

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 51-905**

**30 SEPTEMBER 2014**



**Law**

**USE OF MAGISTRATE JUDGES FOR TRIAL  
OF MISDEMEANORS COMMITTED BY  
CIVILIANS**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

---

**ACCESSIBILITY:** Publications and forms are available for downloading or ordering on the e-Publishing website at [www.e-Publishing.af.mil](http://www.e-Publishing.af.mil)

**RELEASABILITY:** There are no releasability restrictions on this publication.

---

OPR: AF/JAA

Certified by: AF/JA (Maj Gen Rockwell)

Pages: 11

Supersedes: AFI 51-905, 1 June 1998

---

This instruction implements AFPD 51-9, *Civil Law for Individuals*. It provides guidance and procedures for prosecution before U.S. magistrate judges of civilians who commit minor offenses on United States Air Force reservations where the U.S. has either exclusive or concurrent jurisdiction. The procedures contained in this Instruction do not apply to offenses committed by service members in the Regular Air Force (RegAF), or offenses committed by service members in the Air Force Reserve (AFR), and Air National Guard (ANG), when such service members are on Title 10 orders. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with (IAW) Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of IAW Air Force Records Disposition Schedule (RDS) located in the Air Force Records Information Management System (AFRIMS). Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, Recommendation for Change of Publication; route AF Forms 847 from the field through the appropriate functional chain of command. The authorities to waive wing-level requirements in this publication lie with the OPR of this publication, unless such requirements are otherwise followed with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, Table 1.1 for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items.

This publication may be supplemented at any level, but all direct Supplements must be routed to the OPR of this publication for coordination prior to certification and approval. This publication requires the collection and or maintenance of information protected by the Privacy Act (PA) of 1974, 5 United States Code (U.S.C.) § 552a; AFI 33-332, *The Air Force Privacy and Civil*

*Liberties Program*, 5 June 2013. The authorities to collect and or maintain the records prescribed in this publication are 10 U.S.C. § 8013 and Executive Order 9397, 22 November 1943. Forms affected by the PA have an appropriate PA statement. The applicable Privacy Act System Notice(s) is available online at: <http://dpclo.defense.gov/Privacy/SORNs.aspx>.

## ***SUMMARY OF CHANGES***

This document has been revised and should be reviewed. Changes include citations to current statutory authorities, delineation of responsibilities of the installation commander and the servicing staff judge advocate (SJA) pertaining to establishing and maintaining a process for prosecution of civilians; clarification as to when a defendant's consent to be tried before a U.S. magistrate judge is required, and the addition of tiered waiver authorities in accordance with AFI 33-360.

**1. Overview.** Civilians who violate federal law on Air Force installations, including assimilated state criminal laws applicable to federal reservations, may be prosecuted in U.S. district court or the U.S. magistrate court. The magistrate system is particularly well-adapted to dispose of traffic and minor offense cases. Air Force attorneys appointed as Special Assistant United States Attorneys (SAUSA) may represent the United States in such proceedings.

**2. Roles and Responsibilities.** This instruction establishes the following roles and responsibilities:

### **2.1. Installation Commanders.**

2.1.1. Have the responsibility and authority to protect personnel and property, to maintain good order and discipline and to enforce applicable laws.

2.1.2. Will establish and maintain an effective, comprehensive traffic safety program on the installation. (T-0). See Title 32, Code of Federal Regulations (CFR), § 634.25, *Installation Traffic Codes*; 32 CFR § 210.3, *Policy*; DoD Directive 5525.4, *Enforcement of the State Traffic Laws on DoD Installations*.

2.1.3. Will coordinate with the Department of Justice a process for the prosecution of civilians who commit minor offenses on Air Force Installations. (T-3). If no U.S. magistrate judge has been designated to try misdemeanors on an Air Force installation, the installation commander will request the U.S. attorney to petition the U.S. district court to designate a U.S. magistrate judge for that purpose. If the U.S. district court fails to designate a U.S. magistrate judge after petition, the installation commander will report the failure to AF/JAA. (T-1).

2.1.4. Where an installation magistrate court program is established in accordance with this Instruction, the installation commander should execute a Memorandum of Understanding with the U.S. attorney covering responsibilities and procedures for trials in U.S. Magistrate Court.

2.1.5. May delegate administration of the installation's magistrate court program to the servicing SJA.

2.1.6. State vehicular and pedestrian traffic laws are expressly adopted and made applicable under the provisions of 18 U.S.C. § 13 on military installations having

concurrent or exclusive federal jurisdiction. See 32 CFR § 634.25. In those states where violations of traffic laws are not considered criminal offenses and cannot be assimilated, DoDD 5525.4 adopts the vehicular and traffic laws of such states and makes these laws applicable to military installations having concurrent or exclusive federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. See DoDD 5525.4, enclosure 1. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. See 32 CFR § 634.25. In those States where traffic laws cannot be assimilated, an extract copy of DoDD 5525.4, paragraph (f) and a copy of the delegation memorandum in DoDD 5525.4, enclosure 1, will be posted in a prominent place accessible to persons assigned, living, or working on the installation. (T-0). **Note:** Congress authorized the General Services Administration (GSA) to establish regulations for the protection of federal property. The GSA delegated to the Secretary of Defense the authority to promulgate traffic and pedestrian regulations for military installations. The statutory basis for military traffic regulations and criminal sanctions are currently found at 40 U.S.C. § 1315 (transferring authority from GSA to the Department of Homeland Security).

2.1.7. May, in addition to case by case consideration, make a blanket determination (based on safety, discipline or other considerations) that administrative disposition of certain offenses committed by civilians on the installation is not adequate or appropriate and that all such offenses should be presented to the U.S. attorney's office for consideration of prosecution before a U.S. magistrate judge for trial.

## **2.2. Staff Judge Advocates.**

2.2.1. SJAs will ensure overall management of the magistrate court program and compliance with this Instruction. (T-1).

2.2.2. SJAs will closely monitor prosecutions conducted by SAUSAs in U.S. magistrate's court and U.S. district court, and will provide supervision as necessary through appropriate coordination with the U.S. attorney concerned. (T-1).

## **2.3. Special Assistant United States Attorneys.**

2.3.1. Air Force attorneys designated to prosecute cases before the U.S. magistrate judge must be appointed as SAUSAs. 28 U.S.C. § 543. (T-0). Attorneys so appointed come under the supervision of the appropriate U.S. attorney in the performance of those duties, and may perform only those duties, under such supervision, specifically authorized under this Instruction.

2.3.2. Air Force Attorneys designated to prosecute cases before a U.S. magistrate judge must familiarize themselves with the local rules of court and Federal Rules of Criminal Procedure, Rule 58, Petty Offenses and other Misdemeanors.

## **3. U. S. District Courts and U.S. Magistrates.**

3.1. The U.S. district courts are the general trial courts of the federal court system. Each district court has at least one United States district judge appointed for a life term. The

districts are the same as those for the U.S. attorneys, and the U.S. attorney is the primary prosecutor for the federal government in his or her respective area. The district courts of the United States have original jurisdiction of all offenses against the laws of the United States. See 18 U.S.C. § 3231.

**3.2. U. S. Magistrate Judge.** A properly designated U.S. magistrate judge:

3.2.1. Has jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed in places under the exclusive or concurrent jurisdiction of the United States and in the judicial district for which such magistrate judge is appointed. 18 U.S.C. § 3401(a); see also 28 U.S.C. § 636.

3.2.2. Can issue a warrant of arrest, based on a properly filed complaint.

3.2.3. Can try persons for violating Air Force or installation instructions, when promulgated under the authority delegated by the Office of the Secretary of Defense to installation commanders in DoDD 5525.4.

#### **4. Prosecutions by Air Force Attorneys Before U. S. Magistrate Judges.**

4.1. The U.S. attorney has prosecutorial responsibility and authority in U.S. district and U.S. magistrate courts. The U.S. attorney for the judicial district in which the installation is located may advise that a representative of the Department of Justice is not available to conduct the prosecutions before U.S. magistrate judges. In this case, installation SJAs will designate one or more Air Force attorneys to conduct such prosecutions. (T-3).

4.2. Once designated, the SJA will, through the local U.S. attorney, seek such designee's appointment as a SAUSA consistent with 28 U.S.C. §§ 515(a), 516, 543. (T-0).

**5. Prosecutions by Air Force Attorneys in U. S. District Courts.** If the defendant elects to be tried before the U.S. district court in a non-petty offense, and the U.S. attorney requests the Air Force attorney conduct the prosecution in U.S. district court, the SJA, through appropriate command channels, must first obtain approval from the major command SJA before an Air Force attorney may prosecute the case in U.S. district court. This is true even if the judge advocate was authorized to prosecute in that case before a U.S. magistrate judge. Such approval is granted on a case by case basis. (T-2).

#### **6. Procedures Established by This Instruction:**

6.1. Offenses committed by service members in the RegAF, and by AFR, and ANG service members, when such members are on Title 10 orders, shall not be tried in U.S. magistrate or U.S. district court under the provisions of this Instruction; rather, appropriate action will be taken by military commanders in such cases.

6.2. The trial of a misdemeanor may proceed on a Complaint, Information, or Indictment, in accordance with the local rules and procedures, and in the format prescribed by the local U.S. magistrate judge. Attachment 2 is a suggested Complaint format. Assistant U.S. attorneys and SAUSAs prepare these charging documents. The office of the SJA will ensure these documents properly allege a violation of federal law, including crimes assimilated pursuant to 18 U.S.C. § 13, and offenses established under the authorities identified in DoDD 5525.4. (T-3).

6.3. The trial before a U.S. magistrate judge of petty offenses committed by civilians on base may also proceed on a U.S. District Court Violation Notice. A U.S. District Court Violation Notice is not a Complaint, Information, or Indictment as those terms are used here. A U.S. District Court Violation Notice issued by the security forces does not require review by the office of the SJA.

6.4. **Warrants.** When a U.S. magistrate judge issues a warrant of arrest, U.S. marshals or their deputies will usually execute such warrants. Under no circumstances will Air Force personnel execute such warrants.

6.5. **Trial.** Any person charged with a misdemeanor, other than a petty offense, may elect trial before the U.S. district court for the district in which the offense was committed. In accordance with 18 U.S.C. § 3401(b), the U.S. magistrate judge must inform the defendant of the right to make this choice and may not try the case until the defendant is notified and expressly consents to be tried by the U.S. magistrate judge. Attachment 2 is a suggested written consent format.

6.6. In all cases of conviction by a U.S. magistrate judge, the defendant may appeal to the U.S. district court for the district in which the offense was committed. 18 U.S.C. § 3402.

CHRISTOPHER F. BURNE  
Lieutenant General, USAF  
The Judge Advocate General

## Attachment 1

### GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

#### *References*

AFPD 51-9, *Civil Law for Individuals*, 5 November 1993

AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, 5 June 2013

AFI 33-360, *Publications and Forms Management*, 25 September 2013

AFMAN 33-363, *Management of Records*, 1 March 2008, AFGM dated 28 May 14

32 CFR § 210.3, *Policy*

32 CFR § 634.25, *Installation Traffic Codes*

DoDD 5525.4, *Enforcement of the State Traffic Laws on DoD Installations*, 2 November 1981

18 U.S.C. § 13

18 U.S.C. § 3231

18 U.S.C. § 3401(a)

28 U.S.C. § 636

28 U.S.C. § 515(a)

28 U.S.C. § 516

28 U.S.C. § 543

40 U.S.C. § 1315

#### *Adopted Forms*

AF Form 847, *Recommendation for Change of Publication*

#### *Abbreviations and Acronyms*

**AFI**—Air Force Instruction

**AFPD**—Air Force Policy Directive

**AFR**—Air Force Reserve

**ANG**—Air National Guard

**JAA**—Administrative Law Directorate

**OPR**—Office of Primary Responsibility

**SAUSA**—Special Assistant United States Attorney

**SJA**—Staff Judge Advocate

**TJAG**—The Judge Advocate General

**UCMJ**—Uniform Code of Military Justice

**USC**—United States Code

USAF—United States Air Force

*Terms*

**Magistrate Judge**—A U.S. magistrate judge serves as a judicial officer of the U.S. district courts and exercises the jurisdiction delegated to him or her by law as well as those delegated by the district judges.

**Misdemeanor**—An offense for which the authorized penalty does not exceed imprisonment for one year. Misdemeanors may include violations of assimilated state criminal laws that apply to a federal reservation pursuant to 18 U.S.C. § 13.

**Petty Offense**—A misdemeanor for which the authorized penalty does not exceed imprisonment for six months or a fine of \$5,000.00, or both. This includes installation traffic offenses promulgated under DoDD 5524.4, subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation.

Attachment 2

SAMPLE COMPLAINT

UNITED STATES DISTRICT COURT  
FOR THE

Magistrate Judge's Docket No.

Case No.

UNITED STATES OF AMERICA

COMPLAINT for VIOLATION of

V.

U.S.C. Title

Section

BEFORE

\_\_\_\_\_  
Name of Magistrate Judge

\_\_\_\_\_  
Address of Magistrate Judge

The undersigned complainant being duly sworn states:

That on or about 20XX at in the

District of

(1) \_\_\_\_\_

did (2) \_\_\_\_\_

And the complainant states that this complaint is based on

\_\_\_\_\_

And the complainant further states that (he) (she) believes that

\_\_\_\_\_

are material witnesses in relation to this charge.

---

Signature of Complainant

---

Official title

Sworn to before me, and subscribed in my presence, 20XX.

---

United States Magistrate Judge

(1) Insert name of accused.

(2) Insert statement of the essential facts constituting the offense charged.

Attachment 3

SAMPLE CONSENT DOCUMENT

(Misdemeanors)  
UNITED STATES DISTRICT COURT  
FOR THE

UNITED STATES OF AMERICA

V.

Docket No. \_\_\_\_\_

CONSENT TO PROCEED BEFORE UNITED STATES MAGISTRATE JUDGE IN A  
MISDEMEANOR CASE

The United States magistrate judge has explained to me the nature of the offense(s) with which I am charged and the maximum possible penalties which might be imposed if I am found guilty. The magistrate has informed me of my right to the assistance of legal counsel.

The magistrate judge has also informed me of my right to trial, judgment and sentencing before a United States district court judge.

I HEREBY: Waive (give up) my right to trial, judgment and sentencing before a United States district court judge and I consent to trial, judgment and sentencing before a United States magistrate judge.

.....

Defendant

WAIVER OF RIGHT TO TRIAL  
BY JURY

The magistrate judge has advised me of my right to trial by jury before either a United States district court judge or a United States magistrate judge.

I HEREBY: Waive (give up) my right to trial by jury.

.....

Defendant

WAIVER OF RIGHT TO HAVE THIRTY  
DAYS TO PREPARE FOR TRIAL

The magistrate has also advised me of my right to have at least thirty days to prepare for trial before the magistrate judge.

.....

Defendant

Date

Before

United States Magistrate Judge

\_\_\_\_\_

Defendant's Attorney (if any)