

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

AIR FORCE INSTRUCTION 51-206

31 AUGUST 2018



Law

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

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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(Mr. Conrad Von Wald)

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This instruction implements Air Force Policy Directive 51-2, Military Justice. It provides guidance and procedures for prosecution before U.S. magistrate judges of civilians who commit misdemeanor or petty offenses on United States Air Force installations where the United States has either exclusive or concurrent jurisdiction. Subject to provisions herein regarding joint bases, 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 all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, Management of Records, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. 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/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See AFI 33-360, Publications and Forms Management, 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 requestor’s commander 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 Instruction

requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Title 5, United States Code (U.S.C.), Section 552a; Title 10 U.S.C. Section 8013; Executive Order 9397 Numbering System for Federal Accounts Relating to Individual Persons, as amended; and AFI 33-332, Air Force Privacy and Civil Liberties Program. The applicable System of Records Notice, F051 AFJAI Military Justice and Magistrate Court Records, is available at: <http://dpclo.defense.gov/Privacy/SORNS.aspx>.

SUMMARY OF CHANGES

This document has been substantially revised and should be completely reviewed. Major changes include elimination of administrative requirements and unnecessary repetition of statutory and regulatory language, and policy guidance; clarification of training limitations, supervision, and applicability on joint bases; and overall organization.

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

2. Roles and Responsibilities.

2.1. Installation Commanders.

2.1.1. Will establish and maintain an effective, comprehensive traffic safety program on the installation that includes methods to enforce the program. **(T-0)**.

2.1.2. Will, through their SJA, coordinate with the Department of Justice on a process for the prosecution of civilians who commit misdemeanor or petty offenses on Air Force installations. **(T-3)**.

2.1.3. If no magistrate judge has been designated to try misdemeanor or petty offense cases on an Air Force installation, will request that the United States Attorney petition a district court to designate a magistrate judge for that purpose. If the district court fails to designate a magistrate judge after petition, the installation commander will report the failure to the Administrative Law Directorate of the Office of The Judge Advocate General (AF/JAA). **(T-1)**.

2.1.4. Will delegate administration of the installation's magistrate court program to the servicing staff judge advocate. **(T-1)**.

2.1.5. May make a blanket or case-by-case 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 such offenses should be presented to the United States Attorney's Office for consideration of prosecution before a magistrate judge.

2.2. Installation SJAs.

2.2.1. Upon delegated authority from the installation commander, will provide overall management of the magistrate court program to ensure compliance with the legal and procedural requirements of DoDD 5525.4; Title 32, Code of Federal Regulations

(C.F.R.), Section 634.25; this Instruction; governing procedures of the applicable United States Attorney's Office; and all other legal and procedural requirements relevant to prosecution in district and magistrate courts. **(T-1)**.

2.2.2. Will select one or more Air Force attorneys to be designated as Air Force SAUSAs; and, through the local United States Attorney, will seek the appointment of these designated attorneys as SAUSAs consistent with 28 U.S.C. §§ 515(a), 516, 543. **(T-0)**.

2.2.3. Coordinate with the United States Attorney to establish a mutual agreement about the scope of the magistrate court program under this Instruction, and supervision, oversight, and direction of Air Force attorneys appointed as SAUSAs.

2.2.3.1. SJAs are encouraged, but not required, to enter into a memorandum of understanding with their local United States Attorney for these issues.

2.2.3.2. SJAs shall ensure any agreement with the local United States Attorney will not interfere with the SJA's primary responsibility for Air Force attorneys appointed as SAUSAs.

2.2.4. Will closely monitor prosecutions conducted by SAUSAs in magistrate and district courts, and will provide supervision and training as necessary through appropriate coordination with the United States Attorney concerned. **(T-1)**. SJAs are encouraged to allow SAUSAs to complete training offered by the United States Attorney's Office directly pertaining to their limited role as SAUSAs appearing in magistrate and district court.

2.2.5. May, upon request of the United States Attorney, and with the concurrence of the major command SJA, authorize an Air Force SAUSA to prosecute a case in district court. Such approval is granted on a case-by-case basis.

2.3. Air Force SAUSAs

2.3.1. Under the supervision of the local United States Attorney, represent the United States before a magistrate or district court judge in the prosecution of a civilian alleged to have committed an offense on an Air Force installation.

2.3.2. Though subject to direction of the appropriate United States Attorney in the performance of SAUSA duties, will remain as a supervisee of their SJA, and may perform only those duties, under such direction, specifically authorized under this Instruction. **(T-2)**.

2.3.3. Will contact their SJAs to obtain guidance necessary to resolve any conflict between their role as a representative of the Department of the Air Force and any contrary guidance from the United States Attorney, and will comply with the direction of his or her SJA.

2.3.4. Will comply with DoDD 5525.4, 32 C.F.R. § 634.25, this Instruction, governing procedures of the applicable United States Attorney's Office, general and specific legal requirements and procedures in magistrate and district courts, and all other legal and procedural requirements relevant to their role as SAUSAs.

3. Applicability to Military Members, Including on Joint Bases.

3.1. 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 magistrate or district court under the provisions of this Instruction; rather, appropriate action will be taken by military commanders in such cases. **(T-0)**.

3.2. When service members in the RegAF, or the AFR and ANG when such members are on Title 10 orders, are cited for offenses on non-Air Force installations, to include joint bases where the Air Force is not the lead military service, Air Force commanders will have the discretion to allow the service member to be tried in magistrate or district court per owning service policies or to request the owning service dismiss the case and allow command to resolve the matter with an administrative disposition. **(T-1)**.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

18 U.S.C. § 13

18 U.S.C. § 3231

18 U.S.C. § 3401(b)

18 U.S.C. § 3402.

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

32 C.F.R. § 634.25, *Installation Traffic Codes*

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

AFPD 51-2, *Military Justice*, [DATE]

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

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

C.F.R.—Code of Federal Regulations

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

U.S.C—United States Code

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 (18 U.S.C. §3231 and 28 U.S.C. 636) 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 5525.4, subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation.