the year, unless birth month is relevant to the charged offense.

(9) Any other information that could be used to identify a specific person other than the accused.

z. Closed sessions and sealed items. If the report of preliminary hearing or ROT contains exhibits, proceedings, or other materials ordered sealed by the preliminary hearing officer or military judge, counsel for the Government, the court reporter, or trial counsel will cause such materials to be sealed so as to prevent unauthorized examination or disclosure, pursuant to RCM 1113. Sealed material will be properly marked, individually placed in separate envelopes with a copy of the preliminary hearing officer or military judge sealing order affixed to it, and inserted at the appropriate place in the ROT. Do not duplicate sealed

material for purposes of including in any copy of the ROT. Instead, insert a copy of the sealing order in lieu of any sealed material, in any copies of the ROT.

Appendix F

Attorney-Client Guidelines

These guidelines have been approved by TJAG. Military personnel who act in courts-martial, including all Army attorneys, will apply these principles insofar as practicable. However, the guidelines do not purport to encompass all matters of concern to defense counsel, either trial or appellate. Attorneys must always comply with TJAG policy and the ethical guidance of their licensing jurisdictions. As problem areas are identified, TJAG will develop a common position and policies for the guidance of all concerned.

F–1. Problem areas in general

a. Applicability of the attorney-client relationship rules to military practice generally. Military attorneys and counsel are bound by the law and the highest recognized standards of professional conduct. The Army "Rules of Professional Conduct for Lawyers" (see AR 27–26), and the "Code of Judicial Conduct for Army Trial and Appellate Judges" are applicable to all attorneys who appear in military justice matters.

b. Attorney-client relationship in the military criminal practice.

(1) *Establishment.* When an officer holds themselves out as an attorney or is designated on orders as a detailed defense counsel, they are regarded for the purposes of these guidelines as an attorney and is expected to adhere to the same standards of professional conduct. Any authorized contact with a Soldier seeking their services as a defense counsel or as an attorney for that Soldier in their personal capacity results in at least a colorable attorney-client relationship, although the relationship may be for a limited time or purpose. When an attorney's assigned or reasonably anticipated military duties indicate that the relationship is for a limited time or purpose, they must inform the prospective client of these limitations. There is no service obligation to appoint an attorney as detailed counsel merely because an attorney-client relationship has been established. However, an attorney will not later place themselves (or allow such placement) in the position of acting adversely to the client on the same matter.

(2) *Dissolution.* An attorney should not normally be assigned as counsel to a case unless they can be expected to remain for the trial or adverse administrative proceeding. This does not apply to court-martial appeals, as those might take several years. If it appears that they will not be available for the trial or adverse administrative proceeding, the client must be notified at the inception of the relationship or as soon as unavailability is known, whichever is sooner. Military requirements or orders to move the attorney (as proper personnel management requires) will be respected. An attorney will not, without their own agreement, be retained on duty beyond a service appointment merely to maintain an existing relationship with respect to a particular case or client. As no authority exists to hire a civilian attorney at government expense to represent a Soldier in a court-martial or adverse administrative proceeding, no former officer should expect to be retained by the government to represent a Soldier with whom that officer has developed an attorney-client relationship. A military defense counsel may not solicit clients for future civilian employment and representation.

(3) *Content.* The attorney should represent their Soldier client to the fullest extent possible within the limits of the law and applicable regulations. No information obtained in an attorney-client relationship may be used against the interests of the client except in accordance with the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26) or the attorney's licensing authority.

c. Restrictions in exhausting legal and administrative remedies. Military attorneys will normally confine their activities to proceedings provided for in the UCMJ and Army regulations (see para F–2*c*). They will be guided by local policies as to the extent that a military defense counsel is allowed to handle other matters, such as general legal assistance. The activities of USATDS counsel are governed by chapter 6 of this regulation.

d. State rules of professional conduct. When an ARNG defense counsel, in Title 32 status, serves in a state in which the attorney is not licensed, such counsel must review and comply with the state's rules of professional conduct before entering into an attorney-client relationship. As an exception, an ARNG defense counsel is permitted to represent ARNG members in "covered legal defense actions" defined by NGR 27–12, in all States, Territories, and the District of Columbia, regardless of the defense counsel's state(s) of licensure.

F–2. Problems associated with trials

a. Steps to ensure that conflicts of attorney's interest do not arise because of multiple clients.

(1) Barring unusual circumstances, a military attorney will not undertake or be detailed to represent more than one client where there are multiple accused. Prior to the time that defense counsel are detailed, the Chief, USATDS, or his or her delegate (see para 6–9), will ensure that co-accused are initially contacted by separate defense counsel. Once detailed to represent one of two or more co-accused, a military attorney will not represent another co-accused in the absence of a request for IMC processed under UCMJ, Article 38(b); RCM 506; and this regulation.

(2) Requests for IMC will not be approved unless—

(a) Each co-accused to be represented by the same attorney has signed a statement reflecting informed consent to multiple representation.

(b) It is clearly shown that a conflict of interest is not likely to develop.

(3) In no instance will a military attorney knowingly establish an attorney-client relationship with two or more coaccused prior to gaining approval from the appropriate authority.

(4) If a civilian or military attorney is representing two or more co-accused at the commencement of trial, the defense counsel concerned will bring the matter to the attention of the military judge. The military judge will then determine the issue of adequate representation with respect to each co-accused who is before the court as an accused at that time. For additional guidance see The Defense Function, section 3.5, and the Function of the Trial Judge, section 3.4(b), Code of Judicial Conduct for Army Trial and Appellate Judges; and Rule 1.7, Army "Rules of Professional Conduct for Lawyers" (AR 27–26).

(5) If additional defense counsel will be required by a command due to the prohibition on multiple client representation, the SJA concerned or his or her representative will contact the SDC supporting his or her jurisdiction who will act expeditiously on such requests according to USATDS procedures. Funding for USATDS counsel will be provided in accordance with chapter 6 of this regulation.

b. Relationship between military and civilian defense counsel.

(1) Military counsel will not recommend any specific civilian counsel. This rule does not prohibit military attorneys from referring clients to public interest or *pro bono* resources. The best method of providing options for private representation is to show the accused a list of local attorneys. This list should be compiled by personnel in the SJA office and representatives of the local bar association. This will ensure that local attorneys who have no interest in such referrals will not appear on the list. The accused must be told that—

(a) This list is not exclusive.

(b) He or she is not limited to the services of a local attorney.

(c) The listing of an attorney is not necessarily an endorsement of the attorney's capability or character. The accused should be reminded that the responsibility for the choice is solely his or hers.

(2) The civilian counsel is expected to treat an associated military attorney as a professional equal. Military and civilian counsel are expected to treat each other with the respect and courtesy due their professional status.

(3) Where the conflict between military and civilian counsel concerns defense tactics, the military counsel must defer to the civilian counsel if the accused has made the civilian counsel lead counsel. If the civilian counsel is not the lead counsel, the client should be consulted as to any conflicts between counsel. If the military counsel determines that the civilian counsel is conducting himself or herself contrary to the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26) or violating the law, the military counsel should first discuss the problem with the civilian counsel. If the matter cannot be resolved, the military counsel, after consultation with the defense supervisory chain of command, has the duty to inform the accused of the civilian counsel's actions. The military counsel should inform the civilian counsel of his or her intention to discuss the matter with the accused. If the accused approves of the civilian counsel's conduct, the military counsel must inform the accused that he or she will inform the military judge or, if before referral, the convening authority, if either action is appropriate and allowed under the rules of professional responsibility.

c. Collateral civil court proceedings.

(1) A military defense counsel's ability to act in such matters is regulated by Army policy in AR 27–40.

(2) The military defense counsel is not required to prepare a *habeas corpus* petition pursuant to 28 USC 2242 and is prohibited from doing so unless the provisions of AR 27–40 are followed. However, nothing prohibits the military counsel from explaining to the accused how to prepare a *pro se* petition. This would entail the accused's writing to the Federal district court judge requesting a writ of *habeas*

corpus or other relief. Also, nothing prohibits the military defense counsel's explaining to the accused the right to retain civilian counsel in the matter. Further, this section does not prohibit military counsel from filing a petition for an extraordinary writ with USACCA or USCAAF if such a petition is otherwise allowed and appropriate.

(3) Extent of participation when civilian counsel has initiated such proceedings. Military counsel would be acting contrary to the spirit of AR 27–40 if he or she acted through civilian counsel to perform a service for a client that military counsel could not perform on his or her own (for example, preparation of pleadings in *habeas corpus* proceedings) and should not do so.

d. Scope of trial defense counsel's responsibility after appellate defense counsel has been appointed. After appellate defense counsel has been appointed, trial defense counsel should assist the appellate defense counsel where such assistance does not interfere with his or her regularly assigned duties or violate attorney-client confidentiality. Trial defense counsel have an obligation to provide all client files upon receipt of a limited waiver of attorney-client confidentiality (a *Dorman* waiver) by appellate defense counsel. Trial defense counsel have no right or obligation to assist in preparation of briefs for anyone other than appellate defense counsel after appellate defense counsel has been appointed.

e. Ability of trial defense counsel to provide otherwise privileged information when his or her conduct at trial has been raised on appeal. When a trial defense counsel's conduct at trial has been raised on appeal, any privilege is waived to the extent necessary to address the issues raised when the accused has argued he or she was inadequately represented at trial. In protecting his or her professional integrity against such a challenge, trial defense counsel may reveal, only to the extent necessary, otherwise privileged matters. Trial defense counsel should consult with DCAP prior to submitting such an affidavit.

F–3. Problems associated with appeals

a. Appellate defense attorney-client relationship.

(1) *Creation.* The attorney-client relationship exists between the accused and counsel designated to represent the accused pursuant to UCMJ, Article 70. Generally, TJAG initially directs the Chief, DAD, to represent an accused. The Chief, DAD, as the chief appellate defense counsel, designates other appellate counsel assigned to the DAD to assist as appellate defense counsel. The duty of representation is established at the time of the appointment for the purpose of the appointment and the relationship remains in effect until—

(a) Withdrawal of representation and appropriate notice to USACCA.

(b) Completion of the direct appellate processes under the UCMJ.

(2) *Termination.* An accused has no right to select specific military appellate defense counsel or to initiate termination of the attorney-client relationship. The scope of representation is limited to the court-martial appeal and when direct appeal is complete, the relationship terminates. The designation may be terminated earlier for administrative purposes.

(3) *Relationship generally.* Face-to-face interviews are normally not necessary in an appellate defense attorney-client relationship. Telephonic facilities are available at no cost to clients in military confinement for communication between the appellant and his or her counsel. If the chief appellate defense counsel determines that a face-to-face interview is essential, necessary travel funds will be provided, if available. General legal assistance is available at any Army legal assistance office.

b. Extent of attorney's duties.

(1) *Collateral attacks in civilian courts.* The UCMJ, Article 70 mandates that appellate counsel will represent the accused before the military appellate courts and will "perform such other functions in connection with the review of court-martial cases as TJAG directs." The direct review of a court-martial is set out in the UCMJ, and military representation of the accused does not include collateral attacks in the Federal courts except as permitted pursuant to AR 27–40.

(2) *Administrative proceedings in confinement facilities.* Military attorneys assigned to the installations containing confinement facilities have the responsibility to provide counsel to the confined accused when he or she is entitled to such counsel.

c. Conflict between appellate attorneys. Divergent views between military appellate defense counsel and retained civilian counsel must be resolved in the same manner as at trial, discussed in paragraph F–2*b*(3). Military appellate defense counsel must defer to the decisions of the Chief, DAD, on matters of representation. If irreconcilable differences appear, the assisting military appellate defense counsel should ask to be relieved from the case. The Chief, DAD has the authority to grant such a request.

Appendix G

Court-Martial Orders for Cases Referred to Trial Prior to 1 January 2019

G–1. Effective dates and references

a. This appendix is applicable to all cases referred prior to 1 January 2019.

b. References to the MCM, including any RCM or MRE, or article of the UCMJ contained within this appendix refer to the MCM, 2016 unless otherwise noted.

c. CMOs for cases referred on or after 1 January 2019 are addressed in chapter 5 of this regulation.

G–2. Types of court-martial orders

a. Convening orders. A convening order is used to announce the members of a SPCM or GCM (see RCM 504(d)).

b. Promulgating orders. An initial promulgating order is used to promulgate the results of trial by a GCM or SPCM and the initial action of the convening authority thereon. A supplementary promulgating order is used to promulgate any subsequent action taken by the convening or higher authority on findings or sentence of an SPCM or GCM (see RCM 1114).

G–3. Convening orders

The convening authority will issue convening orders for each SPCM or GCM as soon as practicable after he or she personally determines the members of a court-martial. Oral convening orders will be confirmed by written orders as soon as practicable. Convening orders may be amended.

G–4. Promulgating orders

a. The convening authority will issue an order promulgating the results of trial for all SPCMs and GCMs (see app 17, MCM, 2016). A copy of the initial promulgating order will be immediately forwarded to the commander of the proper confinement facility and the finance and accounting officer providing finance service to that facility (see also, para D–5*d*, requiring 24-hour notification of convening authority's action).

b. Action taken on the findings or sentence of a SPCM or GCM subsequent to the initial action by the convening authority will be promulgated, as appropriate, by—

(1) The convening authority who took the initial action in the case.

(2) The commanding officer of the accused who is authorized to take the action being promulgated.

(3) The GCMCA of the accused at the time of the action, or

(4) The Secretary of the Army.

c. An order promulgating a self-executing DD or BCD need not be issued.

d. Initial or supplementary promulgating orders in SPCMs or GCMs are designated "special court-martial order," or "general court-martial order," respectively.

e. All promulgating orders will identify victims and witnesses by initials only, for example "...cause Ms. A.B. to engage in a sexual act..." and "...make to SA B.C., an official statement...." No promulgating order will publish personal information concerning victims or witnesses. (see paras 5–56*h*(3) through 5–56*h*(9) for a list of additional personal information that must be redacted from a promulgating order).

G–5. Format for court-martial orders

a. Heading.

(1) The heading of CMOs is the same as that used for other orders, except that the words "court-martial convening order," "general court-martial order," or "special court-martial order," are substituted for the word "Orders."

(2) Courts-martial orders will be numbered so that convening authorities and other interested parties are able to track the creation and amendment of both convening and promulgating orders by calendar year.

(a) Courts-martial convening orders may be grouped into separate categories, such as general and special courtsmartial, with each category having its own numbering sequence and beginning anew each calendar year. Alternatively, a convening authority may wish to group all general and SPCM convening orders together in one series, with each succeeding convening order numbered sequentially and the whole series beginning anew each calendar year. This latter option may be preferable when a convening

authority picks the same panel members to serve as a standing panel for both general and special courts-martial.

(b) Promulgating orders should always be grouped into separate categories of general and special CMOs, with each series beginning anew each calendar year.

(c) For all CMOs, the first numbered order in each series issued in any calendar year will bear a notation above the heading of the first page showing the number of the last order issued for that series during the preceding year. For example, "Court-Martial Convening Order Number 37 was the last of the series for 2011." (see Post-Trial Handbook).

(3) The type of order will be written in capital letters beginning at the left margin immediately opposite the date. The word "NUMBER" in capital letters will be placed immediately below the type of order. An Arabic numeral indicating the serial number of the order will be placed so that the last number is immediately below the last letter of the word "ORDER." Dates will be indicated as follows:

(a) A CMCO will bear the date of its publication.

(b) An initial promulgating order will bear the date of the action of the convening authority on the ROT.

(c) An initial order promulgating an acquittal or termination, or a supplementary order will bear the date of its publication.

(4) If the initial promulgating order for a general or SPCM contains findings of guilty as to any qualifying military offense, the SJA will ensure that the top of the first page of the order is annotated in bold-face type with "DNA processing required. 10 USC 1565." A "qualifying military offense" is an offense determined by the Secretary of Defense to be a qualifying military offense for the purposes of 10 USC 1565 (see DoDI 5505.14).

b. Body.

(1) *Court-martial convening orders.* Great care should be used to verify that the members actually detailed by the convening authority are present. At a minimum, each member should be asked to verify their name, rank, and unit. After verification, no document that includes the SSNs of court members should be attached to the ROT (see RCM 504(d) and appendices 6 and 8, MCM, 2016).

(2) *Initial special court-martial and general court-martial promulgating orders.* The body of the order will contain the elements outlined in RCM 1114 in the format of appendix 17, MCM, 2016. If the order promulgates the proceedings of a rehearing, it will recite that fact together with the number and date of the CMO publishing the former proceedings.

(3) *Supplementary special court-martial and general court-martial promulgating orders.* The order will be in the format contained in Appendix 17, MCM, 2016, and the order will include, if applicable, the following:

(a) The date the sentence was adjudged if the supplementary action in any manner affects a sentence of confinement.

(b) The courts-martial case number (ARMY0000000) inserted in parentheses at the end of the distribution list.

c. Authentication. CMOs are authenticated in the same manner as other orders discussed in DA Pam 600–8–105 with the exception of the authority line. The authority line in convening orders indicates that the commander has personally acted with respect to the selection of the personnel named in the order. In CMOs, the authority line reads—

(1) "By command of (grade and last name)" when the commander is a general officer.

(2) "By order of (grade and last name)" when the commander is below the grade of brigadier general.

d. Distribution designation.

(1) The word "distribution" is placed beginning at the left margin opposite the signature block. A list of the individuals, organizations, and installations to which copies of the order will be sent and the number of copies to be furnished will be indicated under "distribution." Distribution includes one copy for the reference set, when needed, and the record set of military publications.

(2) Standard distribution of orders within a command and to agencies requiring full distribution may be designated by letters, for example, distribution A, B, or combinations thereof, to indicate all or part of the distribution made. Agencies included in each letter designation are shown in a distribution list prepared and published by the HQ or agency concerned (see DA Pam 600–8–105).

e. Corrections. CMOs are corrected in the same manner as other orders discussed in AR 600–8–105, with the following exceptions:

(1) Changed material will be underscored.

(2) Further corrections will be made by additional corrected copies, as necessary, with the figure "2d," "3d," and so forth, inserted before the words "corrected copy." Extreme care should be used in preparing CMOs to avoid the need for corrections.

G–6. Modification of findings or sentence

a. Orders modifying the findings. Orders modifying the findings or all or any part of the sentence of a SPCM or GCM issued subsequent to the order promulgating the result of a trial are published in appropriate supplementary CMOs.

b. Self-executing punishments.

(1) Where the convening authority initially approves an adjudged DD or BCD, that punishment is self-executing in cases where the accused—

(a) Received no sentence to confinement.

(b) Has completed a sentence to confinement.

(c) Is on excess or appellate leave.

(d) The Clerk of Court, USACCA, certifies that the case is final.

(2) The Clerk of Court, USACCA, will forward the initial promulgating order and certification that the case is final to the accused's personnel office for preparation of a discharge order and certificate.

(3) No supplementary CMO is necessary.

(4) In cases where an accused was tried by separate courts-martial and received different punitive discharges, those punishments remain self-executing to the extent the criteria in paragraph G–6*b*(1) are satisfied.

c. Supplemental orders for UCMJ, Article 66 cases in which a petition to the U.S. Court of Appeals for the Armed Forces has not been filed.

(1) No supplementary CMO is necessary if the accused waives or withdraws appellate review under RCM 1110 (and no modification of the action in the initial promulgating order is necessary after review, under RCM 1112) or if the USACCA affirms the findings and sentence without modification.

(a) No dismissal or discharge was adjudged or approved.

(b) A suspended dismissal or discharge has not been vacated pursuant to UCMJ, Article 72.

(c) No action has been taken by TJAG or the Secretary of the Army modifying the findings or the sentence.

(2) A supplemental CMO is necessary for a case involving a sentence to dismissal or discharge not described in (1), above—

(a) In a case involving a sentence to a punitive discharge in which the accused has waived or withdrawn appellate review under RCM 1110, the supplementary CMO will be promulgated on completion of review under RCM 1112 or subsequently, after final review by TJAG pursuant to RCM 1201(b)(2) if review by TJAG is required under RCM 1112(g)(1).

(b) In a case involving a sentence to dismissal in which the accused has waived or withdrawn appellate review under RCM 1110, the supplementary CMO will be promulgated after the record has been forwarded to TJAG under RCM 1112(g)(2) for action under RCM 1206.

(3) In a case reviewed by the USACCA, and if required (see para G–6*b*, above), the supplementary CMO will be promulgated after the expiration of 75 days from the date the USACCA decision is served on or mailed to the accused under paragraph 12–9, whichever is earlier, unless the accused requests final action sooner or petitions the USCAAF for a grant of review.

(4) A supplemental CMO is necessary in all other cases in which competent authority modifies the findings or sentence.

(5) When the accused is enlisted, or is an officer not under an approved or affirmed sentence to dismissal, the supplemental CMO will be promulgated by the GCMCA of the accused at the time the court-martial was held if the case receives final review under RCM 1112, or otherwise by the present GCMCA of the accused, or by HQDA. If the accused is under an approved sentence to dismissal, the supplementary CMO will be promulgated by HQDA.

d. Supplementary or final orders for UCMJ, Article 66 cases in which a petition to U.S. Court of Appeals for the Armed Forces or the Supreme Court has been filed, or review is final under UCMJ, Article 76. Supplemental or final CMOs, as required, will be promulgated either by the officer exercising GCM authority over the accused—according to a letter of instruction from the Clerk of Court, USACCA, by HQDA—or by the Clerk of Court, USACCA, who is delegated discretionary authority to issue such CMOs.

G–7. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various HQs will be thus dispersed—

a. Convening orders. Convening orders will be distributed as follows:

(1) One copy to each individual named in the order.

(2) One copy to the GCMCA (inferior courts only).

(3) One copy each for original and copies of the ROT.

b. Initial court-martial promulgating orders. Initial court-martial promulgating orders will be distributed in accordance with paragraph H–4.

c. Supplementary court-martial orders.

(1) A supplementary order promulgating a self-executing DD or BCD need not be issued.

(2) GCM and SPCM supplementary orders will be distributed in accordance with paragraph H–4, except that copies are not required to be forwarded to the military judge and trial or defense counsel of the court-martial at which the case was tried.

(3) If the authority issuing the supplementary order is other than the authority initially acting on the case, the latter will be forwarded two copies of the supplementary order. These copies will be made available for information and annotation of MP and criminal investigation reports.

(4) A copy of all supplementary orders will also be provided to the Director, U.S. Army Crime Records Center, 27130 Telegraph Rd., Quantico, VA 22134, usarmy.belvoir.usacrc.mbx.mailcicr@army.mil.

Appendix H

Distribution of Court-Martial Orders and Documents

H–1. General

This appendix is a summary of the distribution requirements for official copies of CMOs and documents, and amending orders, if any. These distribution requirements are in addition to any required by the UCMJ or RCMs, and are not intended to duplicate those requirements. Where a street address is shown for distribution, a valid, official email address for the addressee may be substituted.

H–2. Court-martial convening orders

CMCOs will be distributed as follows:

a. One copy to each individual named in the order.

b. One copy to the officer exercising GCM jurisdiction (inferior courts only).

c. One copy each for original and copies of the ROT.

H–3. Statements of trial results

The STR will be distributed as follows, if appropriate:

a. One copy to the servicing DMPO in any case involving a reduction in rank, a forfeiture of pay, or a fine.

b. One copy to escorts for post-trial prisoners transferred to the USDB or other military corrections system facilities for delivery with the prisoner.

c. One copy to the military law enforcement agency that investigated the case, either the servicing Provost Marshal's Office for MPI investigations; or HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134 for CID investigations.

d. One copy placed in the Soldier’s AMHRR.

H–4. Entries of judgment

The EOJ will be distributed as follows, if appropriate:

a. One copy each to the immediate and next higher commander of the individual tried.

b. Two copies for each individual tried to the SJA of the GCMCA.

c. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, one copy to the special trial counsel and one copy to the OSTC.

d. One copy each to the senior commander of the installation and the commander of the corrections facility where the individual tried is confined.

e. One copy to the MPD or PSC maintaining the personnel records of the individual tried, addressed to the Records Section, in compliance with AR 600–8–104. The MPD or PSC will ensure the order is transmitted to the finance and accounting office maintaining the pay account of the individual tried for filing and for use as a substantiating document, according to AR 37–104–4.

f. One copy for each RA or AGR officer tried, to the U.S. Army Human Resources Command (PDR–R), usarmy.knox.hrc.mbx.tagd-ask-hrc@army.mil.

g. In all SPCM cases, three copies forwarded to the Clerk of Court, U.S. Army Court of Criminal Appeals, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, usarmy.pentagon.hqda-otjag.list.usalsa-acca@army.mil.

h. One copy to the local Department of Emergency Services or Provost Marshal’s Office, if applicable.

i. One copy to the local investigating CID office.

j. One copy to the HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134.

k. One copy to the Army Corrections Command (DAPM–ACC), usarmy.pentagon.hqda-pmg.list.npe-mgt@army.mil.

l. One copy, for each member of the USAR (TPU or AGR) tried, to USARC, Office of the Staff Judge Advocate, Chief, Military Law Division, 4710 Knox St, Fort Bragg, NC 28310. usarmy.usarc.usarc-hq.mbx.usarc-osja-mj@army.mil.

m. One copy to U.S. Army Criminal Investigation Laboratory, usarmy.gillem.dfsc.list.usacil-headquarters@army.mil.

n. One copy to the finance office of the installation in which the Soldier is confined.

o. One copy to the Special Actions Branch of the Fort Sill Defense Military Payment Office, Fort Sill DMPO, 4700 Mow Way Rd., Suite 190, Fort Sill, OK 73503, usarmy.knox.hrc.mbx.epmd-special-actions-branch@army.mil (only if Soldier is confined for 121 days or more).

p. In all cases without a finding of guilty, one copy to U.S. Army Court of Criminal Appeals, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546, usarmy.pentagon.hqda-otjag.list.usalsa-acca@army.mil.

q. One copy placed in the Soldier's AMHRR.

Appendix I

Application for Relief under Article 69, UCMJ in Cases Referred Prior to 1 January 2019

I–1. Effective dates and references

a. This appendix is applicable to all cases referred prior to 1 January 2019.

b. References to the MCM, including any RCM or MRE, or article of the UCMJ contained within this appendix refer to the MCM, 2016 unless otherwise noted.

c. Applications for relief under Article 69, UCMJ in cases referred on or after 1 January 2019 are addressed in chapter 13 of this regulation.

I–2. General

This chapter implements RCM 1201(b)(3) and UCMJ, Article 69(b), MCM, 2016. It prescribes the procedures for applying to TJAG for relief from the findings or sentence in an SPCM or SCM court-martial case that has been finally reviewed, but has not been reviewed by the USACCA.

a. TJAG may vacate or modify the findings or sentence in whole or in part and may grant relief on grounds of—

(1) Newly discovered evidence.

(2) Fraud on the court.

(3) Lack of jurisdiction over the accused or the offense.

(4) Error prejudicial to the substantial rights of the accused.

(5) Appropriateness of the sentence (except that the quality of the behavior or duty performance of the accused after trial, or any evidence of personal hardship not admitted at trial, is normally not a basis on which relief on grounds of sentence appropriateness may be considered).

b. No provision exists for a hearing or personal appearance before TJAG.

c. Relief under UCMJ, Article 69(b); the RCM; and this chapter is authorized only when the court-martial is final within the meaning of RCM 1209(a)(2), and when at least one of the grounds set forth in I–2*a* has been established to the satisfaction of TJAG. If TJAG sets aside the sentence, TJAG may, except when the setting aside is based on lack of sufficient evidence to support the findings, order a rehearing. A new trial may be granted only under UCMJ, Article 73. The denial of relief by TJAG under the provisions of this chapter does not preclude application on clemency grounds under UCMJ, Article 74 (see AR 190–47 or AR 15–185).

I–3. Procedures for making application

a. Apply for relief on DA Form 3499.

b. The DA Form 3499 will be prepared and submitted according to the requirements set forth in the instructions contained on the form. The DA Form 3499 must be filed with the OTJAG by the accused, or by a person with authority to act for the accused, on, or before the last day of the 2-year period beginning on the date the sentence was approved by the convening authority.

c. Failure to file within the prescribed time may be excused by TJAG for good cause established by the accused.

I–4. Submission of application

a. When an applicant seeks relief from the findings or sentence, or both, of a SPCM or SCM and is a member of the command that convened the court-martial (or of a unit within the same GCM jurisdiction), the application will be sent through the office of the SJA of that GCM jurisdiction. That office will forward the application to OTJAG–CLD.

(1) The original ROT.

(2) Copies of all CMOs in the case.

(3) Any matter related to the allegations of the applicant.

(4) Responsive comments on the merits of the applicant's allegations, signed by the SJA of the GCM jurisdiction.

(5) Original post-action review of the case in accordance with RCM 1112(a).

b. All other applications will be submitted directly to OTJAG–CLD. A copy of the application will be referred to the SJA of the command that convened the court-martial (or of a unit within the same GCM jurisdiction) for processing in accordance with paragraph I–4*a,* above.

Appendix J

Victim/Witness Checklist

J–1. Victim checklist

a. Coordinate with the installation/community casualty working group and the CID survivor point of contact in death cases (see para 17–2*c*).

b. Ensure that victims are provided the name, location, and telephone number of the VWL, and when applicable, the SVC (see paras 17–8*b* and 17–11*e*).

c. Inform victims of the right to receive the services described in chapter 17 (secs III and V) and provide a Victim and Witness Information Packet (see para 17–9*b*).

d. Inform victims of their rights as provided in para 17–11.

e. Inform victims of the availability of emergency medical and social care and, when necessary, provide appropriate assistance in securing such care (see para 17–12*a*).

f. Inform victims of dependent abuse offenses of the Transitional Compensation Program. VWLs/SVLs may assist eligible victims with the application process or refer to Army Community Service victim advocates (see para 17–24 and AR 608–1).

g. Help victims obtain financial, legal, and other social service support by informing victims of the military and/or civilian programs that are available to provide counseling, treatment, and other support, to include available compensation through Federal, state, and local agencies (see para 17–12*b*).

h. Refer dependents of retirement-eligible Soldiers who are victims of abuse by the retirement-eligible Soldier to Legal Assistance for advice on the Uniformed Services Former Spouses' Protection Act (see para 17–25).

i. Inform victims that families of Soldiers may be eligible for transportation and shipment of household goods regardless of the character of the Soldier's discharge (para 17–12*b*(8)).

j. Inform victims of the various means available to seek restitution (see UCMJ, Article 139; other remedies, such as claims, private lawsuits; or any state compensation programs) and of appropriate and authorized points of contact (see para 17–16*b*).

k. Inform a victim concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17–13).

l. Inform victims of the right to receive notice of significant events in the case (see para 17–14*a*).

m. Advise victims that they may ordinarily consult with a government representative concerning the following decisions in accordance with paragraph 17–15:

(1) Decisions not to prefer charges;

(2) Decisions concerning pretrial restraint;

(3) Pretrial dismissal of charges; and

(4) Negotiations of plea agreements and their terms.

n. Advise victims that all non-contraband property that has been seized or acquired as evidence will be safeguarded and returned as expeditiously as possible. Inform victims of applicable procedures for requesting return of property (see para 17–16*a*).

o. Inform victims that their interests are protected by administrative and criminal sanctions; that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities; and that their complaints will be promptly investigated and appropriate action will be taken (see para 17–19).

p. Inform victims that, within the guidelines of RCM 701(e) and UCMJ, Article 6b(f), and upon request, the VWL or when applicable, the victim's SVC may act as an intermediary between the victim and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial (see para 17–18*d*).

q. Trial counsel or special trial counsel will use best efforts to apprise a victim's chain of command of the necessity for the victim's testimony and the inevitable interference with and absence from duty (see para 17–17).

r. Inform victims that, upon request, reasonable steps will be taken to inform an employer should the victim's involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17–20).

s. Inform victims that, upon request, reasonable steps will be taken to explain to a creditor when the victim, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17–20).

t. Inform victims of the availability of a separate waiting area (see para 17–18*c*).

u. Inform victims of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17–23).

v. Inform victims that witnesses requested or ordered to appear at UCMJ, Article 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Article 47; chapter 3 of the Joint Travel Regulations; and chapter 5 of this regulation (see paras 5–33 and 17–21).

w. Assist victims in obtaining timely payment of witness fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (para 17–21).

x. For the trial counsel, special trial counsel, or designated government representative:

(1) No later than after trial if the offender is sentenced to confinement, advise victims of the offender's place of confinement and the offender's projected minimum release date and determine whether the victims desire to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17–14b).

(2) In all cases, record the victims' elections regarding notification of changes in confinement status using DD Form 2704. Give one copy to each victim; forward one copy of the form to the commander of the gaining confinement facility; forward one copy of the form to the Army's central repository, Army Corrections Command.

(3) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17–14*b*).

y. Process the victims' requests for investigative reports or other documents under applicable Freedom of Information Act or Privacy Act procedures. Eligible victims will receive a copy of the STR, convening authority's action, judgment of the court, and a copy of the certified ROT (see para 17–26).

z. Ensure that each victim in an incident that is prosecuted at a SPCM, GCM, or investigated pursuant to a UCMJ, Article 32 preliminary hearing in those cases not disposed of by SPCM or GCM, receives a DA Form 7568. These forms may also be provided to other victims (see para 17–29).

J–2. Witness checklist

a. Coordinate with installation/community casualty working group and the CID survivor point of contact in death cases (see para 17–2*c*).

b. Ensure that witnesses are provided the name, location, and telephone number of the VWL (see para 17–8*b*).

c. Inform witnesses of the right to request the services described in this chapter (secs IV and V) and provide a Victim/Witness Information Packet (DD Form 2701 and DD Form 2702) when necessary or requested (see para 17–9*b*).

d. Inform witnesses concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17–17*b*).

e. Inform witnesses regarding notification of the following significant events in the case (see para 17–17):

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral or dismissal of charges or specifications.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under the provisions of UCMJ, Article 32.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend, and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial.

(9) If the sentence includes confinement, the probable parole date.

(10) General information regarding the corrections process, including information about forms of release from custody, and the offender's eligibility for each.

(11) In appropriate cases, inform the witness of the right to request notice of the offender's confinement or parole status.

(12) Inform the witness that the witness' interests are protected by criminal sanctions, that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities, and that complaints will be promptly investigated and appropriate action will be taken (see para 17–19).

(13) Inform the witness that the VWL may act as an intermediary between a witness and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial, within the guidelines of RCM 701(e) and upon request (see para 17–18*d*).

(14) Trial counsel or special trial counsel will apprise a witness' chain of command of the necessity for the witness' testimony and the inevitable interference with and absence from duty (see para 17–18).

(15) Inform witnesses that, upon request, reasonable steps will be taken to inform an employer should the witness' innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17–20).

(16) Inform the witness that, upon request, reasonable steps will be taken to explain to a creditor when the witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17–20).

(17) Inform the witness of the availability of a separate waiting area (see para 17–18*c*).

(18) Inform the witness of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17–23).

(19) Inform the witness that witnesses requested or ordered to appear at UCMJ, Article 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Articles 46 and 47; RCM 405(i); DFAS–IN 37–1; and chapter 5 of this regulation (see paras 5–33 and 17–21).

(20) Assist the witness in obtaining timely payment of witness fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (see para 17–21).

f. For the trial counsel, special trial counsel, or designated government representative:

(1) No later than after trial if the offender is sentenced to confinement, advise the witness of the offender's place of confinement and the offender's projected minimum release date.

(2) In all cases, advise the witness regarding the right to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17–17).

g. For the VWL or designated government representative.

(1) In all cases, complete DD Form 2704 regarding the witness' election regarding notification of changes in confinement status and give one copy to the witness; forward one copy of the form to the commander of the gaining confinement facility; and forward one copy of the form to the Army's central repository, Army Corrections Command (see para 17–17).

(2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17–17*b*).

h. Process a witness' request for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures (see para 17–26).

i. Ensure that each witness in an incident that is prosecuted at a GCM, SPCM, or investigated pursuant to a UCMJ, Article 32 preliminary hearing, in those cases not disposed of by SPCM or GCM, receives a DA Form 7568. These forms may also be provided to other witnesses (see para 17–29).

Appendix K

Military Justice Area Support Responsibilities

K–1. Coordinating installations

Commanders of coordinating installations exercising GCM jurisdiction will exercise those aspects of UCMJ authority, withheld as a matter of policy from RC commanders pursuant to chapter 20 of this regulation, over units and activities within the following geographical areas of responsibility. Commanders of coordinating installations exercising GCM jurisdiction will serve as GCMCAs for Soldier Recovery Units based on geographical areas of responsibility.

K–2. Geographical areas of responsibility

See figure K–1 for support areas.

K–3. Outside continental United States support relationships

USAR units OCONUS should continue existing support relationships already established within their geographic areas, such as that established by the 8th Theater Sustainment Command for all USAR units located in Hawaii, and that established by U.S. Army in Europe Regulation 27–10 for the 7th Mission Support Command. Changes to the current GCMCA support arrangement in CONUS or OCONUS reflected in figure K–1 intended to last for more than 18 months, will be followed by email notification of such changes to OTJAG–CLD for information purposes. Also, OTJAG–CLD will be provided with an electronic courtesy copy of the U.S. Army in Europe Regulation 27–10 within 90 days following each updated publication.

Aberdeen Proving Ground (CECOM), MD

New Jersey – All

Joint Base Lewis-McCord (I Corps), WA

a. Oregon – all b. Washington -All

Fort Belvoir, VA

a. Virginia counties

(1) Culpeper	(6) Madison	(11) Rappahannock	(16) Stafford
(2) Fauquier	(7) Northumberland	(12) Richmond	(17) Warren
(3) Greene	(8) Orange	(13) Rockingham	
(4) King George	(9) Page	(14) Shenandoah	
(5) Lancaster	(10) Prince William	(15) Spotsylvania	

b. West Virginia counties

(1) Grant	(2) Hardy	(3) Pendleton

c. Middle District of Washington (MDW): During mobilization planning and execution, Fort Belvoir is responsible for unit. Reserve component support located in Arlington and Fairfax counties.

Fort Benning, GA

a. Alabama counties

(1) Bullock	(4) Montgomery	(7) Lee
(2) Chambers	(5) Coosa	(8) Russell
(3) Macon	(6) Elmore	(9) Tallapoosa

b. Florida counties

(1) Bay	(7) Gadsden	(13) Jefferson	(19) Santa Rosa
(2) Calhoun	(8) Gilchrist	(14) Lafayette	(20) Suwanee
(3) Columbia	(9) Gulf	(15) Leon	(21) Walton
(4) Dixie	(10) Hamilton	(16) Liberty	(22) Wakulla
(5) Escambia	(11) Holmes	(17) Madison	(23) Washington
(6) Franklin	(12) Jackson	(18) Okaloosa	

c. Georgia – All counties except those listed under Fort Gordon and Fort Stewart.

d. Puerto Rico – All

e. Virgin Islands – All

Fort Bliss, TX

a. New Mexico - All

b. Texas counties

(1) Brewster	(4) Hudspeth	(7) Pecos	(10) Terrell
(2) Culberson	(5) Jeff Davis	(8) Presidio	(11) Ward
(3) El Paso	(6) Loving	(9) Reeves	(12) Winkler

Fort Bragg, NC

North Carolina – All

Figure K–1. Installations and areas of support responsibility

Fort Campbell, KY

a. Kentucky counties

(1) Edmonson
(2) Grayson
(3) Warren
(4) All counties west of Allen

b. Tennessee – All

Fort Carson, CO

a. Colorado - All
b. Idaho – All
c. Montana – All
d. Utah - All
e. Wyoming - All

Fort Drum, NY

a. New York – All counties, except those listed under USMA.
b. Connecticut – All
c. Maine – All
d. Massachusetts – All
e. New Hampshire – All
f. Rhode Island – All
g. Vermont – All

Fort George G. Meade, MD

a. Maryland counties – All, except those listed under MDW.
b. Delaware counties – All
c. Pennsylvania counties
d. Virginia counties
(1) Accomack
(2) Clarke
(3) Frederick
(4) Loudoun
(5) Northampton
e. West Virginia – All counties except Grant, Hardy, and Pendleton

Fort Gordon, GA

a. South Carolina counties

(1) Abbeville	(5) Barnwell	(9) Hampton	(13) Pickens
(2) Aiken	(6) Edgefield	(10) Laurens	(14) Saluda
(3) Allendale	(7) Greenville	(11) McCormick	(15) Spartanburg
(4) Anderson	(8) Greenwood	(12) Oconee	

b. Georgia counties

(1) Baldwin	(9) Glascock	(17) Laurens	(25) Richmond
(2) Banks	(10) Green	(18) Lincoln	(26) Screven
(3) Burke	(11) Hancock	(19) Madison	(27) Stephens
(4) Clarke	(12) Hart	(20) McDuffie	(28) Taliaferro
(5) Columbia	(13) Jackson	(21) Morgan	(29) Warren
(6) Elbert	(14) Jefferson	(22) Oconee	(30) Washington
(7) Emanuel	(15) Jenkins	(23) Oglethorpe	(31) Wilkes
(8) Franklin	(16) Johnson	(24) Putnam	(32) Wilkinson

Fort Hood, TX

Texas – All counties, except those listed under Fort Bliss, Fort Sam Houston, and Fort Polk

Figure K–1. Installations and areas of support responsibility–continued

Fort Huachuca, AZ

Arizona – All

Fort Irwin, CA

a. California counties

(1) Fresno	(6) Los Angeles	(11) Riverside	(16) Tulare
(2) Imperial	(7) Madera	(12) San Benito	(17) Ventura
(3) Inyo	(8) Mariposa	(13) San Bernardino	
(4) Kern	(9) Mono	(14) San Diego	
(5) Kings	(10) Orange	(15) Santa Barbara	

b. Nevada counties

(1) Clark	(3) Esmeralda	(5) Nye
(2) Mineral	(4) Lincoln	

Fort Jackson, SC

South Carolina – All counties, except those listed under Fort Eisenhower and Fort Stewart.

Fort Knox, KY

a. Illinois counties

(1) Champaign	(8) Douglas	(15) Jasper	(22) Moultrie
(2) Christian	(9) Edgar	(16) Laurence	(23) Piatt
(3) Clark	(10) Edwards	(17) Logan	(24) Richland
(4) Coles	(11) Effingham	(18) Macon	(25) Shelby
(5) Crawford	(12) Ford	(19) Mason	(26) Tazewell
(6) Cumberland	(13) Fulton	(20) McLean	(27) Vermilion
(7) DeWitt	(14) Iroquois	(21) Menard	(28) Wabas

b. Indiana – All counties, except for those listed under Fort Leavenworth.

c. Kentucky – All counties, except those listed under Fort Campbell.

d. Ohio – All

Fort Leavenworth, KS

a. Iowa - All b. Michigan – All c. Minnesota – All d. Wisconsin – All

e. Illinois counties

(1) Boone	(9) Henry	(17) Lee	(25) Rock Island
(2) Bureau	(10) Jo Daviess	(18) Livingston	(26) Stark
(3) Carroll	(11) Kane	(19) Marshall	(27) Stephenson
(4) Cook	(12) Kankakee	(20) McHenry	(28) Warren
(5) DeKalb	(13) Kendall	(21) Mercer	(29) Whiteside
(6) DuPage	(14) Knox	(22) Ogle	(30) Will
(7) Grundy	(15) Lake	(23) Peoria	(31) Winnebago
(8) Henderson	(16) La Salle	(24) Putnam	(32) Woodford

f. Indiana counties

(1) Elkhart	(3) LA Porte	(5) St. Joseph
(2) Lake	(4) Porter	

Figure K–1. Installations and areas of support responsibility–continued

Fort Lee, VA

Virginia – All counties, except those listed under Fort Meade, Fort Belvoir, and MDW.

Fort Leonard Wood, MO

a. Illinois – All counties, except those listed under Fort Knox and Fort Leavenworth.
b. Missouri – All

Fort Polk, LA

a. Louisiana - All
b. Texas counties

(1) Chambers	(2) Jefferson	(3) Orange (Beaumont area)

Fort Riley, KS

a. Kansas - All
b. Nebraska - All
c. North Dakota – All
d. South Dakota - All

Fort Rucker AL

a. Alabama counties – All counties, except those listed under Fort Benning.
b. Mississippi – All

Fort Sam Houston (U.S. Army North), TX

Texas

a. All counties south of -

(1) Burleson	(4) Grimes	(7) Mason	(10) Sutton
(2) Burnet	(5) Kimble	(8) Milam	(11) Washington
(3) Crockett	(6) Llano	(9) Montgomery	(12) Williamson

b. All counties west of –

(1) Chambers	(2) Liberty	(3) Boundary on the west consists of the south half of Terrell County and the Mexican boarder.

Fort Sill, OK

a. Arkansas - All
b. Oklahoma – All

Figure K–1. Installations and areas of support responsibility–continued

Fort Stewart, GA

a. Florida – All counties, except those listed under Fort Benning.

b. Georgia

(1) Appling	(8) Candler	(15) Jeff Davis	(22) Telfair
(2) Atkinson	(9) Charlton	(16) Liberty	(23) Toombs
(3) Bacon	(10) Chatham	(17) Long	(24) Treutlen
(4) Brantley	(11) Coffee	(18) McIntosh	(25) Ware
(5) Bryan	(12) Effingham	(19) Montgomery	(26) Wayne
(6) Bullock	(13) Evans	(20) Pierce	(27) Wheeler
(7) Camden	(14) Glynn	(21) Tattnall	

c. South Carolina

(1) Beaufort	(2) Jasper

Military District of Washington (MDW)

a. District of Columbia - All

b. Maryland counties

(1) Montgomery	(2) Prince George's	

c. Virginia counties

(1) Alexandria	(2) Arlington	(3) Fairfax (except for Fort Belvoir)

d. Includes all DA and other Government agencies/activities and individuals supported by MDW.

Presidio of Monterey (DLI), VA

a. California – All counties, except those listed under Fort Irwin.

b. Nevada – All counties, except those listed under Fort Irwin.

United States Military Academy (West Point), NY

New York

(1) Bronx	(6) Kings	(11) Queens	(16) Ulster
(2) Columbia	(7) Nassau	(12) Richmond	(17) Westchester
(3) Delaware	(8) New York County	(13) Rockland	
(4) Dutchess	(9) Orange	(14) Suffolk	
(5) Greene	(10) Putnam	(15) Sullivan	

Figure K–1. Installations and areas of support responsibility–continued

Appendix L

Capital Litigation

L–1. Applicability and purpose

a. This appendix is only applicable to cases referred capital prior to 1 January 2019.

b. References to the MCM, including any RCM or MRE, or article of UCMJ contained within this appendix refer to the MCM (2016) unless otherwise noted.

L–2. Reports

Reports and updates relating to cases referred prior to 1 January 2019 will be provided in accordance with paragraph 28–2 of this regulation.

L–3. Court-martial personnel

a. Qualifications. The following subparagraphs are suggested minimum requirements to serve as guidelines to assist the Chief, USATDS, or that officer's delegate, in determining the appropriate personnel to assign to capital cases. These guidelines will not be construed as mandatory requirements, and they will not be construed as a right to a particular counsel or as a standard for determining the effectiveness of counsel under the U.S. Constitution. All military personnel assigned to a capital case must be qualified and certified under UCMJ, Article 27(b).

(1) *Lead defense counsel.* USATDS counsel representing an accused who is charged with a capital offense should possess the following attributes to the maximum extent practicable: prior experience as lead defense counsel in GCM panel cases tried to findings; substantial knowledge and understanding of the procedural and substantive law governing capital cases; skill in the management and conduct of complex negotiations and litigation; skill in legal research, analysis, and the drafting of litigation documents; skill in oral advocacy; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; skill in the investigation, preparation, and presentation of evidence bearing upon mental status; skill in the investigation, preparation, and presentation of mitigating evidence; skill in the elements of trial advocacy, such as panel selection, cross-examination of witnesses, and opening and closing statements; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(2) *Assistant defense counsel.* USATDS counsel representing an accused who is charged with a capital offense as an assistant defense counsel should possess the following attributes to the maximum extent practicable: prior experience as lead counsel in GCM panel cases tried to finding; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(3) *Additional defense counsel.* USATDS counsel representing an accused who is charged with a capital offense as an additional defense counsel should possess the following attributes to the maximum extent practicable: prior experience as lead or assistant counsel in panel cases tried to findings and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(4) *Alternative qualifications.* The Chief, USATDS, may appoint counsel even if he or she does not meet all of the qualifications stated above. If appointed under this section, TDS counsel must state on the record his or her qualifications. The appointed counsel must be qualified under UCMJ, Article 27(b), and should possess the following attributes to the maximum extent practicable: extensive criminal or civil trial experience; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

b. Defense counsel appointment and training. USATDS capital-qualified counsel should be appointed as soon as there is reason to believe a case may be referred capital. All capital-qualified counsel assigned to a capital case should be detailed no later than seven days after referral of the capital case. In capital-referred cases, the Chief, USATDS, or his/her designee, should detail at least two qualified defense counsel. The Chief, USATDS will develop programs and policies consistent with paragraph 6–7 to ensure regular capital defense training opportunities for USATDS counsel. Capital training opportunities

should be made available as part of routine professional development and not based on specific assignment to a capital case.

c. Detailing.

(1) *Defense counsel.* Defense counsel for capital cases will be detailed by the Chief, USATDS, or if the Chief, USATDS is conflicted, their designee.

(2) *Trial counsel.* Trial counsel will be detailed in accordance with paragraph 5–5.

(3) *Special trial counsel.* Special trial counsel may be detailed at the discretion of the LSTC (see chapter 30).

(4) *Military judge.* The Military Judge will be detailed by the Chief Trial Judge, or if the Chief Trial Judge is conflicted, their designee.

L–4. Administrative and logistical support

a. Prosecution support. The SJA will use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with the OSTC, PPTO, and TCAP.

b. Defense counsel support. In any case after preferral in which an offense punishable by death under the UCMJ is charged, the defense may submit a request in writing to the servicing SJA for support greater than that required by paragraph 6–4, including but not limited to: paralegals (with criminal law experience), legal administrator, investigative support, office administrative resource support (as defined by the defense team), security managers, interpreters, translators, and other specialized expertise as required.

(1) Office administrative resource support may include support such as private, lockable office space, SIPRnet capability, computers authorized to handle classified information and documents, separate defense witness waiting room under the control of the defense team, desktop computers with double monitors, copiers, printers, case management software, projectors, routine office supplies, textbooks, and reference materials, and full access to installation network and internet. This list is not to be interpreted as exhaustive, but rather illustrative.

(2) The SJA must make reasonable efforts to provide the additional support within 30 days of the request or deny the request by stating the reasons in writing within the same period.

(3) The requesting counsel will forward all denied requests through the defense technical chain to Chief, USATDS. The Chief, USATDS will make reasonable efforts to fill the request internally. The Chief, USATDS will forward all unfilled requests for personnel to PPTO within 15 days of receipt stating the reasons that USATDS is unable to support the request. Assets provided by USATDS will be funded in accordance with paragraph 6–5.

(4) Nothing in this section should be interpreted to create a substantial right or remedy to the accused, but rather this section provides a system of accountability to ensure proper resources and support are provided.

L–5. Suggested capital litigation teams

a. General guidance. The suggested capital litigation team serves as a guideline to the OSTC, SJA, the detailing authority for the defense counsel, PPTO, and HRC; however, every case must be analyzed and resourced individually, based on its specific circumstances. Nothing in this paragraph is to be construed as a right to a particular counsel or staff, or as a standard for determining the effectiveness of counsel under the U.S. Constitution. The members of each team should be relieved of other duties (for example, charge of quarters, motor pool, non-paralegal sergeants time, other case assignments, and so forth), to the maximum extent practicable, and PPTO, HRC, or other personnel assignment agencies should not reassign the members during the investigation, pretrial, trial, and clemency stages, unless requested by the LSTC, SJA, or RDC, or as approved or directed by TJAG. This includes reassignment for professional courses (JAGC Graduate Course, Intermediate Level Education, and so forth) or other reasons.

b. The prosecution team. The prosecution team should consist of members whose duties substantially are dedicated to the capital case and may include: at least two experienced, qualified trial counsel, detailed by the SJA in the affected jurisdiction or two special trial counsel detailed by the LSTC; a legal administrator in the grade of CW2 or higher, or an office manager in the grade of E–7 or higher; two paralegals, at least one of which should be an NCO; a criminal investigator; a victim-witness liaison; and a public affairs officers or civilian public affairs specialist.

c. The defense team. The defense team should consist of members whose duties are substantially dedicated to the capital case and will include at least two experienced, qualified defense counsel, detailed by the Chief, USATDS, or by his or her designee, and one paralegal (GS–9 or E–6), in addition to the

supervisory chain including, but not limited to the Deputy and Chief, DAD, and the Chief, Capital Litigation. Other personnel may include, but will not be limited to, a warrant officer, criminal investigator, mitigation specialist, and/or mental health professionals, as deemed appropriate. Because appellate review in capital cases normally takes a number of years, significant effort will be made to ensure continuity of counsel. Counsel representing capital defendants on appeal will undergo specialized training as determined by the Chief, DAD. Such training should seek to fulfill, to the extent practicable, the training requirements of the American Bar Association Guidelines for the Appointment and Performance of Death Penalty Counsel in Death Penalty Cases Guideline 8.1.

d. Experts. The type and number of experts, whether for consultation or use at trial, will vary depending on the facts and circumstances of the case. Defense may typically request experts or specialists in the area of mitigation, psychology, and/or psychiatry, science (for example, DNA, crime scene analysis and reconstruction, firearms, and so forth), jury consulting, and sentencing.

e. Reserve personnel. The LSTC, SJA, or RDC must notify PPTO if the use of RC personnel will be requested.

Appendix M

Internal Control Evaluation

M–1. Function
The function covered by this evaluation is military justice.

M–2. Purpose
The purpose of this evaluation is to assist chiefs of military justice and SJAs in evaluating their key internal controls. It is not intended to cover all controls.

M–3. Instructions
Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

M–4. Test questions
a. Managing the imposition of nonjudicial punishment. If NJP was imposed—
(1) Did the command initiate a flag in accordance with AR 600–8–2?
(2) Was DA Form 2627 completed properly?
(3) Was DA Form 2627 recorded properly in either the Soldier's local file or the AMHRR?
(4) Was DA Form 5110 completed properly for all NJP within the appropriate jurisdiction?
(5) Was the DA Form 2627 distributed properly?
(6) If applicable, was the DA Form 2627 transferred or removed properly?
b. Managing the court-martial process.
(1) Does each level of command possess the appropriate level of authority to convene a court-martial?
(2) Has a CMCO been produced?
(3) Have qualified military judges, trial counsel, special trial counsel, defense counsel, and members been detailed and selected?
(4) If applicable, has the DA Form 5112 and other appropriate documentation been prepared and retained to justify pretrial confinement?
(5) Did the command initiate a flag in accordance with AR 600–8–2?
(6) Was DD Form 458 completed properly?
(7) Were charges forwarded properly?
(8) If applicable, was the UCMJ, Article 32 preliminary hearing completed and recorded properly?
(9) Do military justice supervisors regularly monitor witness travel expenses, and, where necessary, take corrective action to ensure travel dates are reliably established so that expenses are limited?
(10) Are witness travel payments made only to proper claimants with actual travel expenses?
(11) Were the DD Form 490 and DD Form 491 prepared properly, and were they timely?
(12) Was the ROT completed accurately, and was it timely?
(13) Were the ROT and other allied documents distributed properly and timely?
(14) Has a CMO been signed by the convening authority and distributed?
(15) Has a promulgating order been appropriately signed and distributed?
c. Detailing magistrates. Have military magistrates been detailed appropriately to provide sufficient coverage for the jurisdiction?
d. Reporting data. Has the Army Military Justice Report data been submitted and distributed?
e. Managing victim and witness assistance.
(1) Has the victim-witness program been trained and implemented in each GCMCA jurisdiction?
(2) Have victim-witness liaisons been appointed and trained?
(3) Have DD Form 2701, DD Form 2702, DD Form 2703, and DD Form 2704 been completed and distributed properly?
(4) Have victim services been coordinated with medical, financial, legal, and social services?
(5) Have appropriate victim and witness notifications been made before, during, and after a court-martial?

(6) Have witness fees and costs been reimbursed?

(7) Do military justice supervisors oversee and reconcile witness fees and costs with local finance personnel?

(8) If applicable, has transitional compensation been provided to a victim?

(9) Has DA Form 7568 been properly completed and distributed?

f. Paralegals and judge advocates. Have paralegals and JAs been appropriately trained and prepared for processing military justice actions using MJO?

g. Complaints under UCMJ, Article 138.

(1) Have complaints been forwarded to the appropriate GCM authority as required?

(2) Have complaints deemed to be inappropriate been answered and referred appropriately?

(3) Have all appropriate complaints been answered?

(4) If applicable, has the complaint been forwarded to DA?

h. Federal court considerations. Have reports been prepared and submitted concerning prosecution of criminal offenses in Federal court?

i. Registration of military sexual offenders.

(1) Was DD Form 2791 prepared properly and provided to the accused?

(2) Was DD Form 2791 included in the ROT and distributed properly?

(3) Has the Provost Marshal entered appropriate data in the National Crime Information Center?

j. Court Reporter Program.

(1) Are court reporters properly trained and detailed?

(2) Are court reporters attaining the performance standard metric?

(3) Is the court reporter productivity report properly and timely completed and distributed?

(4) Are court reporters properly equipped?

k. Jurisdiction and court-martial considerations. Are appropriate procedures in place to implement MEJA or to court-martial pursuant to UCMJ, Article 2(a)(10)?

M–5. Supersession

This evaluation replaces the evaluation previously published in AR 27–10, dated 20 November 2020.

M–6. Comments

Help make this a better tool for evaluating internal controls; submit comments to the Office of The Judge Advocate General, Criminal Law Division, usarmy.pentagon.hqda-otjag.mbx.cl@army.mil.

Glossary of Terms

Admonition
A warning or reminder given to an offender to deter repetition of a type of misconduct and to advise the offender of the consequences that may flow from a recurrence of that misconduct.

Chief circuit judge
The senior military judge in a judicial circuit, or other judge designated by the chief trial judge.

Covered offense
The term "covered offense" means—
a. an offense under section 917a (article 117a), section 918 (article 118), section 919 (article 119), section 919a (article 119a), section 920 (article 120), section 920a (article 120a), section 920b (article 120b), section 920c (article 120c), section 925 (article 125), section 928b (article 128b), section 930 (article 130), section 932 (article 132), the standalone offense of child pornography punishable under section 934 (article 134), or the standalone offense of sexual harassment punishable under section 934 (article 134) in each instance in which a formal complaint is made and such formal complaint is substantiated (effective 1 January 2025), of Title 10;
b. a conspiracy to commit an offense specified in subparagraph (A) as punishable under section 881 of Title 10 (article 81);
c. a solicitation to commit an offense specified in subparagraph (A) as punishable under section 882 of Title 10 (article 82); or
d. an attempt to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 880 of Title 10 (article 80).

Deferral
The term deferral of an offense means a special trial counsel declines to prefer charges for an offense or declines to refer charges to court-martial.

Inactive duty training
Duty prescribed for Reserves by the Secretary of the Army pursuant to 37 USC 206 or any other provision of law and special additional duties authorized for Reserves by an authority designated by the Secretary of the Army and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Judicial circuit
One or more GCM jurisdictions, or the geographical area where the HQ of such jurisdictions are situated, as designated by TJAG.

Military Judge
A JA officer who has been certified by TJAG as qualified to preside over GCMs and/or SPCMs.

Military Judge Program
A system in which military judges are designated and made available for detail as judges of SPCMs and GCMs.

Mitigation
A reduction in either the quantity or quality of a punishment, its general nature remaining the same.

Parent unit
The unit to which the Soldier is contractually obligated.

Preferral of charges
The act of bringing charges against another party.

Referral of charges
The order of a convening authority or special trial counsel that charges and specifications against an accused will be tried by a specified court-martial.

Related offense
Any reported offense or charge related to a covered offense, whether alleged to have been committed by the suspect of the covered offense or by anyone else subject to the UCMJ.

Reprimand
An act of formal censure that reproves or rebukes an offender for misconduct.