



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON, DC

DAFI 51-201\_DAFGM2025-01  
**18 MARCH 2025**

MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FLDCOMs/FOAs/DRUs

FROM: HQ USAF/JA  
1420 Air Force Pentagon  
Washington, DC 20330-1420

SUBJECT: Department of the Air Force Guidance Memorandum to Department of the Air  
Force Instruction (DAFI) 51-201, *Administration of Military Justice*

By Order of the Secretary of the Air Force, this Department of the Air Force Guidance Memorandum (DAFGM) immediately changes DAFI 51-201, *Administration of Military Justice*. Compliance with this memorandum is mandatory. To the extent its directions are inconsistent with other Department of the Air Force publications, the information herein prevails, in accordance with Department of the Air Force Instruction (DAFI) 90-160, *Publications and Forms Management* and Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes and Procedures*.

This guidance is applicable to the entire Department of the Air Force (DAF), including uniformed members of the Regular Air Force, United States Space Force, Air Force Reserve and Air National Guard, except where noted otherwise, all DAF civilian employees and those with a contractual obligation to abide by the terms of DAF issuances.

This DAFGM renews previous guidance and adds requirements for Preliminary Hearing Officer (PHO) training and certification.

This memorandum becomes void after one year has elapsed from the date of this memorandum, or upon incorporation by interim change (IC) or rewrite of the affected publication, whichever is earlier.

REBECCA R. VERNON  
Major General, USAF  
Performing the Duties of The Judge Advocate General

Attachment:  
Guidance Changes

ATTACHMENT

Current guidance in DAFI 51-201, *Administration of Military Justice*, remains in effect with the following changes:

*Section 1A (Updated)—Overview*

**1.2. (Updated) Templates.** All templates implementing the UCMJ and MCM that are referenced in this instruction can be found on the Virtual Military Justice Deskbook (VMJD) 2.0 on Federal Legal Information Through Electronics (FLITE) Knowledge Management (KM) as well as the AF/JAJM Outreach and Training page on Microsoft Teams (hereinafter AF/JAJM Teams Page). Contact AF/JAJM for questions. Air Force JAG Corps personnel can access the VMJD at <https://kmjas.jag.af.mil/moodle/course/view.php?id=563> and the AF/JAJM Teams Page at <https://dod.teams.microsoft.us/l/team/19%3adod%3a85ded12aa2304ea1ac0223d14119168e%40thead.tacv2/conversations?groupId=6db8414f-1fa7-48e6-9714-7756762703b9&tenantId=8331b18d-2d87-48ef-a35f-ac8818ebf9b4>. Non-JAG Corps personnel requesting copies of templates should work with the relevant servicing legal office to obtain needed templates and other documents.

**12.2. (Updated) Preliminary Hearing Personnel.**

**12.2.1.1. (Updated) PHO Qualifications.**

**12.2.1.1.1. (Added)** The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the PHO. **(T-0)** For offenses under OSTC authority, an STC will determine whether a preliminary hearing is required and will contact the servicing legal office to request the convening authority appoint a PHO.

**12.2.1.1.2. (Added)** The accuser may not serve as the PHO.

**12.2.1.1.3. (Added)** The PHO will be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing unless the SJA expressly determines this is impracticable. **(T-0)**

**12.2.1.1.4. (Added)** The PHO will be certified under Article 27(b), UCMJ.

**12.2.1.1.5. (Added)** The PHO will be certified by TJAG as having the requisite training and experience to serve as a PHO. **(T-0)**

**12.2.1.1.6. (Added)** An ARC judge advocate may be detailed to serve as a PHO while on active duty or performing IDT. Article 136(b), UCMJ, authorizes AFR judge advocates to administer oaths while on active duty or performing inactive duty training. ANG judge advocates must be on Title 10 orders. **(T-0) Note:** Recommend all installations verify the certification status of a AFR or ANG judge advocate before appointment. Certification status of all judge advocates may be verified via the AF/JAX Knowledge Management page utilizing the annually published JAG Order 1 and JAG Order 2.

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#### 12.2.1.2. **(Updated)** PHO Training and Experience.

12.2.1.2.1. **(Added)** Judge advocates will attend and successfully complete the AF/JAJM Preliminary Hearing Officer-Legal Advisor Training Course.

12.2.1.2.2. **(Added)** Military judges may serve as PHOs. Military judges, and judge advocates who have previously been assigned as a military judge, are not required to attend the AF/JAJM Preliminary Hearing Officer-Legal Advisor Training Course. Requests for a military judge to serve as a PHO are coordinated with AF/JAT. No judge who has served on a pre-referral proceeding pursuant to Article 30a, UCMJ, may be detailed to an Article 32, UCMJ, preliminary hearing in the same case.

12.2.1.2.3. **(Added)** RegAF judge advocates must be approved as Career Litigation Development Program (CLDP) Stage 2 in accordance with DAFI 51-101, *The Air Force Judge Advocate General's (AFJAGS) Corps Operations, Accessions, and Professional Development*, Chapter 7.

12.2.1.2.4. **(Added)** ARC judge advocates must have at least 10 cumulative months of military or civilian litigation experience.

12.2.1.2.5. **(Added)** Judge advocates must be nominated for the Preliminary Hearing Officer-Legal Advisor Member Pool as follows:

12.2.1.2.5.1. **(Added)** For active duty and IMA judge advocates, by their MAJCOM/FLDCOM SJA or functional equivalent;

12.2.1.2.5.2. **(Added)** For Category A reservists, by the Total Force Advisor to TJAG; or

12.2.1.2.5.3. **(Added)** For ANG judge advocates, by the Air National Guard Assistant to TJAG.

#### 12.2.1.3. **(Updated)** PHO Certification.

12.2.1.3.1. **(Added)** In accordance with R.C.M. 405(e)(1)(A), TJAG is the designated authority for certifying judge advocates as having the requisite training and experience to serve as PHOs.

12.2.1.3.2. **(Added)** AF/JAJM will route recommendations for certification through AF/JAX for TJAG decision. The recommendation will include the following:

12.2.1.3.2.1. **(Added)** A statement indicating that the judge advocate is certified under Article 27(b), UCMJ.

12.2.1.3.2.2. **(Added)** A statement indicating that the judge advocate attended and successfully completed the AF/JAJM Preliminary Hearing Officer-Legal Advisor Training Course, to include the date of completion.

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12.2.1.3.2.3. **(Added)** For RegAF judge advocates, a statement indicating that the judge advocate has been approved as CLDP Stage 2.

12.2.1.3.2.4. **(Added)** For ARC judge advocates, a statement indicating that the judge advocate has at least 10 cumulative months of military or civilian litigation experience and was nominated for the Preliminary-Hearing Officer-Legal Advisor Member Pool in accordance with paragraph 12.2.1.2.5.

12.2.1.3.3. **(Added)** TJAG retains authority to otherwise certify judge advocates determined to have the requisite training and experience to act as a PHO, or to decertify judge advocates, in accordance with R.C.M. 405(e)(1)(A).

12.2.1.4. **(Updated)** AF/JAJM Preliminary Hearing Officer-Legal Advisor Training Course and Preliminary Hearing Officer-Legal Advisor Member Pool.

12.2.1.4.1. **(Added)** AF/JAJM will hold a Preliminary Hearing Officer-Legal Advisor Training Course at least twice each calendar year and will manage a Preliminary Hearing Officer-Legal Advisor Member Pool containing a list of judge advocates who are trained and certified by TJAG to serve as a PHO within the DAF.

12.2.1.4.2. **(Added)** If a member of the Preliminary Hearing Officer-Legal Advisor Member Pool has not served as a PHO, Legal Advisor for an administrative separation board or Board of Inquiry, or a participant in any other military justice or other litigation (criminal or administrative) role during any three-year period, the judge advocate must re-attend and successfully complete the Preliminary Hearing Officer-Legal Advisor Training Course prior to serving as a PHO.

#### **12.14. (Updated) Forwarding the PHO Report to a Superior Convening Authority.**

##### **12.14.2. (DELETED)**

19.14.1. **(Updated)** For offenses under command authority, trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and R.C.M. 908, only after consultation with AF/JAJG. The SJA decides whether to file such notice of appeal with the convening authority's concurrence. For offenses under OSTC authority, trial counsel may file a notice of appeal only after consultation with AF/JAJG and with the concurrence of the detailed STC.

19.14.2. **(Updated)** DAF prosecutors are encouraged to consult with JAJG if, at any general or special court-martial, any criteria for appeal under Article 62 is met. DAF prosecutors must notify JAJG if, at a general court-martial under command authority: (1) a charge or specification identifying a named victim is dismissed because of a military judge's ruling adverse to the government; or (2) a military judge issues an order or ruling which is case dispositive.

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19.14.2.1. **(Added)** As soon as possible, but no later than eight hours after receiving the military judge's adverse ruling, prosecutors will telephone JAJG to notify JAJG of the ruling and discuss the context of the ruling and will email JAJG the charge sheet, adverse ruling, relevant motions written by all parties, and any additional information requested by JAJG. Once received, JAJG will review the information and provide guidance on a potential motion for reconsideration or appeal under Article 62.

19.14.2.2. **(Added)** For cases under command authority, the base SJA or designee is responsible for JAJG notification.

19.14.3. **(Updated)** After filing a notice of appeal conforming to the requirements of R.C.M. 908(b) with the military judge and after initial notification to AF/JAJG, trial counsel sends to AF/JAJG within 20 days the following:

***Section 19K (Added)—End of Trial Documents Checklist.***

19.29. **(Added) End of Trial Documents Checklist.** For all special and general courts-martial, practitioners are required to use the AF/JAT End of Trial Documents Checklist, located on the VMJD. Immediately at the conclusion of trial, trial counsel and the court reporter will verify, in person, that Trial Counsel has physical and complete possession of all documents and items on the checklist. Both Trial Counsel and the Court Reporter will sign and date the checklist immediately following trial, after verifying the physical presence of all required documents and items immediately after trial concludes. If trial concludes after the end of normal duty hours, the checklist and verification will occur no later than the morning following trial. See, Rule for Courts-Martial 1112(b).

20.47.3. **(Updated) Certification.** Prior to certification of the transcript by the court reporter, the court reporter must forward the transcript to the trial counsel, who examines it for accuracy and signs a memorandum verifying the examination was accomplished. **(T-1)** Trial counsel must complete their examination within 14 calendar days of receipt from the court reporter. A sample memorandum is located in DAFMAN 51-203. The SJA must also afford defense counsel 14 calendar days to examine the transcript before certification. **(T-0)** Time for trial and defense counsel to conduct their examination runs concurrently, starting from the day each receives the transcript from the court reporter. Where defense counsel does not provide comments or edits on the transcript prior to certification, the reason(s) should be attached to the record. The transcript must be certified by the court reporter(s) detailed to the proceeding and included in the ROT prior to forwarding for appellate review. **(T-0)** For certification requirements, refer to DAFMAN 51-203.

***Section 20M (Updated)—Excess Leave***

20.53.6.2. **(Added)** If the member is operationally gained by AFSFC, the consolidated brig will complete the excess leave paperwork upon release from confinement.

***Section 20O (Added)—Post-Trial Processing Dashboard.***

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20.62. **(Added) Post-Trial Processing Dashboard.** Practitioners are required to use the Post-Trial Processing Dashboard to track all post-trial processing timelines. MAJCOMs and FLDCOMs are responsible for Post-Trial Processing Dashboard entries, unless otherwise delegated. The link for the Post Trial Processing Dashboard, Dashboard User Guidance, and trainings can be found on the VMJD.

***Section 23B (Updated)—Composition of an SCM***

23.8. **(Updated) Summary Court-Martial Officer (SCMO).** An impartial, RegAF or Space Force commissioned officer presides over an SCM as the SCMO. A Reserve commissioned officer on active duty or an ANG commissioned officer on active duty in federal service may serve as an SCMO. The SCMO must be impartial. Before appointing an officer to serve as an SCMO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the SCMO's impartiality could be questioned based on the SCMO's relationship with the case, the parties, and the base legal office. A commanding officer in the accused's chain of command may not serve as the SCMO unless that commanding officer is the only commissioned officer present with a command or detachment in accordance with Article 24, UCMJ, and R.C.M. 1301.

***Section 23F (Updated)—Post-Trial Procedure (R.C.M. 1306)***

23.16.1. **(Added)** If correction to the SJA's first indorsement is required, correct in accordance with **paragraph 21.13** and redistribute in accordance with **paragraph 23.17**.

***Section 24A (Updated)—Appellate Defense Counsel***

24.3.4. **(Updated)** In the event of withdrawal, appellate defense counsel must file a motion with the appropriate appellate court. If the appellate court grants the motion, AF/JAJM will notify the original GCMCA SJA to complete an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201 and **paragraph 24.16**. A Certification of Final Review (CFR) will need to be completed by the responsible authority in accordance with **Chapter 27**.

***Section 24C (Updated)—Judge Advocate Review of Summary Courts-Martial (Article 64, UCMJ; R.C.M. 1307)***

24.8.3.3. **(Updated)** The GCMCA takes further action in accordance with R.C.M. 1307(e) and Article 64(c), UCMJ, and the review and action are included in the ROT. There will be no additional notation on the DD Form 490 and no additional notation on the DD Form 2329.

***Section 24G (Updated)—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210)***

24.25.2.1. **(Updated)** If the petitioner's case is pending before AFCCA, AF/JAJM forwards the following documents to the Court: the signed petition and supporting documents, and the original

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ROT. AF/JAJM also forwards a copy of the petition and supporting documents to appellate defense and appellate government counsel. R.C.M 1210(e).

**(Updated) Chapter 27 – CERTIFICATION OF FINAL REVIEW**

27.1.3. **(Added)** In courts-martial in which the member waived or withdrew from appellate review, the original GCMCA SJA is responsible for accomplishing the CFR except for cases falling under **paragraph 27.1.2.**

***Section 29B (Updated)—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. § 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)***

29.10. **(Updated) Criminal History Record Information.** CHRI reported in accordance with DoDI 5505.11 and DAFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP, or administrative discharge).

29.12. **(Updated) Disposition Data.** The DAF, through DAF-CJIC, OSI, and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action taken was regarding each qualifying offense. The disposition includes acquittals, convictions, sentencing, NJP, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

29.19.1. **(Updated)** The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a LIO, sentence data, NJP) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). See DAFMAN 71-102, Table 1.1 for Disposition Documentation Requirements. If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ. Servicing legal offices must provide the DAF Form 239 and the appropriate disposition documents to DAF-CJIC within three duty days of completion.

***Section 29D (Updated)—Possession or Purchase of Firearms Prohibited (18 U.S.C. §§ 921-922, Definitions; Unlawful acts; 27 C.F.R. § 478.11)***

29.30.7. **(Updated)** Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM are covered under 18 U.S.C. § 922(g)(1).

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***Section 29E (Updated)—Distribution of Court-Martial Data for Indexing Purposes***

29.35.10. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under **Sections 29B-D** of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with **paragraph 10.2**; NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for discharge, resignation, or retirement in lieu of trial by court-martial). There is no requirement to provide administrative paperwork (e.g. Letters of Reprimand, Admonishment, or Counseling).

***Section 31A (Updated)—General Information***

31.3.1. **(Updated)** AF/JA is the release authority for data collected and stored in DCMS-AMJAMS and the products they may generate. This includes data in the OSTC module.

***Section 31D (Updated)—SIRs and Covered Offense Notifications***

31.10. **(Updated) Reporting Special Interest Cases.** Certain cases involving DAF members generate interest within Headquarters DAF because of the nature of the offense, the subject's grade, or some other reason. SJAs must be sensitive to SIR requirements.

31.11. **Responsibilities.** Reporting special interest cases in DCMS is a base-level responsibility. Reports must be prepared and forwarded to AF/JAJM within one duty day of learning of the incident by the base legal office responsible for the case or supporting the subject's unit of assignment. If a base legal office learns of a SIR case but another office is responsible for it, the base legal office with knowledge of the case should inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders' reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority.

31.12. **(Updated) Requirements.** SIRs must be created in the circumstances outlined in **paragraphs 31.12.1 – 31.12.3**. MAJCOM/FLDCOM and NAF SJAs may not impose additional SIR requirements without TJAG approval. However, this paragraph does not preclude MAJCOM/FLDCOM SJAs from notifying senior JAG Corps leaders of cases that may not fit within the circumstances specifically listed below. MAJCOM/FLDCOM SJAs must exercise their judgment in making such notifications.

31.12.1. **(Updated) Select Officer and Senior Enlisted Leader (SEL) Subjects.** Regardless of offense, report all allegations of misconduct resulting in an investigation involving officers in the grade of O-6 or above, G-Series commanders (exception: section commanders), first sergeants, enlisted members in the grade of E-9, and SELs at group-level or higher.

31.12.2. **(Updated) Serious Crimes.** Regardless of the subject's grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit



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these crimes: espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States.

31.12.2.1. **(DELETED)**

31.12.2.2. **(DELETED)**

31.12.2.3. **(DELETED)**

31.12.2.4. **(DELETED)**

31.12.2.5. **(DELETED)**

31.12.2.6. **(DELETED)**

31.12.2.7. **(DELETED)**

31.12.2.8. **(DELETED)**

31.12.2.9. **(DELETED)**

31.12.3. Cases Involving Command or Media Interest.

31.12.3.1. **(DELETED)**

31.12.3.2. **(DELETED)**

31.13. **What to Report.** Use DCMS-AMJAMS to generate the SIR, which must include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. Identify missing information and follow up as soon as possible.

31.13.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to AF/JAJM via email.

31.13.2. Ensure law enforcement sensitive investigative information is not included in the SIR without concurrence of the OSI Detachment Commander/Special Agent-in-Charge or investigating agency.

31.13.3. For matters investigated by CDI, IG, or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

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31.13.4. For cases disposed of by NJP or administrative action, identify the wrongdoing or offenses alleged (e.g., “On (date), Subject received NJP/letter of reprimand (LOR) for...”).

31.13.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities, court, jurisdiction, and a summary of the charges, pleas, findings and sentence.

31.13.6. If a case was closed without action, explain why.

### **31.14. When to Submit a SIR.**

31.14.1. Initial SIR. Within one duty day of learning of an incident that requires a SIR. If an initial report does not provide sufficient information to determine whether a SIR is required, the installation legal office should work with investigators to gather additional information and submit a SIR within one duty day of receiving sufficient information to determine a SIR is required. If DCMS-AMJAMS cannot be accessed within one duty day, submit case information using the most expeditious means possible (likely email), and input the case into DCMS-AMJAMS as soon as possible.

31.14.2. Final SIR. Submit a final SIR upon completion of the court-martial, NJP or administrative action, including the decision whether to file NJP action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed upon case closure.

### **31.15. How to Report.**

31.15.1. Use DCMS-AMJAMS to generate the SIR. Complete the SIR and Special Identifier tabs in DCMS-AMJAMS.

31.15.2. Transmitting SIRs to AF/JAJM. Generate a PDF copy of the SIR in DCMS-AMJAMS and send it via encrypted email to [AF.JAJM.SIR.Workflow@us.af.mil](mailto:AF.JAJM.SIR.Workflow@us.af.mil). Further instructions are available on the VMJD and AF/JAJM Teams page.

31.15.3. Initial. When submitting an initial SIR, use the following subject line/title: Controlled Unclassified Information (CUI) NEW SIR: CASE ID # - RANK SURNAME – BASE.

31.15.4. Final. When submitting a final SIR, use the following subject line/title: Controlled Unclassified Information (CUI) FINAL SIR: CASE ID # - RANK SURNAME – BASE.

31.15.5. **(Added)** Covered Offense Notifications. When sending a covered offense notification to OSTC, also copy the AF/JAJM SIR Workflow [AF.JAJM.SIR.Workflow@us.af.mil](mailto:AF.JAJM.SIR.Workflow@us.af.mil) and the servicing NAF/MAJCOM/FLDCOM legal offices.

### ***Section 34C (Updated)—Reporting Cases Involving Foreign National DAF Members***

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**34.7. (Updated) When to Report.** Consistent with AFI 51-707, *Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice*, notify AF/JAO when a foreign national DAF member is:

34.7.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that they are a foreign national;

34.7.2. Ordered into arrest or confinement;

34.7.3. Held for trial with or without any form of restraint; or

34.7.4. Pending court-martial charges that have been referred for trial.

**34.8. What to Report.** Include the following:

34.8.1. **(Updated)** The name, grade, SSN, nationality, organization, and station of the member;

**34.15. (Updated) Compliance Review.** MAJCOM/FLDCOM legal offices will review their compliance with Article 140a, UCMJ, every 6 months by reviewing both their compliance with the 45-day metric and their compliance with the requirements set out in the 140a checklist, located on the VMJD. Results of the compliance review will be reported to AF/JAJM no later than 1 January and 1 July of each calendar year. Results will include cases in which the Article 140a metric date falls within the 6-month review period and include case name, verdict date, ROT certification date, Article 140a completion date, and checklist certification.

**34.17. (Added) Certification.** All installation, MAJCOM, and FLDCOM legal offices must complete an Article 140a checklist, located on the VMJD, for each case. Installation and MAJCOM or FLDCOM personnel must certify on the checklist that all steps are complete by signing and dating the bottom of the checklist.

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

**DEPARTMENT OF THE AIR FORCE  
INSTRUCTION 51-201**



**24 JANUARY 2024**

**Law**

**ADMINISTRATION OF MILITARY  
JUSTICE**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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

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

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OPR: AF/JAJM

Certified by: AF/JAJ  
(Brig Gen Gail E. Crawford)

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Pages: 264

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This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial (MCM), including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.), and applicable Department of Defense (DoD) guidance. This publication is applicable to the entire Department of the Air Force (DAF), including uniformed members of the Regular Air Force, United States Space Force, Air Force Reserve and Air National Guard, except where noted otherwise, all DAF civilian employees and those with a contractual obligation to abide by the terms of DAF issuances. Commands may supplement this instruction only with the prior, written approval of the Military Justice Law and Policy Division (AF/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This Instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by DoD Directive (DoDD) 5400.11, *DoD Privacy Program*. The applicable System of Records Notice (SORN), "Military Justice and Civilian Criminal Case Records," DoD 0006, is available at <https://www.federalregister.gov/documents/2021/05/25/2021-10367/privacy-act-of-1974-system-of-records>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through major command (MAJCOM) or field command (FLDCOM) functional managers. The authorities to waive requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes*

*and Procedures*, for a description of the authorities associated with the Tier numbers. For tiered items, submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the publication OPR. Commanders may not waive non-tiered compliance items in this instruction. See DAFMAN 90-161, paragraph 9.2.2. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Department of the Air Force.

### ***SUMMARY OF CHANGES***

This document has been substantially revised and must be completely reviewed. This document implements requirements contained in the Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA) and FY 2023 NDAA, as well as Executive Order (EO) 14103, *2023 Amendments to the Manual for Courts-Martial, United States*. It contains guidance to implement establishment of the Office of the Special Trial Counsel (OSTC) and guidance concerning UCMJ amendments to sentencing rules and appellate rights.

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## Chapter 1

### OVERVIEW, TEMPLATES, ROLES & RESPONSIBILITIES

#### *Section 1A—Overview*

**1.1. Overview.** The military justice system promotes justice, deters misconduct, facilitates appropriate accountability, assists in maintaining good order and discipline, and promotes military efficiency and effectiveness, thereby strengthening the national security of the United States. This instruction implements requirements for the administration of military justice in the Department of the Air Force (DAF) (comprised of the Air Force and Space Force). The primary sources of direction and guidance on military justice are the UCMJ, Title 10 United States Code (U.S.C.) §§ 801-946a, and the MCM which includes the R.C.M. and M.R.E. Compliance is mandatory with the UCMJ as federal law, and with the MCM as an executive order. **(T-0)** While this publication may expand upon articles of the UCMJ or rules in the MCM, to the extent this publication is ever in direct conflict with the UCMJ or MCM, those sources take precedence over this publication. All requirements that are not tiered may only be waived by AF/JAJM or superior functional authority with coordination with AF/JAJM. Submit waiver requests via DAF Form 679 through the functional chain.

**1.2. Templates.** All templates implementing the UCMJ and MCM that are referenced in this instruction can be found on the Virtual Military Justice Deskbook (VMJD) on Federal Legal Information Through Electronics (FLITE) Knowledge Management (KM) as well as the AF/JAJM Outreach and Training page on Microsoft Teams (hereinafter AF/JAJM Teams Page). Contact AF/JAJM for questions. Air Force JAG Corps personnel can access the VMJD at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251> and the AF/JAJM Teams Page at <https://dod.teams.microsoft.us/l/team/19%3adod%3a85ded12aa2304ea1ac0223d14119168e%40thread.tacv2/conversations?groupId=6db8414f-1fa7-48e6-9714-7756762703b9&tenantId=8331b18d-2d87-48ef-a35f-ac8818ebf9b4>. Non-JAG Corps personnel requesting copies of templates should work with the relevant servicing legal office to obtain needed templates and other documents.

1.2.1. Templates. Legal offices are strongly advised to use AF/JAJM-produced templates included on the VMJD and AF/JAJM Teams Page. Templates may be modified as needed to address the particulars of a given case, however the format should be adhered to unless modification is required. This ensures consistency in military justice documentation and records of trial (ROTs) throughout the DAF. Nothing in the templates should be construed to inhibit the ability of an attorney to provide legal advice to a commander, convening authority, or trial participant.

1.2.2. Modification of Templates. Deviation on substantive provisions is not recommended without prior approval of AF/JAJM; however, templates may be modified to address the facts and circumstances of each individual case (e.g., names, addresses, offense types). If there is uncertainty about whether a specific provision is substantive, contact AF/JAJM for guidance.

**1.3. Mandatory Use of Court-Martial Checklists.** The base legal office responsible for administering a court-martial must use the applicable AF/JAJM court-martial checklists, to include checklists for completion of post-sentencing paperwork and distribution, available on the VMJD and AF/JAJM Teams Page. Legal offices must begin using the checklists as soon as they

start reviewing a case with an eye toward the earlier of pretrial confinement, preferral of charges, or an Article 30a, UCMJ, pre-referral judicial proceeding. Supplemental checklists may only be used if reviewed and approved by, or provided by, AF/JAJM. Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the ROT and are kept with the base copy of the ROT.

### ***Section 1B—Roles and Responsibilities***

**1.4. Secretary of the Air Force (SecAF).** Exercises DAF secretarial authorities set out in 10 U.S.C. § 9013, *Secretary of the Air Force*, the UCMJ, and the MCM. Is a general court-martial convening authority (GCMCA) pursuant to Article 22, UCMJ. Designates commanders with convening authority pursuant to R.C.M. 504. Issues DAFPD 51-2 and other regulations to implement the UCMJ, MCM, and DoD policy. Authorizes The Judge Advocate General (TJAG) to issue DAF publications establishing procedures to administer military justice in the DAF, as directed in DAFPD 51-2. Exercises direct reporting authority over the Office of Special Trial Counsel (OSTC) with no intervening authorities.

**1.5. The Judge Advocate General.** Exercises TJAG authorities set out in the UCMJ and MCM for the DAF. Conducts inspections to supervise the administration of military justice pursuant to Article 6, UCMJ. Advises the SecAF, the Chief of Staff of the Air Force, and the Chief of Space Operations on military justice matters. Provides oversight of the DAF military justice system. Issues DAF publications establishing procedures to administer military justice in the DAF.

**1.6. Office of Special Trial Counsel (OSTC).** Provides expert, specialized, independent, and ethical representation of the United States, under the direct civilian control of the SecAF, in the investigation and trial-level litigation of covered offenses, as prescribed by Article 1(17), UCMJ, and other offenses over which the office exercises authority pursuant to Article 24a, UCMJ. OSTC reports directly to SecAF with no intervening authority.

1.6.1. Lead Special Trial Counsel (LSTC). Leads OSTC for the DAF and establishes policies, procedures, and delegations necessary to exercise OSTC's statutory authorities. OSTC executes its duties independently of the military chains of command of both victims and those accused of offenses under OSTC authority.

1.6.2. Special Trial Counsel (STC). Judge advocates certified under Article 24a, UCMJ, who exercise OSTC authorities set out in the UCMJ, MCM, and OSTC Standard Operating Procedures.

**1.7. Military Justice and Discipline Directorate (JAJ).** Exercises supervisory responsibility for its subordinate divisions. Adjudicates central witness funding matters.

1.7.1. The Director, Military Justice and Discipline (JAJ). A senior judge advocate assigned by TJAG to direct the duties of and to exercise supervisory responsibility for all JAJ personnel, including all members assigned who are detailed to perform full-time duties as district trial counsel (DTC); chief district defense counsel (CDDC), senior defense counsel (SDC), area defense counsel (ADC), defense paralegal managers (DPM), and defense paralegals (DP); chief district victims' counsel (CDVC), victims' counsel (VC), and victims' paralegals (VP); and appellate government and appellate defense counsel.

1.7.2. Chief, Military Justice Law and Policy Division (AF/JAJM). A senior judge advocate assigned by TJAG to direct the duties of and be responsible for providing field support for the

administration of military justice, development and dissemination of DAF military justice instructions and policy, and supervision of certain other actions required by TJAG.

1.7.2.1. AF/JAJM provides counsel, guidance and support to Headquarters DAF, court-martial convening authorities and staff judge advocates (SJAs) on the administration of military justice.

1.7.2.2. AF/JAJM is the Office of Primary Responsibility for this instruction and other regulations establishing procedures to administer military justice in the DAF.

1.7.2.3. AF/JAJM functions as a component of the Office of The Judge Advocate General (AF/JA) for matters pursuant to the UCMJ, as determined by TJAG, operating in close coordination with AF/JAJ.

1.7.2.4. AF/JAJM manages the Disciplinary Case Management System (DCMS), Automated Military Justice Analysis and Management System (AMJAMS), and any replacement systems. All references to AMJAMS in this publication apply equally to DCMS and any future replacement systems.

1.7.2.5. AF/JAJM is responsible for maintaining and archiving ROTs for all DAF courts-martial.

1.7.2.6. AF/JAJM provides the DAF active-duty voting member and working group member to the Joint Service Committee on Military Justice.

1.7.3. Chief, Government Trial and Appellate Operations Division (AF/JAJG). A senior judge advocate assigned by TJAG to direct the duties of and to supervise DTCs and Government appellate counsel. For offenses under command authority, this individual manages the training and assignment of DTCs, including the detailing of one or more DTCs to courts-martial. This individual supervises all DAF appeals before the United States Air Force Court of Criminal Appeals (AFCCA), the United States Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States. This individual may delegate one or more of these authorities to their Director of Operations.

1.7.3.1. Director of Operations, AF/JAJG. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. Supports the Chief, AF/JAJG, in directing the duties of and supervising DTCs and Government appellate counsel. This individual may detail DTCs to courts-martial and other military justice proceedings, and supports the Chief, AF/JAJG in supervising all DAF appeals before AFCCA, CAAF, and the Supreme Court of the United States.

1.7.3.2. DTC. A judge advocate, certified under Article 27(b)(2), UCMJ, generally responsible for the prosecution of complex offenses under command authority. The Director of Operations, AF/JAJG, serves as the lead DTC for the DAF. DTC primary duties include the following, in order of priority:

1.7.3.2.1. Serve as lead trial counsel in courts-martial under command authority upon request by an installation-level SJA and approval by the Chief or Director of Operations, AF/JAJG, with litigated general courts-martial generally having priority.

1.7.3.2.2. Serve as the government representative in Article 32, UCMJ, preliminary hearings for offenses under command authority.

- 1.7.3.2.3. Serve as the recorder in administrative discharge boards and boards of inquiry, upon request by an installation-level SJA, approval by the Chief or Director of Operations, AF/JAJG, and appointment by the convening authority concerned.
- 1.7.3.2.4. Train, advise, and assist installation-level personnel in the investigation and disposition of offenses under command authority.
- 1.7.3.2.5. Installation-level SJAs are expected to use their assigned DTCs for support and employ their expertise and services to the maximum extent possible. As outlined more fully below, a DTC should generally be the most senior prosecutor assigned to any Criminal Investigation and Prosecution (CIP) team.
- 1.7.4. Chief, Trial Defense Division (AF/JAJD). A senior judge advocate assigned by TJAG with overarching supervisory authority over all CDDCs, SDCs, ADCs, DPMs, DPs, the Manager, JAJD, the Deputy Chief JAJD, criminal defense investigators, and the Defense Counsel Assistance Program (DCAP). The Chief, AF/JAJD's duties include: (1) serving as the ultimate detailing authority on all detailing decisions and individual military defense counsel (IMDC) requests for personnel within the division; (2) managing the training, legal and developmental education, and career progression of all AF/JAJD personnel; (3) personally defending senior officers and others in select cases; (4) overseeing the management of trial defense facilities, equipment, and budgets; (5) serving in the functional rating chain for all AF/JAJD personnel not otherwise delegated; and (6) establishing policy and strategic guidance to enhance the trial defense services worldwide.
- 1.7.4.1. Deputy Chief AF/JAJD. The Deputy Chief is an attorney designated by the Chief, AF/JAJD to perform the duties of the Chief, AF/JAJD, in the Chief's absence, and to manage policy and professional development for all personnel within the division. The Deputy Chief may be detailed by the Chief to defend senior officers and others in select cases, and perform other duties as assigned by the Chief, AF/JAJD.
- 1.7.4.2. DCAP. The DCAP reports directly to the Chief, AF/JAJD. The DCAP is responsible for providing technical expertise, strategic planning/policy development, and programmatic continuity for the division. This DCAP also develops training for AF/JAJD personnel, serves as reach-back to the field on new and complex issues, and responds to various inquiries and taskers from higher headquarters, Congress, and within the DoD.
- 1.7.4.3. Manager, AF/JAJD. The Manager is the senior noncommissioned officer assigned to AF/JAJD whose primary duty is to assist and advise the Chief, AF/JAJD, CDDCs and DPMs with all enlisted matters (e.g., training, mentoring, and administrative aspects of enlisted affairs) within the division. Additionally, the Manager is responsible for office management matters.
- 1.7.4.4. CDDC. CDDCs, in concert with subordinate SDCs, mentor, train, and direct the provision of defense services throughout their district. CDDC duties consist of the following: (1) exercising supervisory authority over all ADCs, DPs, SDCs, and the DPM assigned to their district; (2) managing all administrative and personnel actions (e.g., evaluations, awards, and decorations) for personnel assigned to the district; (3) serving as the rater for all ADCs and additional rater for all DPs assigned to the district; (4) serving as defense counsel in selected courts-martial, administrative boards, investigations, and other adverse actions; (5) making detailing decisions; (6) acting on IMDC requests for



personnel currently assigned to the district; (7) overseeing the management of trial defense facilities, equipment, and budgets; and (8) performing other duties as assigned by the Chief, AF/JAJD.

1.7.4.5. DPM. DPMs are the senior enlisted advisors to the CDDCs on all DP matters within their assigned district. DPMs also assist and advise CDDCs, SDCs and ADCs on DP professional development, evaluations, awards and decorations, manpower issues, and training/utilization of their district's assigned DPs. The DPM evaluates and monitors DP proficiency/upgrade training requirements and coordinates compliance with wing legal offices. DPMs provide DPs with career guidance, training on duties and responsibilities, and oversee law office and resource management. DPMs conduct staff assistance inspections and help provide oversight on the management of trial defense facilities, equipment, and budgets.

1.7.4.6. SDC. SDCs, in concert with the CDDCs, mentor, train, and direct the provision of defense services throughout their assigned district. SDC duties include the following: (1) serving as the first-line supervisory attorney to all ADCs assigned to their region; (2) assisting with administrative matters and personnel actions, as directed by their supervising CDDC; (3) making detailing decisions in accordance with the AF/JAJD Operating Instruction; (4) serving as defense counsel in select courts-martial, administrative boards, and other adverse actions; and (5) training, advising, and assisting other defense personnel in the region, as needed.

1.7.4.7. ADC. ADCs are responsible for providing defense services at the installation where assigned and any designated geographically separated units, subject to conflicts and detailing decisions made by the SDC or CDDC. ADCs serve as a rater and supervisor for the DP(s) assigned to their office. In an office with more than one ADC, the ADC senior in grade or rank is responsible for rating the DP(s) and for oversight of office administration.

1.7.4.8. DP. DPs' primary duties are to support ADCs in the management and operation of the ADC office. As appropriate, DPs shall complete upgrade training in a timely manner, as described in their respective career field education and training plan (CFETP) or other official publication(s).

1.7.4.9. Other Designated Defense Counsel. In accordance with R.C.M. 502(d)(2)(B) and 506(b), counsel not currently assigned to AF/JAJD may be detailed as defense counsel through the IMDC process. All IMDC requests shall be processed in accordance with this instruction.

1.7.5. Chief, Appellate Defense Division (AF/JAJA). A senior judge advocate assigned by TJAG to direct the duties of and to supervise the division's appellate counsel in representing DAF members entitled to representation under Article 70, UCMJ, before the AFCCA, CAAF, and the Supreme Court of the United States.

1.7.6. Victims' Counsel Division (AF/JAJS). Provides legal representation to victims of crimes in accordance with 10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*, 10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*, 10 U.S.C. § 1044, *Legal assistance*, Public Law 116-92, Section 548, *Legal counsel for victims of alleged domestic violence offenses*, and other applicable rules and

regulations. Additionally, the division provides policy guidance on legal representation of victims under those prescribed laws and regulations. For additional information, see DAFI 51-207, *Victim and Witness Rights and Procedures*.

1.7.7. Office of Disability Counsel (AF/JAJO). Provides legal representation of DAF members meeting established criteria for referral into the Disability Evaluation System (DES) in accordance with 10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*; DoDI 1332.18, *Disability Evaluation System*; and AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*.

1.7.8. Investigations, Inquiries and Relief Division (AF/JAJI). Functions as a component of AF/JA for matters pursuant to the UCMJ, as determined by TJAG and operating in close coordination with AF/JAJ. Advises senior leaders, SAF/IGQ and SAF/IGS on senior officer misconduct and other matters. Processes adverse actions that require SecAF coordination or approval, including but not limited to nonjudicial punishment (NJP) appeals, recalls to active duty, requests for resignation, retirements, and discharges in lieu of court-martial. Advises SecAF on promotion propriety actions. Conducts final legal review of formal Article 138, UCMJ, complaints on behalf of SecAF. Advises AF/JA on media, congressional, secretarial, and White House inquiries pertaining to military justice and discipline matters. Coordinates on Board for Correction of Military Records petitions. Recommends actions by SecAF on all affirmed officer courts-martial resulting in a dismissal, and action by SecAF or TJAG on all court-martial sentences in which clemency may be appropriate. Represents TJAG on the Air Force Clemency and Parole Board, advises the Office of the Pardon Attorney on applications for Presidential Pardon, and is counsel to the Director of Air Force Corrections on matters relating to corrections and rehabilitation of DAF inmates.

**1.8. Trial Judiciary (AF/JAT).** Provides support to military courts-martial throughout the DAF. Details trial judges and court reporters to courts-martial. Dockets courts-martial. Provides oversight of military judges and court reporters throughout the DAF. Prescribes guidance for military judges and court reporters regarding procedural and substantive aspects of trials by courts-martial. Responsible for the centralized management of the court reporter program and serves as the single point of contact for all requests for transcription assistance and court reporter temporary duty support. See DAFMAN 51-203, *Records of Trial*, for guidance on requesting court reporter assistance.

1.8.1. Chief Trial Judge. A senior judge advocate designated by TJAG, pursuant to statutory authority under Article 26(c) and (g), UCMJ, to direct and manage AF/JAT. The Chief Trial Judge supervises all trial judges, details judges to all DAF general and special courts-martial, supervises the Central Docketing Office, maintains and updates the Uniform Rules of Practice Before Department of the Air Force Courts-Martial, supervises the docketing of all general and special courts-martial within the DAF, and manages and details military judges to administrative hearings as appropriate. The Chief Trial Judge shall be responsible for all policies pertaining to court reporters and the overall management of the court reporter program.

1.8.2. Central Docketing Office. The Central Docketing Office reports directly to the Chief Trial Judge. The Central Docketing Office's primary function shall be to implement the Chief Trial Judge's (or the Chief Trial Judge's delegee's) decisions regarding the docketing of courts-martial and detailing of military judges.

1.8.3. **Military Judge.** Must be a judge advocate, certified under Article 27(b)(2), UCMJ, and designated by TJAG as a military judge according to Article 26(b) or (c), UCMJ. Military judges are assigned to a designated district or to the Chief Trial Judge. Judges may perform the following duties, in an installation or expeditionary environment, subject to availability as determined by the Chief Trial Judge:

1.8.3.1. Preside over courts-martial.

1.8.3.2. Preside over Article 30a, UCMJ, and other R.C.M. 309 proceedings.

1.8.3.3. Serve as Article 32, UCMJ, preliminary hearing officers (PHOs).

1.8.3.4. Serve as legal advisors for administrative discharge boards or boards of inquiry.

1.8.3.5. Serve as hearing officers for contingent confinement hearings.

1.8.3.6. Serve as pretrial confinement hearing officers.

1.8.3.7. Conduct other investigations.

1.8.3.8. Other duties as detailed by the Chief Trial Judge (e.g., presiding over environmental impact public hearings).

1.8.4. **Air Force Trial Judiciary Court Reporter Manager.** A paralegal assigned to the Trial Judiciary who is delegated operational authority over the court reporter program. The Court Reporter Manager shall be responsible for the centralized management and detailing of all court reporting and transcription taskings.

**1.9. Court Reporter.** Records and transcribes records for Article 30a and other R.C.M. 309 pre-referral judicial proceedings, courts-martial, and other proceedings, as required or able, in accordance with the MCM, UCMJ, and DAFMAN 51-203 and in the priority designated by the Chief Trial Judge. Assists counsel, hearing officers, and the military judge in preparing and marking documents associated with proceedings and may assist paralegals with the assembly of the ROT. Remains neutral and refrains from expressing personal opinions about the case being reported. Records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns, and maintains the reporter's notes and recordings according to the Air Force Records Disposition Standards.

**1.10. SJA.** Performs the duties of the SJA set out in the UCMJ and MCM. Directly reports to and advises the court-martial convening authority or commander on military justice matters. Supervises the administration of military justice for the command and installation. Forwards specified disposition data for criminal indexing to the appropriate points of contact. Installation SJAs ensure individuals identified by the Force Support Squadron Commander (FSS/CC) receive Article 137 briefings (if there is not a local installation SJA, then the SJA who advises the court-martial convening authority will ensure the Article 137 briefings are completed). Serves as the release authority on certain court-martial and disciplinary documents pursuant to VC and civilian victim attorney requests for information, as outlined in this instruction. Supports CIP capabilities and the OSTC-led Investigation and Prosecution Support Team (IPST) capability. Ensures legal office responsibilities are accomplished in accordance with this and other applicable instructions. See [Section 1C](#) for additional guidance.

**1.11. Court-Martial Convening Authority.** Exercises court-martial convening authority powers, and, upon OSTC determination to refer offenses under their authority, convenes courts-

martial to support OSTC's statutory authority to refer covered, known, and related offenses to trial. With the exception of the President of the United States, the Secretary of Defense, and SecAF, is a commander or commanding officer on G-series orders. In this regulation, the term "court-martial convening authority" may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial. Convening Authorities are specified in the Worldwide Convening Authority Designation Memorandum (WWCADM) (see [Chapter 2](#)).

## **1.12. Installation Commanders' Logistical Support.**

1.12.1. Commanders of installations where AF/JAJ, OSTC, or AF/JAT personnel are assigned or on temporary duty (TDY) are responsible for their administrative and logistical support. Host commanders will provide support to AF/JAJ, OSTC, and AF/JAT personnel as set forth in AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*.

1.12.1.1. Installation commanders will ensure that assigned military judges, court reporters, DTC, VC, STC, and ADC offices receive no less than the same support provided to other units assigned to the host command. This support must include, but is not limited to, the following:

1.12.1.1.1. Private office space clearly designated as a military judge, DTC, VC, STC, or ADC office including necessary furniture/supplies and access to electronic law library facilities. When practicable, ADC offices and VC offices shall be physically separated from one another and from the offices of the SJA and the convening authority. DAFMAN 32-1084, *Standard Facility Requirements*, sets forth minimum space requirements.

1.12.1.1.2. All communications equipment and support, to include: telephone services, e-mail capability, installation of security measures in offices where AF/JAJ, OSTC, and AF/JAT personnel are designated to work, to include courtrooms, and office equipment, including, but not limited to, computer refresh and multi-function device equipment including copier maintenance agreements.

1.12.1.1.3. Military family housing on the same basis as other personnel of like grade, rank, and responsibility.

1.12.1.1.4. Civilian personnel services normally provided by the Civilian Personnel Office.

1.12.1.1.5. Publications support normally furnished to tenant units.

1.12.1.1.6. Funding for necessary supplies.

1.12.1.1.7. Duress alarms.

1.12.1.2. Military transportation support is crucial to successful execution of military justice proceedings. The host installation commander should provide suitable military transportation support, such as a government-owned vehicle, to AF/JAJ, OSTC, and AF/JAT personnel TDY to their installation.

1.12.1.3. Host SJAs will assist TDY AF/JAJ, OSTC, and AF/JAT personnel by arranging appropriate billeting, messing, and transportation in advance to ensure TDY personnel may devote full attention to their duties.

1.12.1.4. AF/JAJ and OSTC, as appropriate, provide funding for travel costs and per diem expenses for their personnel when TDY to execute their military justice duties. AF/JAT provides funding for military judges when TDY to execute their military duties. The convening authority funds traveling court reporters.

**1.13. Unit Commander.** Exercises authorities of a commanding officer set out in the UCMJ and MCM.

**1.14. FSS/CC.** Identifies individuals that require Article 137 briefings.

### *Section 1C—Additional Requirements and Delegations Affecting the Staff Judge Advocate*

**1.15. Title of Staff Judge Advocate.** Unless otherwise specified by TJAG, the senior judge advocate on a commander's staff is designated the "Staff Judge Advocate" of that command. All other judge advocates assigned to a command are designated "Assistant Staff Judge Advocates" for the purpose of pretrial advice, post-trial recommendations, and court-martial orders.

**1.16. Acting as the Staff Judge Advocate.** The Deputy Staff Judge Advocate (DSJA) or other assistant staff judge advocate signs "Acting as the Staff Judge Advocate" when the SJA is absent or ineligible to act in a particular case. In all other matters, titles such as "Deputy Staff Judge Advocate" or "Chief, Military Justice," may be used.

**1.17. Convening Authority Delegation of Military Justice Administrative Duties.** Convening authorities may delegate military justice administrative duties to the SJA or any other attorney assigned to the servicing SJA's office. A template delegation letter is located on the VMJD and AF/JAJM Teams Page. In addition to the duties listed in the template, convening authorities may delegate any other military justice administrative duties not expressly requiring convening authority action. The delegation letter should be updated when a new commander is appointed to or assumes a command with convening authority.

**1.18. Signing on Behalf of the Convening Authority.** When signing a military justice matter for the convening authority, use the signature element, "FOR THE COMMANDER."

**1.19. Staff Judge Advocate Rating Chain.** To maintain unfettered access to military justice legal advice, avoid conflicts of interest, execute delegations of convening authority prerogatives, and maintain confidentiality, officers designated as SJAs by TJAG in accordance with Article 6(a), UCMJ, shall report to and be rated by the first commander in the chain of command who has been designated as a convening authority. TJAG-designated SJAs, assigned to units where the commander is not designated as a convening authority, should ordinarily report to and be rated by the immediate commander despite not being designated as a convening authority.

### *Section 1D—Applicability of This Instruction*

**1.20. General Rule.** This version of DAFI 51-201 applies equally to cases under traditional command authority and cases under OSTC authority. See paragraph **1.23**.

**1.21. Effective Dates.** Unless otherwise noted, this version of DAFI 51-201 applies to military justice administration after 27 December 2023. Nothing in this publication shall be construed to invalidate any restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action began on or before 27 December 2023. Any such restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in

the same manner and with the same effect as prescribed in the previous applicable version of this instruction.

**1.22. Article 60 Authority.** Use the version of Article 60 in effect on the date of the earliest offense resulting in a conviction to determine the convening authority's ability to modify the findings and/or sentence for an entire case. In all cases, regardless of the date of the offense, the convening authority may suspend certain sentences upon the recommendation of the military judge pursuant to Article 60a(c).

**1.23. Offenses Under OSTC Authority.** After 27 December 2023, STC have exclusive authority to determine whether reported misconduct constitutes an offense under OSTC authority. See R.C.M. 301, 303A. This instruction applies to the administration of offenses under traditional command authority as well as those offenses under OSTC authority.

## Chapter 2

### COURT-MARTIAL CONVENING AUTHORITY

**Section 2A—DAF Court-Martial Convening Authority (Articles 22, 23, and 24, UCMJ; R.C.M. 504)**

#### **2.1. General Court-Martial Convening Authority (GCMCA).**

2.1.1. The following DAF commanders may exercise GCMCA:

2.1.1.1. Commanders of organizations designated in Article 22(a)(7), UCMJ, who have been authorized by SecAF to convene general courts-martial (GCMs) under Article 22(a)(7), UCMJ.

2.1.1.2. Commanders of organizations not designated in Article 22(a)(7), UCMJ, but who are authorized and designated to convene GCMs by SecAF under Article 22(a)(8) or who are empowered by the President under Article 22(a)(9), UCMJ.

2.1.2. Commanders empowered by SecAF to convene GCMs are listed in the current worldwide convening order or worldwide convening authority designation memorandum (WWCO or WWCADM) which can be located on the VMJD and AF/IAJM Teams Page.

2.1.3. Requests for authorization to exercise GCMCA are forwarded through functional channels with commanders' indorsements to AF/IAJM.

#### **2.2. Special Court-Martial Convening Authority (SPCMCA).**

2.2.1. The following DAF commanders may exercise SPCMCA:

2.2.1.1. Commanders authorized to convene GCMs under [paragraph 2.1](#). See Article 23(a)(1), UCMJ.

2.2.1.2. Commanders of organizations designated in Article 23(a), UCMJ, who have been authorized to exercise SPCMCA by SecAF. Commanders empowered by SecAF to convene special courts-martial (SPCMs) are listed in the current WWCO or WWCADM which can be located on the VMJD and AF/IAJM Teams Page.

2.2.1.3. Commanders of organizations designated in Article 23(a)(4), UCMJ, who are not authorized by SecAF to exercise SPCMCA, but who are authorized by the superior commander of an Air Force MAJCOM or Space Force FLDCOM to convene SPCMs. **Note:** Prior to exercise of SPCMCA by a commander pursuant to this paragraph, the SJA of the authorizing MAJCOM/FLDCOM must send a copy of the authorization to AF/IAJM.

2.2.1.4. Commanders who are not authorized by SecAF to exercise SPCMCA, but who are authorized to exercise SPCMCA by the superior commander of a DAF component of a unified or specified combatant command.

2.2.1.4.1. The commander of a DAF component of a unified or specified combatant command may only authorize subordinate commanders to exercise SPCMCA if the subordinate commander commands an organization identified by Article 23, UCMJ, and that organization or unit is assigned or attached to the superior component commander's command. See AFI 38-101, *Manpower and Organization*.

2.2.1.4.2. Prior to the exercise of SPCMCA by a commander pursuant to paragraph [2.2.1.4.1](#), the SJA of the authorizing GCMCA must send a copy of the authorization to AF/JAJM.

2.2.2. A request for authorization to exercise SPCMCA or a superior commander's authorization for a subordinate commander to exercise SPCMCA is forwarded through functional channels with commanders' indorsements to JAJM to process SecAF's acknowledgement. **Note:** This does not apply to organizations identified in [paragraph 2.2.1.4](#).

2.2.3. SPCMCA includes the authority to refer cases to a special court-martial by military judge alone as defined in Article 16(c)(2)(A).

**2.3. Summary Court-Martial Convening Authority (SCMCA).** Any person who may convene a GCM or SPCM may convene a summary court-martial (SCM) under Article 24(a)(1), UCMJ.

2.3.1. The commanding officer of a detached squadron or other DAF detachment may also convene an SCM under Article 24(a)(3), UCMJ, but only with the express authorization of the superior GCMCA for the detached squadron or other detachment consistent with R.C.M. 504(b)(2)(B).

2.3.2. Prior to the exercise of summary court-martial convening authority by a commander pursuant to [paragraph 2.3.1](#), the SJA of the authorizing GCMCA sends a copy of the authorization to AF/JAJM.

#### ***Section 2B—UCMJ Jurisdiction (Articles 2 and 3, UCMJ; R.C.M. 201, 202, 203, and 204)***

**2.4. Exercise of UCMJ Jurisdiction.** This section details the exercise of UCMJ jurisdiction and general, special, and summary courts-martial convening authority in the DAF. No other order, document, or implementing agreement is required unless otherwise stipulated below. This section applies to DAF members and Air Reserve Component members when subject to the UCMJ in accordance with Article 2, UCMJ.

#### **2.5. Members of Department of Air Force Tenant Organizations.**

2.5.1. Unless otherwise stated in this chapter, all members of a DAF tenant unit or DAF element, whether designated as a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. On bases, to include joint bases, where a unit of another military service has been designated as the host unit, the DAF unit that has the preponderance of military justice capabilities will be considered the "host command" for the purposes of this paragraph unless an installation service agreement specifying the contrary is otherwise in place. Requests for exceptions to the exercise of jurisdiction or convening authority pursuant to this instruction shall be coordinated with AF/JAJM in advance of any exercise of jurisdiction pursuant to this paragraph. Attachment to a host command for purposes of this paragraph does not serve to divest any commander from the lawful exercise of convening authority. See [paragraph 2.5.5](#).

2.5.2. For guidance specific to the Reserve Component, see [Chapter 3](#).

2.5.3. Members of a tenant unit, DAF Element, or Reserve or National Guard unit include personnel on temporary duty with or otherwise attached to such unit. See also AFI 90-1001, *Total Force Associations (TFAs)*.



2.5.4. Jurisdiction pursuant to [paragraph 2.5](#) is concurrent jurisdiction to be shared between the command chain of the relevant tenant, DAF Element, Reserve, or Title 10 National Guard unit and the relevant Regular Air Force or Space Force unit or host command.

2.5.5. Attachment for the exercise of court-martial convening authority does not serve to divest any commander of authority over a member of an Air Force or Space Force tenant unit, an Air Force or Space Force Element, or a member of the Reserve or National Guard.

2.5.5.1. Exercise of such authority by the applicable Regular Air Force or Space Force host command is preferred to resolve the matter expeditiously, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

2.5.5.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined.

2.5.5.3. When it is necessary or desirable to deviate from this jurisdiction arrangement, it must be documented in a support agreement or similar document signed at the GCMCA level or a superior level of command with a copy provided to AF/JAJM.

2.5.6. Judge Advocate Field Operating Agency (JA FOA) (formerly AFLOA). The following members are attached to JA FOA/CC, the Deputy Judge Advocate General (DJAG), for the exercise of SPCMCA and GCMCA, regardless of where they are stationed:

2.5.6.1. DTC, CDDC, SDC, and CDVC;

2.5.6.2. ADC and DP;

2.5.6.3. Appellate Government Counsel and Appellate Defense Counsel;

2.5.6.4. VC and VP;

2.5.6.5. Office of Disability Counsel judge advocates and paralegals; and

2.5.6.6. All other members assigned to the JA FOA

**2.6. Jurisdiction of Air Force District of Washington (AFDW).** The commander, AFDW (AFDW/CC), as GCMCA, and the Commander, 11th Wing (11 WG/CC), as the SPCMCA, are authorized to exercise court-martial convening authority over Air Force members whose organization is not subordinate to an Air Force or Space Force GCMCA and who are not assigned to an Air Force or Space Force commander authorized to exercise general or SPCMCA. Such organizations include, but are not limited to, Air Force and Space Force field operating agencies, direct reporting units, elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.6.1. Air Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to AFDW and its subordinate commands for the exercise of court-martial convening authority.

2.6.2. Military judges and staff assigned to the AF/JAT, regardless of base of assignment, and the military appellate judges and staff assigned to the AFCCA are attached to AFDW and its subordinate commands for the exercise of court-martial convening authority.

2.6.3. Inmates, parolees, and members on appellate leave assigned to the Air Force Security Forces Center (AFSFC), Confinement and Corrections Directorate, are attached to AFDW and its subordinate commands for court-martial convening authority. This includes members of the USSF who are so assigned.

2.6.4. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

**2.7. Jurisdiction of Space Operations Command (SpOC).** The commander, SpOC (SpOC/CC), is authorized to exercise court-martial convening authority over Space Force members whose organization is not subordinate to a Space Force or Air Force GCMCA and who are not assigned to a Space Force or Air Force commander authorized to exercise general or SPCMCA. Such organizations include, but are not limited to, Space Force field operating agencies, direct reporting units, elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.7.1. Space Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to SpOC and its subordinate units for the exercise of court-martial convening authority.

2.7.2. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

**2.8. Members of the Air Force Assigned to Headquarters Department of the Air Force, Joint Staff, or Office of the Secretary of Defense.** Air Force members assigned or attached to Headquarters DAF, including the Air Staff and the Office of SecAF; Office of the Chief of Space Operations; Office of Special Trial Counsel; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to AFDW and subordinate units for the exercise of court-martial convening authority. See AFDW 51-5, *Administrative Law, Gifts, and Command Relationships*.

**2.9. Members of the Space Force Assigned to Headquarters Department of the Air Force, Joint Staff, or Office of the Secretary of Defense.** Space Force members assigned or attached to Headquarters DAF, including the Office of Chief of Space Operations, Air and Space Staffs and the Office of SecAF; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to SpOC and subordinate units for the exercise of court-martial convening authority. See AFDW 51-5.

**2.10. North Atlantic Treaty Organization (NATO).** Air Force members assigned or attached to NATO and stationed in Europe are attached to the United States Air Forces in Europe and Air Forces Africa for the exercise of court-martial convening authority and other disciplinary purposes. Space Force members assigned or attached to NATO and stationed in Europe are attached to SpOC for the exercise of court-martial convening authority and other disciplinary purposes. See DAFD 51-2.

**2.11. Joint Commands and Other Armed Forces.** Pursuant to R.C.M. 201(e), a commander of a unified or specified combatant command may convene courts-martial over any armed forces member. Also, a convening authority of one armed force may convene a court-martial to try a member of another armed force. Nonetheless, a joint or non-DAF commander normally allows the appropriate DAF commander to exercise court-martial convening authority over a DAF member. See AFI 38-101.

2.11.1. DAF members in a joint command fall under the applicable DAF component commander for disciplinary purposes. DAF members assigned or attached to an air expeditionary unit fall under the air expeditionary unit chain of command for disciplinary purposes. While attached to a joint command or air expeditionary unit, DAF members normally remain assigned to a home station DAF unit, and the home station chain of command maintains concurrent jurisdiction.

2.11.2. DAF convening authorities exercise court-martial jurisdiction over members outside the DAF only when warranted by R.C.M. 201(e)(3). Prior to exercising such authority, the convening authority's SJA must coordinate with AF/JAJM.

2.11.3. Transmitting or transferring any proceeding from one armed force to another armed force within the DAF prior to final action (e.g., court-martial entry of judgment (EoJ), Article 15 SJA legal review, or separation action) shall not invalidate an otherwise valid proceeding.

**2.12. General Officers.** Only a commander of an Air Force MAJCOM, Space Force FLDCOM, or a superior convening authority may exercise court-martial convening authority over a DAF general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified or specified command. SecAF has court-martial convening authority over the Chief of Staff of the Air Force, Chief of Space Operations, commanders of MAJCOMs, commanders of FLDCOMs, AFDW/CC, and DAF generals not assigned to a MAJCOM, FLDCOM, or combatant command.

**2.13. United States Air Force Academy (USAFA) Cadets.** Only the Commandant of Cadets, a superior commander at USAFA (e.g., the Superintendent), or a commander designated by SecAF may exercise court-martial convening authority over a USAFA cadet. USAFA cadets are considered either Regular Air Force or Space Force personnel and are subject to the UCMJ. See Article 2(a), UCMJ. For purposes of courts-martial jurisdiction and limitations on punishments, cadets are treated as officers. See R.C.M. 1003(c)(2)(A). However, cadets cannot serve as members on a court-martial.

**2.14. Jurisdiction over Separated and Retired Members.**

2.14.1. General Provision. Generally, jurisdiction to try a member of the military by court-martial ceases upon discharge or other separation, provided the discharge is a complete termination of military status and relieves the member of any further military service, including service in the Individual Ready Reserve. Jurisdiction over active-duty military personnel normally continues until the member receives a valid discharge certificate, there is a final accounting of pay, and the member has completed administrative clearance processes required by SecAF. See *United States v. Christensen*, 78 M.J. 1 (C.A.A.F. 2018) (reaffirming the three-part test and applying a "reason or policy" standard); *United States v. Nettles*, 74 M.J. 289 (C.A.A.F. 2015) (pertaining to discharge of reservists); *United States v. Hart*, 66 M.J. 273 (C.A.A.F. 2008). Exceptions may include regaining military jurisdiction for members upon reentry into military service or recalling to active-duty retired members receiving pay. See Article 2(a), UCMJ, R.C.M. 202(a), R.C.M. 204(d).

2.14.2. Members Pending Expiration of Terms of Service, Discharge or Separation. Court-martial jurisdiction extends to those Regular Air Force or Space Force members whose enlistments have expired but are awaiting discharge. See Articles 2(a)(1) and 3(a), UCMJ. A DAF member separated or discharged prior to the expiration of a term of service on active duty

remains subject to UCMJ jurisdiction and may be recalled if the member retains military status in a reserve component. Action with a view to trial should be taken as soon as practicable to preserve jurisdiction. Jurisdiction may attach by apprehension, imposition of restraint, or preferral of charges. Once attached, jurisdiction continues for purposes of trial, sentence, and punishment. See R.C.M. 202(c).

#### 2.14.3. Retired Personnel.

2.14.3.1. Retired Regular Air Force members who are entitled to receive pay (Article 2(a)(4), UCMJ), retired members of a reserve component receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired reserve component members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial subject to both legal and policy limitations.

2.14.3.1.1. For retired Air Reserve Component (ARC) members, the acts or omissions must have been committed while on active duty, inactive duty training or for ANG members while in federal status. Even so, prosecution is ordinarily not appropriate unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

2.14.3.1.2. Retired Regular Air Force members who are subject to the UCMJ and who commit misconduct after retirement will not ordinarily be tried by court-martial unless:

2.14.3.1.2.1. A federal, state or local jurisdiction is unable or unwilling to prosecute; and

2.14.3.1.2.2. The misconduct links them to the military or is adverse to a significant military interest of the United States. See DAFPD 51-2.

2.14.3.2. If a retiree meeting the qualifications of [paragraph 2.14.3.1](#) is to be recalled to active duty to be tried by court-martial, the commander seeking the recall should consider the location of the alleged offense, whether the alleged offense occurred outside the United States, the current location of the retired member, and the current location of the victim, if any, to determine the appropriate recall authority. Retired DAF members recalled to active duty by SecAF may be tried by a court-martial convened by a DAF convening authority and confined in accordance with applicable instructions.

2.14.3.3. SecAF approval to recall a retired member to active duty must be obtained prior to preferral of charges. The supporting legal office of the command seeking the member's recall forwards the request for SecAF approval via functional channels to AF/JAJI. For offenses under OSTC authority, AF/JAJI will coordinate the request with Headquarters OSTC for LSTC input. The request should include coordination with the GCMCA and additional information addressing the policy implications described in [paragraph 2.14.3.1](#). If there is an immediate issue regarding the statute of limitations (Article 43, UCMJ) and the time prescribed by the relevant statute of limitations is about to expire, the SJA coordinates immediate preferral of charges and forwards a request for SecAF approval of the retiree's recall as soon as possible.

## **2.15. Jurisdiction Involving Federal Agencies.**

2.15.1. Department of Justice. As with state (non-federal) nonexclusive jurisdiction, the determination of whether civilian federal or military authorities will exercise jurisdiction is made through consultation or prior agreement between appropriate DAF and civilian authorities. Convening authorities and SJAs foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction. See DoD Instruction (DoDI) 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, which sets forth DoD and Department of Justice responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

2.15.2. United States Secret Service. The Secret Service exercises primary investigative responsibility for all cases involving alleged threats against the President or successors to the Presidency. 18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*. The Chief, AF/JAJM, or a designee, coordinates with representatives of the Department of Justice and the Secret Service to determine which department will exercise jurisdiction in any such case involving a DAF subject.

2.15.3. 18 U.S.C. § 3261 et seq., *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act (MEJA) of 2000)*. Pursuant to MEJA, military members subject to the UCMJ as well as civilians employed by or accompanying the armed forces outside the United States may be subject to United States civilian federal jurisdiction for offenses committed while overseas. The court-martial convening authority with jurisdiction reports any potential MEJA cases through command channels, and the supporting SJA reports the same through functional channels to AF/JAJM. AF/JAJM coordinates potential MEJA cases with the DoD Office of General Counsel and Department of Justice. See DAFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction Over Civilians and Dependents Not in the United States*, for guidance and procedures in MEJA cases.

2.15.4. Federal Criminal Proceedings. A member pending trial or who has been tried by a federal civilian court may not be tried by court-martial or subjected to NJP proceedings for the same act or omission. Unlike exercise of jurisdiction by a state or foreign authority, exercise of jurisdiction by federal civilian authorities prevents exercise of jurisdiction by military authorities for the same act or omission. See R.C.M. 907(b)(2)(C). See [paragraph 2.16.4](#) for further guidance.

## **2.16. Jurisdiction Involving State or Foreign Prosecution Interest (R.C.M. 201(d)).**

2.16.1. Courts-martial have exclusive jurisdiction of purely military offenses. However, when a member is subject to both the UCMJ and state (non-federal) or foreign jurisdiction for substantially the same act or omission, the determination of which sovereign shall exercise jurisdiction should be made through consultation or prior agreement between appropriate authorities (e.g., memoranda of agreements, status of forces agreements). Convening Authorities, SJAs, and OSTC should foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction when it is in the DAF's best interest. For cases within the United States involving sexual assault, see [Section 10A](#).

2.16.1.1. Members who are being investigated by a civilian jurisdiction which has not relinquished jurisdiction, as well as members pending civilian criminal trial or who have been tried by a state or foreign court, should not ordinarily be tried by court-martial or subjected to NJP for the same act or omission, except upon SecAF approval (see [paragraph 2.16.4](#)). This policy is based on comity between the federal government and state and foreign governments and is not intended to confer additional rights upon the accused. See *United States v. Kohut*, 44 M.J. 245 (C.A.A.F. 1996).

2.16.1.1.1. This limitation does not apply to NJP action or vacation proceedings under R.C.M. 1108 and MCM, Part V, paragraph 6a(4)-(5).

2.16.1.1.2. A member may be considered to be “pending trial” when state or foreign authorities have expressed their intention to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.16.1.1.3. A member is deemed “tried” if jeopardy has attached. Follow the state or foreign law to determine when this occurs.

2.16.1.1.4. A member is not deemed “tried” if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.

2.16.1.1.5. A member is not deemed “tried” in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).

2.16.1.2. If the state or foreign proceedings end without jeopardy attaching or if the DAF receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the DAF may proceed with court-martial or NJP.

2.16.2. When a member is subject to both the UCMJ and state or foreign jurisdiction, the installation commander and SJA should determine whether the exercise of jurisdiction is in the best interests of the DAF. For offenses under OSTC authority, STC, in consultation with the installation commander and installation SJA, will determine whether the exercise of jurisdiction is in the best interest of the DAF. Some factors to consider in making this determination include, but are not limited to location of offense, lead investigative agency, status of victims and witnesses, and public attention.

2.16.2.1. If the exercise of jurisdiction is sought, DAF authorities (normally the SPCMCA SJA or delegee, or STC for offenses under OSTC authority) contact appropriate civilian authorities; notify them of the DAF desire to exercise jurisdiction; and, if civilian authorities have primary jurisdiction, request a waiver of state or foreign jurisdiction (additional procedures for seeking jurisdiction from foreign authorities are discussed in [paragraph 2.16.3](#)).

2.16.2.2. DAF requests for waivers of jurisdiction from state or foreign authorities must be in writing with written responses requested.

2.16.2.3. If state or foreign authorities decline or waive the right to exercise jurisdiction, the DAF may proceed with action, up to and including court-martial or NJP.

2.16.2.4. The written request and response shall be maintained as part of the case file and documented in DCMS-AMJAMS.

2.16.3. Foreign Criminal Jurisdiction. The procedures to determine whether United States military authorities or foreign (host nation) authorities will exercise criminal jurisdiction over military members present in foreign countries vary from country to country. The status of forces agreement, or a similar agreement, should address procedures for dealing with nonexclusive or concurrent jurisdiction offenses. Comply with AFI 51-402, *International Law*.

2.16.4. Secretarial Approval. Only SecAF may approve initiation of court-martial or NJP action against a member previously tried by a state or foreign court for the same act or omission, regardless of whether the member was convicted or acquitted of the offense. Approval by SecAF will be granted in only the most unusual cases when justice and good order and discipline can be satisfied in no other way. A request may be submitted only after the member has been tried in a state or foreign court. Submit the request with full justification and commanders' indorsements through functional channels to AF/JAJI. For offenses under OSTC authority, AF/JAJI will coordinate the request with Headquarters OSTC for LSTC input.

2.16.5. Department of Defense (DoD) Civilian Employees, Department of Defense (DoD) Contractor Personnel, and Other Persons. For authorities and procedures related to DoD civilian employees, DoD contractor personnel, and other persons, refer to DAFI 51-205.



## Chapter 3

### MATTERS SPECIFIC TO THE AIR RESERVE COMPONENT

#### *Section 3A—Overview*

**3.1. Air Reserve Component (ARC) References.** ARC is both the Air Force Reserve (AFR) and the Air National Guard (ANG).

**3.2. ARC Status.** Practitioners must be cognizant of how different ARC statuses impact UCMJ jurisdiction and military justice administration. These statuses are defined in law and policy, including but not limited to: 10 U.S.C. § 12301, *Reserve components generally*; 10 U.S.C. § 12302, *Ready Reserve*; 10 U.S.C. § 12304, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency*; 10 U.S.C. § 12310, *Reserves: for organizing, administering, etc., reserve components*; 32 U.S.C. § 325, *Relief from National Guard duty when ordered to active duty*; DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*; AFMAN 36-2136, *Reserve Personnel Participation*. For a primer on ARC statuses, see *The Military Commander and the Law*.

#### *Section 3B—Jurisdiction, UCMJ Authority, and Recall Process*

**3.3. Court-Martial Jurisdiction over ARC Members.** ARC members meeting the requirements of Article 2, UCMJ, are subject to UCMJ jurisdiction for NJP, and general, special, and summary courts-martial for offenses committed while in federal status, on active duty, or on IDT for AFR members. For guidance on NJP, see DAFI 51-202, *Nonjudicial Punishment*. **Note:** Federal active duty statuses for ANGUS personnel may include active duty for training (ADT), active duty other than training (ADOT) which includes operational support to the active component (ADOS-AC) or active-duty operational support to the reserve component (ADOS-RC), and National Guard Bureau (NGB). See Article 2(a)(3), UCMJ, for further guidance. **Note:** For ARC members, contact Air Force Reserve Command (AFRC) JA for the members' orders-history, and review the member's orders to determine the status (e.g., annual tour or IDT, etc.) and the authority for the orders (e.g., Title 10, Title 32, state authority, etc.). ANG members' orders may have a clause that auto-converts orders from one status to another, so it is vital to review orders to identify the member's status as early into the investigation as possible to identify whether the military has prosecutorial jurisdiction over the member.

3.3.1. Concurrent Nature of Jurisdiction. Jurisdiction pursuant to [paragraph 3.3](#) is concurrent jurisdiction to be shared between the command chain of the relevant ARC unit and the relevant Regular Air Force unit or host command. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined. Attachment for the exercise of court-martial convening authority does not serve to divest any commander from the exercise of such authority over a member of an Air Force or Space Force tenant unit or Air Force or Space Force element or a member of the ARC.

3.3.2. Exercise of Court-Martial Jurisdiction over ANGUS Members. All ANGUS members are assigned to the 201st Mission Support Squadron (MSS) and are attached for ADOT or ADT to the relevant Regular DAF unit or host command.



3.3.2.1. Convening authorities generally will reside with the Regular Air Force unit, host command, or with that attached Regular USAF or USSF unit host command's NAF/FLDCOM. Moreover, the exercise of convening authority by the Regular USAF or USSF host command ensures expeditious resolution of military justice matters (bearing in mind due process considerations of the accused and the interest of victims in timely resolution), preserves resources, and retains command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

3.3.2.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined. Accordingly, prior to taking judicial action against an ANG member, legal offices, commanders, and convening authorities at all attached Regular DAF unit or host commands must coordinate with 201 MSS through Air National Guard Readiness Center (ANGRC). Correspondence can be directed to [NGB.CC.201MSSADCON@us.af.mil](mailto:NGB.CC.201MSSADCON@us.af.mil). Such coordination is required to ensure jurisdiction properly attaches. **Note:** Attached/host command legal office coordination with the Military Justice Attorney for the National Guard Bureau, Office of the General Counsel (NGB-GC) is required; however, NGB-GC is not an active-duty SJA, but a legal advisor assigned to support the 201 MSS in ensuring appropriate Total Force Discipline with regard to current and former ANGUS members.

3.3.3. Duration of Jurisdiction. Once court-martial jurisdiction attaches for an offense, an accused remains subject to the UCMJ for that offense through the execution and enforcement of a sentence, or, if not sentenced to confinement, until such time as the member is no longer in a federal status.

3.3.3.1. AFR members may be involuntarily ordered to active duty as necessary if not in federal status, on active duty, or in IDT status when the offense is discovered. Once jurisdiction attaches in accordance with R.C.M. 202(c), the servicing SJA must consult with AF/JAJI and the member's Reserve chain of command through AFRC/JA prior to holding the member on active duty or recalling the member to active duty. AFR members may be held on active duty pending disposition of offenses or may be released to reserve status and recalled as necessary for imposing restrictions on liberty in advance of trial, preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and initial entry into confinement, if adjudged. See R.C.M. 204(b).

3.3.3.2. ANGUS members are subject to UCMJ jurisdiction while on Title 10 orders, in accordance with R.C.M. 202(c). However, ANGUS orders cannot be administratively extended for purposes of investigations into UCMJ violations.

3.3.3.2.1. When ANGUS members have or are about to revert to a State or Title 32 status, the previously attached Regular DAF unit or host command legal office must contact the Military Justice Attorney for NGB-GC, who is the legal advisor detailed to the 201 MSS, ANGRC at Joint Base Andrews, to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction.

3.3.3.2.2. If the attached Regular DAF unit or host command will not be able to complete UCMJ disciplinary action by NJP or court-martial before an ANGUS member's status reverts to a non-federal status, the Regular DAF unit or host command should contact the SJA for the Regular Air Force or Space Force unit that is geographically closest to the member's home state ANG wing. The two Regular DAF

units should consider whether it would be appropriate to transfer the case, including its DCMS-AMJAMS entry, to the geographically closer installation in order to complete any necessary military justice actions, including involuntarily recalling that ANG member to active duty for NJP or court-martial. Ordinarily the case should transfer to the installation geographically closer to the member's home state ANG wing. **Note:** Nothing in this paragraph is intended to limit concurrent jurisdiction or otherwise inhibit the ability of any other convening authority from exercising convening authority (and its ancillary recall authority, if applicable) over the ANG member.

#### 3.3.4. Jurisdiction over Separated/Retired Members.

3.3.4.1. See [paragraph 2.14.1](#) and [paragraph 2.14.2](#) for effects of completion of Regular DAF Military Service.

3.3.4.2. A member separated or discharged from the Regular DAF prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the service member retains military status in the ARC.

3.3.4.3. Retired ARC members receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired ARC members not receiving pay (see *Morgan v. Mahoney*, , 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial for acts or omissions committed while on active duty or inactive duty training or in federal status, if their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

#### 3.3.5. Responsible Regular DAF Command.

3.3.5.1. AFR members are attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.3.5.2. ANG members who commit UCMJ offenses while in federal status or on Title 10 orders, will ordinarily be tried by the Regular Air Force or Space Force unit to which they are assigned or attached. Once recalled to federal status, ANG members not assigned or attached to a Regular Air Force or Space Force unit will be attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.3.5.3. Mobilized or deployed ARC members. The organizational commander exercising Operational Control (OPCON) over the unit/organization to which a recalled or activated reservist is assigned or attached for duty (at the mobilized or deployed location) has concurrent UCMJ punishment authority. However, the deployed commander will confer with the ARC Airman's commander at his or her permanently assigned duty station before taking any action. See AFI 10-402\_ANGSUP, *Mobilization Planning*, paragraph 5.5..

### 3.4. Court-Martial Considerations for ARC Members.

#### 3.4.1. General and Special Courts-Martial.

3.4.1.1. In ARC member cases, trial counsel must be prepared to introduce sufficient evidence to establish in personam (personal) jurisdiction over the accused at the time of the offense. **(T-0)** See R.C.M. 307; *United States v. Miller*, 78 M.J. 835 (ACCA 2019);

*United States v. McDonagh*, 14 M.J. 415, 422 (C.M.A. 1983); *United States v. Laws*, 11 M.J. 475 (C.M.A. 1981).

3.4.1.2. ARC members must be on active duty prior to arraignment at a general or special court-martial. **(T-0)** See R.C.M. 204(b)(1).

#### 3.4.2. Summary Courts-Martial.

3.4.2.1. ARC members may be tried by SCM during the member's period of Title 10 active duty or normal period of IDT for reservists.

3.4.2.2. All punishments remaining unserved at the end of a period of Title 10 active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of IDT or Title 10 active duty. See Article 2(d)(4), UCMJ and R.C.M. 204(b)(2).

### 3.5. Recall to Duty Considerations for ARC Members.

3.5.1. In order for an ARC member to be adjudged confinement or any other restriction on liberty, SecAF must approve the recall to active duty. See Article 2(d)(5), UCMJ. **(T-0)**

3.5.2. An ARC member must be in a Title 10 federal status for the following stages in the court-martial process:

3.5.2.1. While in pretrial confinement; **(T-0)**

3.5.2.2. Preferral **(Note:** When preparing the DD Form 458, *Charge Sheet*, for ARC members serving on extended active duty, use the organization to which they are attached for active duty in Block 5); **(T-0)**

3.5.2.3. Article 32 preliminary hearing; **(T-0)**

3.5.2.4. Service of referral documents; **(T-0)**

3.5.2.5. Any court-martial proceeding at which the accused has a right to be present, to include arraignment and sentencing proceedings; **(T-0)**

3.5.2.6. When testifying at a court-martial as a named victim of a charged offense; and

3.5.2.7. When required to testify at a court-martial as a military duty (i.e., when there is a nexus between the member's military duties and the testimony to be given).

3.5.3. An ARC member confined pursuant to a sentence imposed by a court-martial having in personam jurisdiction over the member at the time of trial remains subject to the UCMJ while in a military confinement facility. See Article 2(a)(7), UCMJ.

### 3.6. ARC Member Recall Authority.

3.6.1. Recall Authority for AFR Members. Subject to the consultation requirement of [paragraph 3.8.7](#) the following individuals may recall a Reserve member to active duty:

3.6.1.1. A GCMCA for the Regular DAF unit to which the ARC member is attached for training purposes;

3.6.1.2. A GCMCA for the Regular DAF unit in which the ARC member performed federal service, active duty, or inactive duty training when the offense occurred;

3.6.1.3. A GCMCA for the Regular DAF host unit, as designated in the applicable host-tenant support agreement, if the ARC member is assigned to an ARC unit for training purposes or was attached to such a unit when the offense occurred;

3.6.1.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for ARC members assigned or attached to their respective commands; or

3.6.1.5. A GCMCA for the Regular DAF host command described in paragraphs 2.5.1 and 2.5.5. See Article 2(d), UCMJ.

3.6.2. Recall Authority for ANG Members. If an ANG member reverts to Title 32 or state status before UCMJ action commences, the member must be recalled to active duty under Title 10 U.S.C. § 802(d), *Persons subject to this chapter*. (T-0)

3.6.2.1. Subject to the consultation requirement of paragraph 3.8.7, the following individuals are authorized to order the recall of an ANG member to Title 10 active duty:

3.6.2.1.1. A GCMCA for the Regular DAF unit to which the member was attached for duty;

3.6.2.1.2. A GCMCA for the Regular DAF unit to which the member was attached for training;

3.6.2.1.3. A GCMCA for the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands; or

3.6.2.1.4. A GCMCA pursuant to an agreement with the former attached supported unit commander or attached unit training commander.

3.6.2.2. Legal Office Coordination.

3.6.2.2.1. For offenses under command authority, the local legal office supporting the relevant SPCMCA will coordinate with the GCMCA legal office and the Military Justice Attorney for NGB-GC, who is the legal advisor detailed to the 201 MSS when determining whether ANG member recall to active duty is appropriate in each applicable case. If the GCMCA concurs with the SPCMCA legal office that an ANG member's recall to active duty is appropriate, that local SPCMCA legal office will work with the NGB-GC legal advisor on the process to involuntarily recall the ANG member to active duty.

3.6.2.2.2. For offenses under OSTC authority, the local legal office supporting the relevant SPCMCA will coordinate with the OSTC District Office, in addition to the GCMCA legal office and the NGB-GC legal advisor to the 201 MSS/CC. If OSTC determines that court-martial is an appropriate disposition, the local SPCMCA legal office will work with the Military Justice Attorney for NGB-GC on the process to involuntarily recall the ANG member to active duty.

### 3.7. Additional Process Requirements to Recall an ARC Member.

3.7.1. The GCMCA, in consultation with its SJA, evaluates recall recommendations made by the subordinate unit, legal office, and, as applicable, servicing OSTC District Office.

3.7.1.1. In order to proceed with recall, the GCMCA SJA concurs with the local SPCMCA SJA's evaluation of the evidence that establishes a probable cause standard has been met and that NJP or court-martial is an appropriate UCMJ process.

3.7.1.2. In order to proceed with recall for offenses under OSTC authority, OSTC must determine that court-martial is an appropriate disposition or defer the offense(s) back to command. Upon deferral of an offense under OSTC authority, command may take appropriate action including NJP; however, command may not dispose of a covered offense by general or special court-martial.

3.7.2. The installation legal office informs the Military Justice Attorney for AFRC/JA (Traditional Reservists), ARPC/JA (IMAs), or NGB-GC (ANG members) of the GCMCA SJA concurrence and GCMCA intent to recall the member.

3.7.3. For ANG members: the Military Justice Attorney for NGB-GC forwards the recommendation to the 201 MSS/CC for concurrence. Upon concurrence, the 201 MSS/CC requests the applicable state TAG's documented consultation and concurrence with the decision to seek the ANG member's involuntary recall to active duty. See [paragraph 3.8.7](#) for documents that must be forwarded to TAG. Upon receipt of the TAG's memorandum, the Military Justice Attorney for NGB-GC forwards the memorandum to the installation legal office staffing the recall package for continued processing of the request.

3.7.4. If confinement is sought, the recall request is routed through AF/JAJI to the SecAF for approval in accordance with [paragraph 3.8](#). **Note:** This step may be skipped if there is no intent to seek confinement in sentencing.

3.7.5. The GCMCA signs the order recalling the member to Title 10 status for UCMJ action.

3.7.6. AF/A1M provides the man days for the orders under 10 U.S.C. § 802(d).

3.7.7. The member's home station creates the pay order(s) based upon directions provided by AFRC/JA (AFR members) or 201 MSS (ANG members).

3.7.8. Travel Funding for Recalled Member. The GCMCA who recalls the member to active-duty funds travel-related entitlements in accordance with the Joint Travel Regulations, Chapter 3, Part A. <https://www.defensetravel.dod.mil/site/travelreg.cfm>

3.7.9. Man Days and Travel Funding for Military Witnesses. The convening authority that convenes a court-martial is responsible for providing man days for active-duty military orders and any accompanying travel-related entitlements for ARC members appearing as military witnesses.

3.7.9.1. When calling an ANG member to testify in a court-martial, practitioners must carefully consider the member's duty status. If there is a factual nexus between an ANG member's military status and the subject matter of their testimony, or if the ANG member is a named victim of a charged offense and was in a military status at the time of the alleged offense, then the ANG member must be placed in Title 10 status on active-duty orders for their court-martial testimony. ANG members must be placed on orders for the duration of the court-martial in which they may be called as a military witness. ANG members must be activated using DAF military personnel appropriations. Conversely, if there is no nexus, the ANG member is treated as a civilian for purposes of travel and duty status (although the member may choose to testify in uniform).

3.7.9.2. In cases involving the travel and potential testimony of ANG witnesses, trial counsel should proactively work with the servicing SJA and the NGB-GC legal advisor to ensure those witnesses are traveled under the appropriate authority and placed in the appropriate status during the court-martial.

**3.8. Secretarial Approval of ARC Member Recall for Court-Martial.** Forward requests for SecAF approval of an order to recall an ARC member for court-martial via functional channels to AF/JAJI. For offenses under OSTC authority, AF/JAJI will coordinate the request with Headquarters OSTC for LSTC input. The request should be made prior to preferral of charges whenever possible. SecAF must approve the recall prior to referral of charges in order to preserve confinement or any restriction on liberty as a punishment option. Requests forwarded to AF/JAJI for processing shall include, at a minimum, the following:

3.8.1. For offenses under command authority, concurrence of the GCMCA for the DAF unit convening the court-martial. For offenses under OSTC Authority, concurrence of the LSTC.

3.8.2. The preferred or anticipated charges and specifications. If charges have been preferred, include a copy of the charge sheet and personal data sheet.

3.8.3. A summary of the evidence relating to each offense. Include copies of any reports of investigation, witness statements, or documentary evidence.

3.8.4. A description and copies of any records of the member's prior court-martial convictions and NJPs, if any.

3.8.5. Whether the member refused an offer of NJP for any of the charged offenses at issue in the case.

3.8.6. The member's background, including civilian employment, family circumstances, and character of military service.

3.8.7. Documentation of consultation with the member's ARC chain of command. **Note:** For ANG members, the state TAG must be informed, which consists of providing the state TAG or chain of command with the general nature of the charges, copies of all investigative reports, and/or other evidence in the government's possession used to support a finding of probable cause.

3.8.8. For offenses under command authority, a written legal review by the installation-level legal office requesting the recall. Additional written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is sufficient and preferred.

**3.9. NJP Jurisdiction Over ARC Members.** Refer to DAFI 51-202 for jurisdictional considerations and processing of ARC members.

**3.10. Other Administrative Action.** Refer to DAFI 36-2907, *Adverse Administrative Actions*, for disciplinary matters not rising to NJP or court-martial.



### *Section 3C—Investigations and Initial Disposition*

#### **3.11. Investigations Involving ARC Members.**

3.11.1. Investigations are conducted by the applicable DAF law enforcement.

3.11.2. The legal office for the responsible Regular DAF command over the ARC member is responsible for advising law enforcement and the command on the case. For offenses under OSTC authority, an STC will lead an Investigation and Prosecution Support Team (IPST) responsible for investigating the reported misconduct. See [Section 4A](#) for additional information on the IPST function.

3.11.3. NGB-GC and ANG wing legal offices are not responsible for advising law enforcement, or the Regular DAF commander, or the convening authority on the case.

3.11.4. Investigation considerations for ARC members. Upon discovery, the servicing Regular DAF legal office should consult with AFRC/JA for specific status considerations.

3.11.5. Investigation Considerations for ANG members.

3.11.5.1. When ANG members are investigated, the legal office servicing the DAF investigative agency must notify the Military Justice Attorney for NGB-GC. When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to AF/JAJM and document the rationale for the delayed entry in DCMS-AMJAMS case notes.

3.11.5.2. Although service members may be involuntarily retained beyond their expiration of term of service to undergo court-martial, there is no authority to administratively extend an ANGUS member's active-duty orders for the purpose of completing an investigation.

**3.12. Search Authorizations (M.R.E. 315).** Commanders acting as search authority for AFRC installations must be serving in a Title 10 status to authorize a search. See [Section 6A](#) for general information on search authorizations.

**3.13. Initial Disposition Authority of Qualifying Sex-Related Offense Allegation(s) under Command Authority.** This provision applies to offenses committed prior to 28 December 2023 that are not otherwise under OSTC authority. For general instructions and qualifying offenses, see [paragraph 10.5](#).

3.13.1. Servicing Legal Office. The servicing legal office responsible for advising the Regular DAF SPCMCA and GCMCA regarding the initial disposition is the Regular Air Force or Space Force legal office that services the Regular DAF SPCMCA to whom the accused is assigned, unless such provision of advice has been withheld to the Regular DAF GCMCA legal office level.

3.13.1.1. Air Force Reserve Members. AFRC is not responsible for the processes defined in [Section 10C](#). However, servicing Regular DAF legal offices should consult with AFRC/JA prior to making a recommendation as to initial disposition.

3.13.1.2. Air National Guard Members. The 201 MSS, Air National Guard Readiness Center is not responsible for the processes defined in [Section 10C](#). However, servicing Regular DAF legal offices should consult the 201 MSS/CC and the Military Justice

Attorney for NGB-GC prior to making a recommendation to the SPCMCA as to initial disposition of allegations of sexual assault allegations.

3.13.2. AFR members accused of committing a qualifying offense in [paragraph 10.5](#) while in Title 10 status. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.6](#).

3.13.3. ANG members accused of committing a qualifying offense in [paragraph 10.5](#) while on Title 10 active duty. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition if the member has been previously recalled to Title 10 active duty status or has remained on Title 10 active duty status. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.6](#). In the event the offense occurred while the member was in Title 32 or civilian status, the active duty SPCMCA and GCMCA are not subject to the requirements of [Sections 10A-10D](#).

3.13.3.1. If the following conditions apply, the local legal office should contact AF/JAJI for guidance:

3.13.3.1.1. The ANG member committed the offense while in Title 10 active duty status;

3.13.3.1.2. The ANG member was subsequently released from Title 10 active duty status;

3.13.3.1.3. The ANG member has not been recalled; and

3.13.3.1.4. No convening authority listed in [paragraph 3.6.2](#) has indicated an intent to recall the member for either NJP or court-martial.

3.13.4. If the initial disposition decision is to not refer the qualifying offense to a court-martial, the responsible legal office will make the required notifications.

3.13.5. In cases where the convening authority with initial disposition authority (IDA) decides to dispose of qualifying sexual assault offenses as listed in [paragraph 10.5](#), the servicing legal office must notify the 201 MSS/CC through the Military Justice Attorney for NGB-GC of the decision. If applicable, the servicing legal office may also recommend adverse administrative action which may be appropriately taken by either the 201 MSS/CC or the ANGRC/CC

### **3.14. Initial Disposition Authority for Offenses Under OSTC Authority Involving ARC Members.**

3.14.1. Only an STC may dispose of offenses under OSTC authority. For general instructions and qualifying offenses see [Chapters 4 and 10](#).

3.14.1.1. Servicing Legal Office. The Regular DAF SPCMCA legal office is responsible for updating command on case status, unless such provision of advice has been withheld to the Regular DAF GCMCA legal office level. The Regular DAF SPCMCA is also responsible for ensuring the legal offices for any applicable command with concurrent jurisdiction (e.g., ARC Wing legal offices) are aware of the case status.

3.14.1.2. Air Force Reserve Members. The servicing legal office will notify AFRC/JA of the STC's initial disposition decision.



3.14.1.3. Air National Guard Members. The servicing legal office will notify the 201 MSS/CC and the Military Justice Attorney for NGB-GC of the STC's initial disposition decision.

3.14.2. If OSTC declines to prefer or refer the qualifying offense to a court-martial, the responsible legal office will make the required notifications. The servicing legal office must notify the 201 MSS/CC and NGB-GC of the decision. If applicable, the servicing legal office may also recommend adverse administrative action which may be appropriately taken by either the 201 MSS/CC or the ANGRC/CC.

### ***Section 3D—Pre-Trial Matters***

**3.15. Detailing ARC Members to Courts-Martial (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ).** For courts-martial involving an AFR accused, convening authorities should consider detailing AFR members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502. For courts-martial involving an ANG accused, convening authorities should consider detailing ANG members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

**3.16. IMDC Requests.** For any Title 10 proceeding, only ARC judge advocates who are ready and available to be placed on extended Title 10 active-duty tours are eligible for IMDC requests and may be made available. The reasonable availability of ARC judge advocates is assessed in the context of R.C.M. 506(b)(1) and [paragraph 15.6](#) (i.e., the restrictions apply to the active and reserve components alike). ARC judge advocates must be placed in Title 10 status for the purposes of such representation but need not be on continuous orders. Orders may be broken up so that the ARC judge advocate is in Title 10 status at the times the member's matter is processed or worked upon. Requests for ARC judge advocates are processed in accordance with [paragraph 15.6](#).

**3.17. Plea Agreement Considerations with ARC Members.** As with expiration of term of service (ETS) for Regular Air Force members, if an ARC member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their expiration of Title 10 status may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority or STC, as applicable, will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0)** See *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

### ***Section 3E—Post-Trial and Punishment Considerations for ARC Members.***

#### **3.18. Post-Trial and Punishment Considerations for ARC Members.**

3.18.1. Confinement and Restrictions on Liberty. Without SecAF approval of the order to active duty (see [paragraph 3.8](#)), an ARC member recalled to active duty for trial by court-martial may not be sentenced to confinement or required to serve a punishment consisting of any restriction on liberty during the recall period of duty. Article 2(d)(5), UCMJ. A punishment of restriction to specified limits may be served only during normal periods of inactive duty training or active duty.

3.18.2. Forfeitures.

3.18.2.1. Member Status. An ARC member involuntarily recalled to active duty and sentenced to post-trial confinement should not normally be placed in an active duty pay status beyond the EoJ.

3.18.2.2. Active Duty Pay. An ARC member in confinement is ordinarily not entitled to pay unless ordered on active duty by statute (mission-related need or disciplinary purposes under 10 U.S.C. § 802(d)), or necessarily incident to an authorized expenditure.

3.18.2.3. Legal Office Responsibilities. Legal offices must pay particular attention to the ARC member's status after EoJ or, if applicable, entry into confinement. If the ARC member is removed from active-duty status after the EoJ, it may limit the relief a convening authority may provide to the member or the member's family under R.C.M. 1103, 1109-1110 (e.g., it may limit the ability of the convening authority to waive forfeitures for the benefit of the dependents).

3.18.3. Involuntary (Required) and Excess Leave. See [Section 20M](#) for general guidance on excess leave. ARC members may be removed from active-duty status after serving an approved sentence of confinement and recalled as necessary to complete appellate review rather than being placed in excess leave. AFRC/JA and AF/A1M should be consulted for further guidance on excess leave for ARC members. Only a GCMCA may involuntarily recall an ANG member to active duty under 10 U.S.C. § 802(d) for purposes of appellate review by the GCMCA.

3.18.4. Release from Active Duty. At the final adjournment of the court-martial, the ARC member ordered to active duty for the purpose of conducting disciplinary proceedings should be released from active duty within one duty day, unless the order to active duty was approved by SecAF and confinement was adjudged.

3.18.5. Unserved Punishment.

3.18.5.1. AFR members. Any other unserved punishments, including a restriction on liberty, may be served during subsequent periods of inactive duty training or active duty. See Article 2(d)(5), UCMJ; R.C.M. 204(b) and 1003(c)(3).

3.18.5.2. ANG members. ANG members may not be placed on NGB or ANG funded orders for the sole purpose of serving unserved punishments, including any restriction on liberty.

### ***Section 3F—Victim Witness Assistance Program and ARC Members***

**3.19. General Provision.** For general instructions see DAFI 51-207, Chapter 2.

**3.20. Determining the Appropriate Local Responsible Official (LRO).** To determine the appropriate LRO, see DAFI 51-207, Chapter 2.

### ***Section 3G—ARC Judge Advocate Requirements***

**3.21. ARC Judge Advocates Serving as Counsel.** The requirements of certification and designation set out in [paragraph 15.4](#) apply to ARC judge advocates. Only those AFR judge advocates assigned as District Trial or District Defense Counsel may be certified annually. Other ARC judge advocates are certified according to DAFI 51-101, *The Air Force Judge Advocate*

*General's (AFJAG) Corps Operations, Accessions, and Professional Development.* ARC judge advocates must be on active duty or performing inactive duty training to be detailed and perform duties as trial counsel or military defense counsel. **Paragraph 15.6** provides additional guidance on ARC judge advocates performing IMDC duties.

**3.22. ARC Judge Advocates Serving as PHOs.** Refer to **paragraph 12.2.1** for general qualifications of a PHO. ARC judge advocates may serve as a PHO while on Title 10 federal status or performing inactive duty training. ANG judge advocates may serve as a PHO but must be on Title 10 orders. **(T-0)** Article 136(b), UCMJ, authorizes ARC judge advocates to administer oaths while on active duty or performing inactive duty training.

**3.23. ARC Judge Advocates Serving as Summary Court-Martial Officers (SCMOs).**

3.23.1. An AFR on active duty who is a commissioned officer may serve as an SCMO under R.C.M. 1301. AFR judge advocates on inactive duty for training are not on active duty and cannot serve as SCMOs.

3.23.2. An ANG officer serving on active duty in federal status may serve as an SCMO under R.C.M. 1301.

***Section 3H—ARC Mandatory Legal Training***

**3.24. SAPR Program First Responder Training for Legal Personnel.** Annual SAPR First Responder Training for Legal Personnel is required for certain legal personnel (judge advocates, victim and witness assistance program personnel, legal assistance attorneys, and trial counsel in accordance with DoDI 6495.02, Volume 1, Enclosure 10, paragraph 2, *Sexual Assault Prevention and Response (SAPR): Program Procedures*). See DAFI 51-207, Chapter 4 for additional information.

3.24.1. ARC judge advocates who practice in military justice (including Article 32 PHOs) or legal assistance (this may include VCs and defense counsel) or who serve as trial counsel are required to complete the annual training.

3.24.2. ARC paralegals who provide legal assistance support or directly contribute to a VWAP are required to complete the annual training.

**3.25. Article 137 Briefing Requirements for ARC Members.**

3.25.1. ARC enlisted members are required to receive the Article 137 briefing within 14 calendar days of initial entrance on a duty status with an ARC, again after completing basic training, and again at the time of reenlistment. **(T-0)**

3.25.2. ARC officers are required to receive the Article 137 briefing within six months of commissioning in a reserve component. **(T-0)**

3.25.3. Training Wing SJAs ensure officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

*Section 3I—ARC DCMS-AMJAMS Issues***3.26. Obtaining Inputs.**

3.26.1. Demographic Data. If demographic data does not automatically populate for members of the ARC, the servicing RegAF or USSF legal office should contact the unit to which the member is assigned or attached, which may be either a RegAF or reserve unit, to request the member's record review RIP. For ANG members, the servicing legal office should contact the 201 MSS and the Military Justice Attorney for NGB-GC to obtain such data.

3.26.2. Command Inputs. The servicing Regular DAF legal office should periodically contact the member's ARC chain of command for DCMS-AMJAMS inputs. For ANG members, this means contacting the Military Justice Attorney for NGB-GC to request substantive inputs.

**3.27. Special Interest Reports (SIRs).** The servicing Regular DAF legal office is responsible for creation, modification, closure, and submission of SIRs in cases for which they are the servicing legal office, including where the members belong to the ARC. See [Chapter 31](#) for specific SIR requirements.

## Chapter 4

### INITIAL STEPS UPON NOTIFICATION OF AN OFFENSE: IPST, CIP, VICTIM SUPPORT, PROTECTIVE ORDERS, AND ADMINISTRATIVE HOLDS

#### *Section 4A—Overview*

**4.1. General Provision.** An effective military justice process starts with a timely, thorough, and accurate investigation. Legal office, STC, and investigative personnel must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready reports of investigation, robust litigation preparation, and timely resolution of military justice cases.

4.1.1. Initiation of Substantive Investigation. If a report of a criminal offense is made to military law enforcement, such that either Security Forces or Department of the Air Force Office of Special Investigations (OSI) initiates an investigation into the alleged offense, the investigator or agent must notify the servicing legal office of the receipt of the report or allegation within 24 hours.

4.1.2. For offenses under OSTC authority, STC will take the lead in providing investigative support for qualifying offense cases through the Investigation and Prosecution Support Team (IPST) function at each MAJCOM/FLDCOM-aligned District. Installation legal offices will coordinate closely with their District designated IPST. See [Section 4B](#).

4.1.3. For complex offense cases that are under command authority and do not trigger IPST, the Criminal Investigative and Prosecution (CIP) Capability remains an important investigative support tool. See [Section 4C](#).

**4.2. Offenses under Command Authority.** Offenses over which OSTC does not have authority or has not exercised authority, including offenses deferred to command.

**4.3. Offenses under OSTC Authority.** STC retain the exclusive authority to determine if a reported offense is a covered offense, as defined by Article 1(17), UCMJ. If an STC determines that a reported offense is a covered offense, the STC shall exercise authority over the offense. Once an STC exercises authority over a covered offense, the STC may also exercise authority over any related or known offense(s). See R.C.M. 303A.

4.3.1. Covered offenses include:

4.3.1.1. Wrongful broadcast or distribution of intimate visual images (Article 117a, UCMJ),

4.3.1.2. Murder (Article 118, UCMJ),

4.3.1.3. Manslaughter (Article 119, UCMJ),

4.3.1.4. Causing the death or injury of an unborn child (Article 119a, UCMJ),

4.3.1.5. Rape and sexual assault generally (Article 120, UCMJ),

4.3.1.6. Depositing obscene matters in the mail (Article 120a, UCMJ),

4.3.1.7. Rape and sexual assault of a child (Article 120b, UCMJ),

4.3.1.8. Other sexual misconduct (Article 120c, UCMJ),

- 4.3.1.9. Kidnapping (Article 125, UCMJ),
- 4.3.1.10. Domestic violence (Article 128b, UCMJ),
- 4.3.1.11. Stalking (Article 130, UCMJ),
- 4.3.1.12. Retaliation (Article 132, UCMJ), and
- 4.3.1.13. Child pornography (Article 134, UCMJ).

4.3.2. After 1 January 2025, covered offenses also include formal and substantiated claims of sexual harassment (Article 134, UCMJ).

4.3.3. Covered offenses further include any attempt (Article 80, UCMJ), conspiracy (Article 81, UCMJ), or solicitation (Article 82, UCMJ) to commit a covered offense.

4.3.4. Related offenses (R.C.M. 303A(c)). Any offense alleged to have been committed by the suspect of the offense or anyone else subject to the UCMJ. STC have exclusive authority to determine whether a reported offense is a related offense.

4.3.5. Known offenses (R.C.M. 303A(d)). Any offense alleged to have been committed by the suspect of a covered offense. STC have exclusive authority to determine whether a reported offense is a known offense.

#### ***Section 4B—Investigation and Prosecution Support Teams (IPST)***

**4.4. General Provision.** The IPST function will be designated to support each investigation of offenses under OSTC authority, including covered, known, and related offenses, as defined above.

4.4.1. DoDI 5505.19, *Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations* (MCIOs), requires activation for certain offenses including (1) all unrestricted reports of adult sexual assault (including penetrative and contact offenses); (2) unrestricted reports of domestic violence involving (a) strangulation or suffocation, (b) a dangerous weapon, or (c) resulting in substantial or grievous bodily harm; and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. **(T-0)** The implementation of IPST for offenses under OSTC authority ensures compliance with SVIP requirements outlined in DoDI 5505.19.

#### **4.5. Initial Notification.**

4.5.1. Initial STC Notification (R.C.M. 301, 303). Legal offices shall forward reports of misconduct that may constitute an offense under OSTC authority to the servicing OSTC District Office **immediately** and no later than **24 hours from when the legal office becomes aware of a report of misconduct that may constitute an offense under OSTC authority.** **(T-1)** Initial STC notification within 24 hours may be accomplished via phone call or electronic message, with written notification to follow within one duty-day courtesy copying [AF.JAJM.SIR.Workflow@us.af.mil](mailto:AF.JAJM.SIR.Workflow@us.af.mil). This notification is required for all reported covered offenses, including offenses reported to civilian or foreign criminal law enforcement. Only an STC may determine if misconduct constitutes a covered, known, or related offense, so installation legal offices **must** immediately seek STC consultation. This requirement applies even if an MCIO has not yet opened an official case on the alleged misconduct. This notification will trigger the IPST function. IPST STC are assigned to each OSTC District

Office, and they are on-call and available for case consultation 24 hours a day and seven days a week.

4.5.2. Initial Command Notification. The STC will notify the SPCMCA when STC exercises authority over any reported offense. The STC's notification may be communicated to the SPCMCA through the SJA or designee. See R.C.M. 303A(e).

#### **4.6. IPST Composition and Qualifications.**

4.6.1. Each IPST will consist of an STC, detailed as the primary legal advisor to provide specialized and expert investigative guidance, and will further include: MCIO investigative personnel, installation trial counsel, installation case paralegal(s), VWAP liaison(s), and other personnel as needed.

#### **4.7. Consultations.**

4.7.1. IPST Case Consultation. Initial collaboration of the IPST must occur within 48 hours of confirmation from an STC that an allegation constitutes an offense under OSTC authority. (T-0)

4.7.1.1. Case update consultations involving all IPST members must occur on at least a weekly basis thereafter, and legal office personnel should coordinate with assigned STC on timing and frequency. Consultations may be conducted in person, telephonically, over video-teleconference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual IPST capability. The case paralegal or legal office judge advocate member must document these weekly meetings in DCMS-AMJAMS.

4.7.1.2. Legal office personnel will integrate with STC and should help facilitate MCIO investigative processes with STC taking the lead on coordinating essential investigative steps with the MCIO, including: victim, subject, and key witness interviews; search authorizations and search warrants; collaboration with local law enforcement; and victim engagement.

4.7.2. Judge advocate and paralegal members of the IPST should avoid direct participation in MCIO activities that may disqualify them from participating as trial counsel or case paralegal on a court-martial.

4.7.3. The IPST should properly safeguard all attorney work-product material. Investigative personnel will not be provided with DCMS-AMJAMS materials or any other attorney work product, and legal office personnel must be cautious to avoid discussing work product materials when investigators are present.

4.7.4. Consultation with External Personnel. In addition, the IPST shall coordinate, as applicable, with the following personnel:

4.7.4.1. Sexual Assault Response Coordinators (SARC) providing services to any victim(s) in an investigation or case.

4.7.4.2. Victim Advocates (VA) providing services to any victim(s) in an investigation or case.

4.7.4.3. Family Advocacy Program (FAP) personnel, to include FAP managers, providing services to any victim(s) in an investigation or case.



4.7.4.4. Domestic Abuse Victim Advocates (DAVAs) providing services to any victim(s) in an investigation or case.

4.7.4.5. VCs representing any victim(s) in an investigation or case.

#### ***Section 4C—Criminal Investigation and Prosecution (CIP) Capability***

**4.8. CIP Capability.** For offenses under command authority, the CIP capability integrates DAF military legal capabilities and military criminal investigation capabilities at the earliest possible opportunity in cases where the servicing legal office SJA determines a substantive investigation warrants CIP capability activation.

#### **4.9. Activation of CIP Capability.**

4.9.1. Within 24 hours of determining a substantive investigation warrants CIP capability, the SJA or designated legal office personnel may request DTC support in accordance with AF/JAIG requirements. AF/JAIG will generally assign a DTC to the CIP capability within 24 hours.

4.9.2. When a legal office receives a report of child abuse involving aggravated assault with grievous bodily harm, and the offense does not fall under OSTC authority, CIP activation with DTC support is mandatory to comply with the SVIP requirements of DoDI 5505.19. **(T-0)**

4.9.3. Receipt of Jurisdiction from Local Authorities. If a criminal report is made to non-DoD law enforcement, such that neither Security Forces nor OSI initiates substantive investigative steps, Security Forces or OSI will notify the servicing legal office SJA within 24 hours of the earlier of either: (1) non-DoD law enforcement cease their investigation and either Security Forces or OSI becomes the primary investigative agency; or (2) the DAF requests and receives jurisdiction from the local authorities.

**4.10. Composition of the CIP Capability.** The CIP capability will consist of investigative personnel and the servicing base legal office judge advocates and paralegals. The CIP capability also includes *individually assigned but not detailed* DTCs, in those cases where the servicing legal office SJA determines DTC support is warranted. Other personnel may join the capability on a case-by-case basis as necessary at the discretion of the SJA or the DTC, if assigned.

4.10.1. Investigative Personnel. The investigator or agent assigned to an investigation is part of the CIP capability. During the investigative stage of the case and until a decision on disposition (e.g., preferral of charges), the investigator or agent is supported by the other CIP capability members. Once charges are preferred the CIP capability investigator or agent will support the capability's prosecutorial investigation and trial preparation.

4.10.2. Legal Office Personnel. If the servicing legal office SJA determines CIP capability activation is warranted, the servicing legal office SJA must appoint, in writing, the legal office members of the CIP capability, which must consist of at least one judge advocate, one paralegal, and one victim/witness liaison (VWL). Judge advocate, paralegal and VWL members can be designated as a standing capability or may be appointed on a case-by-case basis. SJAs should appoint more experienced judge advocates, paralegals and VWLs to the more complex and serious cases.

4.10.3. DTCs. DTCs are assigned to a CIP capability by either the Chief, or Director of Operations, AF/JAIG. DTCs will be detailed in appropriate cases pursuant to AF/JAIG



guidance. Once charges are preferred, the CIP capability DTC will continue to provide pretrial and trial advice to the servicing legal office and military criminal investigators. If the CIP capability DTC is detailed as trial counsel to the case, the DTC is the lead prosecutor and will be supported by the other CIP capability members.

#### **4.11. CIP Capability Process.**

4.11.1. Designation and Notification of CIP Activation. In cases where a DTC is requested, no later than one duty day after DTC assignment, the SJA will ensure the membership of the CIP capability is memorialized in writing and documentation of such is provided to the members of the CIP capability. Where no DTC is requested, the SJA will ensure membership of the CIP capability is memorialized no later than one duty day after CIP activation. This designation and notification may only be made by the SJA or person acting as the SJA.

4.11.2. Case Consultation. Within five duty days of the later of (1) CIP activation; or (2) DTC assignment for a specific case, the CIP capability must conduct a case consultation to obtain the facts and circumstances of the alleged offense and discuss initial legal matters relevant to the investigation. The frequency of further case consultations will be determined on a case-by-case basis, at the discretion of the assigned DTC and the servicing legal office SJA. The case update consultations may be conducted in person, telephonically, over video-teleconference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual CIP capability. The case paralegal or judge advocate member must document CIP consultation meetings in the case file and DCMS-AMJAMS entry.

4.11.3. The CIP capability supports the case agent or investigator during the investigative stage of the case.

4.11.3.1. Judge advocate and paralegal members of the CIP capability should avoid direct participation in MCIO activities that may disqualify them from participating as trial counsel or case paralegal on a court-martial. Judge advocates and paralegals should consult with their assigned DTC and SJA to identify any activities posing this risk. The capability should properly safeguard all attorney work-product material. See *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Romano*, 46 M.J. 269 (C.A.A.F. 1997); *United States v. Vanderwier*, 25 M.J. 263 (C.M.A. 1987).

4.11.3.2. Trial counsel and paralegals provide legal support to the investigator, to include addressing any requests for investigative subpoenas, immunity, or judicial process.

4.11.3.3. The capability will work with investigators during the development of the investigative plan. This includes working with the case agent or investigator in identifying potential criminal offenses for investigation and comparing the evidence in the case with the elements of proof for a given offense.

4.11.3.4. Judge advocates will coordinate with the case agents or investigators on subject interviews and victim interviews. Preferably, judge advocates should coordinate with the case agents or investigators on all substantive witness interviews.

#### **4.12. Case Development.**

4.12.1. The CIP capability and the case agents will continue their collaborative efforts as the investigation proceeds. As appropriate, designated investigative support capability members or judge advocate staff members will attend OSI and Security Forces case review meetings.

Likewise, OSI personnel and Security Forces investigators may be invited to attend portions of judge advocate military justice meetings for relevant case updates. Investigative personnel will not be provided with DCMS-AMJAMS materials or any other attorney work product, and legal office personnel must be cautious to avoid discussing work product materials when investigators are present.

#### ***Section 4D—Victim Support During Investigations***

**4.13. Victim Support.** See DAFI 51-207 for further rights, privileges and responsibilities to victims of crimes and for special requirements pertaining to victims of certain sexual offenses and crimes of domestic violence.

4.13.1. Victim Access to Legal Assistance. If victims are eligible for legal assistance, the victim liaison must notify them of their eligibility during their initial meeting.

4.13.2. Victim Access to VC. If a victim is not represented by a VC but is eligible for representation, the IPST or CIP capability is responsible for notifying the victim of eligibility during the initial meeting. This notification will typically be accomplished by the victim liaison.

4.13.3. Victims' Rights. In cases where victims are not represented by a VC, crime victims must be notified by the IPST or CIP capability of their rights, as discussed in DAFI 51-207. Where applicable, this includes the additional rights afforded to victims of sexual assault, as noted in DAFI 51-207. This notification will typically be accomplished by the victim liaison during the initial meeting with the victim.

4.13.4. Child Forensic Interviewers. The IPST or CIP capability should request MCIO provided specially trained child forensic interviewers to support the investigations and prosecution of complex child abuse and child sexual abuse cases, or other cases where a child was a witness to an alleged offense.

4.13.5. Coordination with Key Organizations and Victim Support Services. Legal offices must establish and maintain active liaisons with the following organizations and key individuals to ensure appropriate victim support:

4.13.5.1. OSTC District Office;

4.13.5.2. Local OSI Detachment;

4.13.5.3. Local civilian law enforcement and prosecutors' offices;

4.13.5.4. Local civilian victim advocacy organizations;

4.13.5.5. SARC and SAPR victim advocates;

4.13.5.6. VC;

4.13.5.7. FAP clinicians, FAP managers, and domestic abuse victim advocates;

4.13.5.8. Military chaplain offices;

4.13.5.9. Medical and mental health providers; and

4.13.5.10. Commanders and first sergeants.

### *Section 4E—No Contact and Military Protective Orders*

**4.14. General Provision.** There are two types of orders that fall under this category that are issued by military members, to military members: informal “no-contact” orders and formal military protective orders (MPOs). Commanders must consult with SJAs prior to the issuance of any such order, to include which type of order is appropriate in each situation. Legal offices should consult with MCIO and STC/DTC (as applicable) if command intends to issue a no-contact order or MPO prior to a subject being notified of an active investigation.

#### **4.15. No-Contact Orders.**

4.15.1. Overview. No-contact orders may be verbal or written in memorandum form addressed to the person being given the order to have no contact with another. No-contact orders are appropriately used to temporarily stop communications between two or more parties who are involved in a dispute that does not rise to the level of a criminal investigation or to safeguard the investigative process in a criminal matter. No-contact orders may also be appropriately used as a brief, interim measure when a commander on G-Series orders is unavailable to issue an MPO. No-contact orders can be used CONUS and OCONUS. Generally, no-contact orders should be of limited duration or have a defined beginning and end date.

4.15.2. Issuing a No-Contact Order. No-contact orders may be issued by commanders, first sergeants, and other members senior in rank to the recipient of the order. If a no-contact order is issued verbally, it should be memorialized in writing as soon as practicable. **Note:** No-contact orders may not be used with the intent to stop defense counsel from contacting witnesses as part of their duty to investigate charges pertaining to their client.

4.15.3. Limitations of a No-Contact Order. These orders are generally not known to civilian law enforcement and not enforced by civilian law enforcement. Moreover, unless notified of the existence of the no-contact order, military law enforcement is generally unaware of the existence of any such order and, therefore, cannot act to enforce the order on the installation.

#### **4.16. Military Protective Orders (MPOs).**

4.16.1. Overview. An MPO is a formal protective order. MPOs are appropriately used to ensure a person is protected from a subject during criminal investigations and prosecutions. Unlike a no-contact order, an MPO offers broad protections to the person being protected. An MPO affords the commander the opportunity to: limit communications; prohibit a subject or accused from being within a certain physical distance of a protected person or protected person’s household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person. MPOs are generally used in all cases involving domestic violence or sexual assault, though commanders may elect to use a no-contact order if more appropriate in the particular case.

4.16.2. Issuing an MPO. MPOs must be completed on DD Form 2873, *Military Protection Order*. **(T-0)** Only a commander on G-Series orders may issue an MPO.

4.16.3. Member Request for Review of an MPO. Any individual who is either the subject of or a party protected by an MPO may request the issuing commander review the MPO or any terms included on the MPO. Such requests are processed in accordance with [paragraph 4.17](#).

4.16.4. Modifying or Rescinding an MPO. Modification and/or rescission of an MPO must be completed via DD Form 2873-1. **(T-0)** Commanders may modify or rescind an MPO of their own volition, responsive to requests from either of the parties, responsive to the periodic review process outlined in [paragraph 4.17](#), or for other reasons.

4.16.5. Expiration of an MPO. MPOs do not expire, and an expiration date may not be listed on the DD Form 2873. Commanders must periodically review MPOs on file with their units in accordance with the procedures outlined in [paragraph 4.17](#).

4.16.6. Effect of Change of Command or Permanent Change of Station. If a member subject to an MPO goes TDY or permanently changes duty stations, the gaining commander must be made aware of the existence of the MPO within the 30 days prior to the member's movement. In the event a member subject to an MPO is transferred to a different unit, the losing commander shall, not later than the date of the transfer, notify the gaining commander of the issuance of the MPO and the individuals involved in the MPO. **(T-0)** The gaining commander shall make the notification requirements in [paragraph 4.16.9](#) to the local authorities within seven days of gaining the member. **(T-0)** If the commander changes command or moves to a new duty station, then the gaining commander must be made aware of and provided a copy of the MPO within 30 duty days of taking command. The gaining commander, in either circumstance, must conduct the periodic review described in [paragraph 4.17](#).

4.16.7. Limitations of an MPO. These orders are not enforced by civilian law enforcement; however, civilian law enforcement may notify military law enforcement (e.g., Base Defense Operations Center (BDOC)) if an MPO is violated, provided the MPO is properly indexed in the National Crime Information Center (NCIC) and therefore visible to civilian law enforcement. See [paragraph 4.16.9](#) and [4.16.10](#). **Note:** Foreign criminal law enforcement will not have access to NCIC.

4.16.8. Service. Copies of completed DD Forms 2873 and 2873-1 are served on each of the parties involved in the order as soon as possible.

4.16.9. Security Forces Notification. All new, modified, and rescinded MPOs (i.e., DD Forms 2873 and 2873-1) must be forwarded by the issuing commander to Security Forces (or service equivalent on installations where there is no Security Forces presence) for indexing in accordance with AFMAN 71-102, *Air Force Criminal Indexing*, and DoD Policy Memorandum, *Placing Military Protective Orders in the National Crime Information Center Protective Order File*, dated 26 June 2014 and DoDI 6400.06, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*. On installations where there is a BDOC, MPOs are forwarded to BDOC. On installations where there is no Security Forces presence, MPOs are forwarded to the primary military law enforcement agency on that installation.

4.16.10. Local Authorities Notification. The installation commander is required to notify the civilian authorities of the issuance of any MPO, the identities of individuals involved in the order, any modifications to the order, and the termination of the protective order. **(T-0)** See 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*. This requirement is satisfied when the issuing commander provides the required information to Security Forces, per [paragraph 4.16.9](#), and Security Forces submits the order to NCIC. See [Section 29B](#).

4.16.11. Orders Issued in Conjunction with Civilian Protective Orders. A commander may issue a “no-contact” order or MPO in conjunction with a protective order issued by civilian authorities. In determining whether issuance of a “no contact” order or MPO is appropriate, commanders should review the terms and length of any civilian protective order (e.g., prohibition against being within 500 feet of a person or prohibition against carrying a firearm vice merely preventing communication). This will help commanders determine which type of order is appropriate and prevent issuance of an order with terms that are contrary to or less restrictive than that issued by civilian authorities. See also 10 U.S.C. § 1561a, *Civilian orders of protection: force and effect on military installations*. Commanders must also consider that civilian authorities will not enforce a no-contact order or MPO, but will enforce a civilian protective order; therefore, MPOs should be no less restrictive than any civilian protective order. Commanders may issue MPOs with terms that are more restrictive than any civilian protective order.

#### **4.17. Command Review of Military Protective Orders.**

##### **4.17.1. Subject Requests for Review.**

4.17.1.1. Members subject to an MPO may request the review of an MPO or any of its terms.

4.17.1.2. Any such request and supporting matters must be submitted in writing.

4.17.1.3. The commander may elect to allow the member to further present matters in person, telephonically, or in writing.

4.17.1.4. Upon receipt of such requests, the commander must provide a copy of the request to the party protected by the MPO and allow that party three calendar days to provide any matters in response. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.17.1.5. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0)**

4.17.1.6. The determination of the commander is final. Members may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

##### **4.17.2. Protected Party Request for Review.**

4.17.2.1. Parties protected by an MPO may request the review of an MPO or any of its terms.

4.17.2.2. Any such request and supporting matters must be submitted in writing.

4.17.2.3. The commander may elect to allow the protected party to further present matters in person, telephonically, or in writing.

4.17.2.4. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0)**

4.17.2.5. The determination of the commander is final. However, protected parties may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

#### 4.17.3. Required Commander Reviews.

4.17.3.1. Annual Review. Commanders must review existing MPOs on at least an annual basis. This obligation is not delegable. This review should be documented in writing, though no format is prescribed.

4.17.3.2. Review at Case Closure. When a case is closed, the commander must review the MPO to assess whether the MPO and its terms continue to be valid. Case closure includes when an investigation is closed with no action, and when administrative action, NJP, or trial by court-martial are complete. This review should be documented in writing, though no format is prescribed.

4.17.3.3. Review as the Result of the Movement of a Member Subject to MPO. In the event a member subject to an MPO moves to a new duty station on either an extended TDY, deployment, or permanent change of station (PCS), the losing commander must notify the losing BDOC and the gaining commander of the existence of the MPO within 30 days prior to the member's arrival at the new unit. This ensures sufficient safeguards for the member and the protected party are put into place prior to the member's arrival and that the gaining commander is put on notice of the requirement to review the MPO. The gaining commander must review the MPO within seven days of the member's arrival to assess whether the MPO and its terms continue to be valid. If the gaining commander determines that the MPO continues to be valid, the gaining commander must notify the protected parties and BDOC within that initial seven-day period. **(T-0)** This obligation is not delegable.

4.17.3.4. Review as the Result of Change of Command. In the event the issuing commander (or subsequent commander who determined the MPO continued to be necessary) changes command, retires, separates, or otherwise ceases to be the commander of the unit to which the individual is assigned, the outgoing commander must notify the incoming commander of the existence of the MPO within 30 days after the change of command. This ensures sufficient safeguards for the member and the protected party remain in place and that the new commander is put on notice of their requirement to review the MPO. The new commander must review the MPO within 30 days of the commander's arrival to assess whether the MPO and its terms continue to be valid. This obligation is not delegable.

#### 4.17.4. Review Process.

4.17.4.1. In order to maintain the MPO and its terms, the commander must determine that the MPO continues to be the least restrictive means necessary to safeguard the protected party from the subject of the MPO.

4.17.4.2. The commander may review the MPO at any time without notifying the subject or victim. However, prior to modifying or rescinding an MPO, the commander (or the commander's designee) must make reasonable attempts to notify the protected party to ensure the opportunity to provide matters for consideration by the commander. The commander (or the commander's designee) should document all attempts to reach the

protected party. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.17.4.3. After reviewing the MPO and any matters provided by the protected party, the commander makes a determination as to whether to retain the MPO. If the MPO is retained in its entirety, the commander must annotate their review in writing. It is recommended that any such documentation be retained with the MPO. If the MPO is rescinded or modified, any such rescission or modification must be documented on DD Form 2873-1 and a copy must be served on all parties and provided to BDOC. **(T-0)** On installations where there is no Security Forces presence, a copy should be forwarded to the primary military law enforcement agency on that installation.

**4.18. Military Protective Orders and Unrestricted Sexual Assault Reports.** In cases involving an unrestricted report of a sexual assault, the commander ensures the issuance of any military protective order complies with DoDI 6495.02. **(T-0)** If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander documents in writing the basis for denial and forwards the request and basis for denial to the installation commander or equivalent. For offenses under OSTC authority, the installation legal office will notify the assigned STC if command issues or rescinds an MPO.

**4.19. Military Protective Orders and Unrestricted Domestic Violence Reports.** In cases involving an unrestricted report of a domestic violence, the commander acts in accordance with this paragraph. If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander must document in writing the basis for denial and forward the request and basis for denial to the installation commander or equivalent. For offenses under OSTC authority, the installation legal office will notify the assigned STC if command issues or rescinds an MPO.

#### ***Section 4F—Legal Office Periodic Notification to Victims***

**4.20. Monthly Notice Required.** Victims must be notified, no less than monthly, of the status of the investigation, prosecution, or alternate disposition of the allegation reported to law enforcement or the command, whichever is applicable. Written notification or memorialization is required in accordance with DAFI 51-207. This notification is required regardless of whether a victim is represented by counsel. See DAFI 51-207 for guidance on contacting represented victims. For offenses under OSTC authority, legal office personnel shall coordinate notifications with an STC prior to engaging with a victim.

#### ***Section 4G—Administrative Holds***

**4.21. Administrative Holds.** Placing an administrative hold on an accused pursuant to DAFI 36-2110, *Total Force Assignments*, and AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, is generally advisable and, in most cases, necessary to avoid risk of PCS or separation of an accused during the pendency of an investigation or judicial proceedings. However, holding a member beyond their separation date is only permitted if there is intent to court-martial. **Note:** Administrative hold is not sufficient to extend an accused on active duty beyond their ETS. See [paragraph 11.3](#).

**4.22. Accused Members Assigned to CONUS.** Accused members assigned CONUS will normally be subject to administrative hold and remain in the same assignment throughout investigation and any judicial proceedings. However, administrative holds of an accused can pose additional challenges at overseas stations or other locations with frequent personnel turnover. Practitioners may exercise discretion in determining whether initiating an administrative hold or terminating an existing administrative hold is in the best interest of the DAF.

4.22.1. Practitioners should consider the following non-exhaustive list of factors: the anticipated length of investigation or proceedings, the accused's DEROS, whether the offenses were allegedly committed at the currently assigned station, whether the accused's tour is accompanied or unaccompanied, location of accused's dependents and support network, the health and safety of the accused, availability of services in the community or host nation, current and anticipated locations of DoD and non-DoD witnesses, availability of service of process and court compulsion, U.S. or host nation restrictions on travel, substantial recurring difficulty in coordinating across geographic boundaries or time zones, and other practical obstacles to holding a trial at or near the accused's current duty station.

4.22.2. If an investigation is open, coordination with the military law enforcement office or other investigating offices is strongly recommended.

4.22.3. For offenses under OSTC authority, a decision to terminate an administrative hold or permit an accused member to PCS must be coordinated with an STC.

**4.23. Directed PCS of Accused Members.** For accused members under law enforcement investigation, with pending charges preferred against them, or for whom a commander is contemplating charges, MAJCOM or FLDCOM SJAs may direct PCS of the accused when in the best interest of the DAF. See DAFI 36-2110. Legal offices at each level of the chain of command should coordinate with their counterparts in the intended gaining commands prior to directing PCS. For offenses under OSTC authority, legal offices shall coordinate with their OSTC District Office prior to a MAJCOM or FLDCOM SJA directing PCS of an Accused member.

#### ***Section 4H—Proof Analyses, Sensitive Case Information, and Lessons Learned***

**4.24. Proof Analyses.** Trial counsel should normally complete the first draft of a proof analysis within 60 days of the activation of CIP or IPST. In cases resulting from command-initiated investigations or inquiries, a proof analysis should be complete as soon as possible after the legal office is made aware the commander is exploring the option of preferring charges.

4.24.1. For offenses under OSTC authority, installation-level trial counsel remains responsible for drafting, updating, and reviewing the proof analysis. STC are responsible for guiding the scope and nature of an investigation, including the identification of charges/specifications and supervision of the proof analysis.

4.24.2. For all investigations, the initial proof analysis crafted by trial counsel should be reviewed and updated to address the elements, evidence, anticipated objections, and potential defenses for each specification as appropriate, but at least on a monthly basis. Judge advocates may generally discuss the analysis with the case agent, investigator, or command as a means of guiding investigative steps, but should not provide investigators or command with copies of the proof analysis. A proof analysis is typically attorney work-product material; provision of



the proof analysis to investigators or command may result in legal challenge to the work product privilege.

4.24.3. In accordance with DAFI 51-205, the SJA initiates the coordination process as early as possible for cases falling under MEJA.

**4.25. Disclosure and Reporting of Sensitive Case Information.** As a case develops, both the SJA and law enforcement are required to provide case information and status updates to higher commands through their respective reporting channels. If the detachment commander, special agent in charge, or security forces commander determines that a case involves sensitive investigative information, to avoid compromising an ongoing investigation, the SJA will not allow disclosure of such information without the concurrence of the detachment commander, special agent in charge, or security forces commander. Some examples of sensitive investigative information could include certain investigative techniques, case leads, and confidential source information. After service of charges, the rules of discovery will control the release of any sensitive investigative information. In addition, portions of the ROI that are in draft form should not be released outside OSTC or legal office channels without detachment concurrence.

**4.26. Lessons Learned.** Within 30 calendar days of the conclusion of trial under command authority, the legal office trying the case and the investigative office responsible for the investigation of the case should conduct a “hot wash.” The hot wash should include the SJA or DSJA, chief of military justice, and trial team from the legal office (to include applicable VWAP personnel), as well as the STC for cases under OSTC authority, AFOSI detachment commander/SFS commander, lead investigator and other case agent(s) or investigators. Other legal office and investigative personnel may attend. Lessons learned may be captured in an after-action report, but an after-action report is not required.

## Chapter 5

### COMPETENT SEARCH AUTHORITIES

**5.1. Appointment of Other Competent Search Authorities (CSA) (Military Rule of Evidence 315(d)(3)).** The DAF installation commander may appoint a maximum of four officers to serve as CSAs for that installation. For certain installations comprised of multiple geographically separated locations, a maximum of four officers may be appointed as CSAs for each geographically separated location. If unique circumstances exist that warrant the appointment of more than four CSAs for any one location, the installation-level SJA should request permission from AF/JAJM to appoint additional officers through functional legal channels. If the installation commander is not a DAF commander, see [paragraph 5.4](#).

5.1.1. A commander appoints CSAs in writing by name, not position, and specifies the installation over which the CSAs may exercise search authority.

5.1.2. The SJA for the appointing commander ensures the CSAs are briefed on their duties at the time of their appointment and whenever necessary thereafter. A template briefing is available on the VMJD and the AF/JAJM Teams Page.

**5.2. Qualifications.** A CSA should be an officer with judicial temperament serving in the rank of lieutenant colonel or above. Chaplains, legal office personnel, and Air Force Office of Special Investigations and Security Forces members may not serve in the position. A convening authority should not be appointed as a CSA, but a convening authority who is a commander with control over the place where the property or person to be searched is situated or found may authorize a search under M.R.E. 315(d)(1). Officers appointed as CSAs for AFRC installations must be serving in a Title 10 status (that is, a period of inactive duty training or active duty) to perform such duties.

**5.3. Authority.** A CSA's authority to issue search and seizure authorizations is found in M.R.E. 315(d)(3). Such authorizations to search and seize are based upon probable cause. If more than one CSA is appointed for an installation or location, each exercises concurrent authority with the others and with the installation commander. The commander need not be unavailable for a CSA to exercise this authority. A CSA's authority is non-delegable.

**5.4. Non-DAF Military Installations.** At a military installation where the installation commander is not a DAF commander, the DAF commander who holds SPCMCA for the supported command may appoint a maximum of four officers to serve as CSAs for searches involving DAF personnel and property on the installation. Based on probable cause, a CSA appointed under this paragraph may authorize search and seizure (and apprehension) of DAF personnel and property at non-DAF military installations to the extent the commander appointing the CSA has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. M.R.E. 315(d)(1); R.C.M. 302(e)(2). This CSA exercises concurrent search and seizure authority with the commander who appointed him or her. Nothing in this paragraph is intended to negate or diminish the authority of a non-DAF commander or any CSA (DAF or otherwise) appointed by the non-DAF installation commander to authorize searches consistent with M.R.E. 315.

## Chapter 6

### OBTAINING EVIDENCE IN SUPPORT OF CRIMINAL INVESTIGATIONS

#### *Section 6A—Overview of Authorities for Search and Seizure*

**6.1. Authorization for Search and Seizure.** Military judges and qualified commanders have the authority to grant search authorizations based upon probable cause for personnel and locations within the military span of control in accordance with M.R.E. 315(d)(1).

6.1.1. Order of Preference. When attempting to obtain a search authorization, legal offices must first attempt to identify a qualifying commander or CSA, if appointed, before seeking authorization from a military judge. This reduces the chance that the military judge will be conflicted out of being detailed to subsequent proceedings related to the search authorization. **Note:** this order of preference does not apply to requests for searches that fall under the Stored Communications Act. See [Section 6E](#).

6.1.2. Obtaining Search Authorization from a Military Judge. Government counsel may request a search authorization from a military judge in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

6.1.3. Forms. Air Force Form 1176, *Authority to Search and Seize*, is used to document authorization for a search of a person, location, or property and seizure of property pursuant to M.R.E. 315(d). When required by circumstances, verbal authorization may be given but should be followed by written documentation.

#### *Section 6B—Search Authorizations (M.R.E. 315)*

**6.2. Search Authority.** A commander is only qualified to grant a search authorization if the commander has control over the place where the property or person to be searched is situated or found, or, if the place is not under military control, if the commander has control over persons subject to military law or law of war. See M.R.E. 315.

6.2.1. Legal Determinations. Government counsel, including STC, advising on the decision as to whether to request a search authorization from a military judge, commander, or CSA, must carefully review the facts in each instance to determine whether an impartial commander is qualified to grant a search authorization without conflicting that commander out of other parts of the courts-martial process (e.g., preferral, referral). Counsel must also determine whether a commander is qualified to act as a search authority each time a request arises (e.g., whether the commander has control over the place where the person or property to be searched is situated or found, or over the person to be apprehended).

6.2.2. Requirement for Neutral and Detached Commander Acting as Search Authority. A commander issuing a search authorization must be neutral and detached. This excludes commanders who exhibit bias or appear to be predisposed to one outcome or another. However, the participation of a commander in investigative activities in furtherance of command activities does not per se disqualify that commander from authorizing a search under M.R.E. 315. See *United States v. Huntzinger*, 69 M.J. 1 (C.A.A.F. 2010); *United States v. Freeman*, 42 M.J. 239 (C.A.A.F. 1995). Prior to utilizing a commander for granting search authorization, government counsel should determine whether the commander's involvement

may preclude them from preferring or referring charges in the same case. Law enforcement members shall not exercise authority to grant search authorizations under M.R.E. 315.

6.2.3. AFRC Jurisdiction. Commanders acting as search authority for Air Force Reserve Command installations and personnel must be in a Title 10 status.

6.2.4. Military Installations Not Under Control of the Air Force or Space Force. Qualifying DAF commanders may exercise search authority for matters involving DAF personnel on the installation. Based on probable cause, qualifying commanders may authorize search and seizure (and apprehension) involving DAF personnel at such installations to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. M.R.E. 315(d)(1); R.C.M. 302(e)(2). Commanders may possess concurrent search and seizure authority with non-DAF commanders. Nothing in this paragraph is intended to negate or diminish the authority of a non-DAF commander, military judge, or magistrate to authorize searches consistent with M.R.E. 315.

6.2.5. Pentagon Reservation. AFDW/CC may authorize searches involving DAF controlled or occupied spaces of the Pentagon Reservation or DAF personnel located, assigned or attached therein, pursuant to M.R.E. 315(d)(1). SpOC/CC may authorize searches involving USSF controlled or occupied spaces of the Pentagon Reservation or USSF personnel located, assigned, or attached therein. Additionally, any other DAF commander located in the Pentagon may authorize searches over people or places under that specific commander's control. Generally, authorized searches within the Pentagon Reservation are coordinated with Washington Headquarters Services and the Pentagon Force Protection Agency prior to execution. The failure to coordinate with the Washington Headquarters Services and Pentagon Force Protection Agency does not create any right or benefit for any DAF member.

6.2.6. Tenant Units. A tenant unit commander may exercise search authority for matters involving DAF personnel to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be searched or apprehended. Depending on the place to be searched, other commanders on the installation may be the more appropriate choice to exercise search authority.

6.2.7. Searches of Locations or Property Under the Control of Military Counsel. If a location or property that is to be inspected or searched is under the control of a military DC or VC, precautions should be taken to protect client confidentiality, privileged communications, and attorney work product to the maximum extent possible. Such a search should be pursued only when there is no other feasible alternative.

6.2.7.1. The base-level SJA informs the Director, AF/JAJ, before such a search is executed pursuant to authorization under M.R.E. 315(d) or as soon as possible if exigent circumstances exist pursuant to M.R.E. 315(g).

6.2.7.2. The purpose of this notification is to provide information, not to seek assistance in obtaining or authorizing a search of DC or VC property. If a search is authorized, it should be conducted so as to minimize disruption to the operation of the office of the defense counsel or VC and should occur at a time when clients are unlikely to be present. It is further recommended that additional precautions, such as having an investigator and judge advocate unaffiliated with the installation conduct the search, ordering the searchers

not to disclose the matters, and have a military judge review papers seized to determine what matters are responsive to the search authorization and how to handle other seized material. See *United States v. Calhoun*, 49 M.J. 485 (C.A.A.F. 1998).

### ***Section 6C—United States Mail and Government Information Systems***

**6.3. United States Mail.** For the inspection, search, and/or seizure of mail in the custody of the military postal service OCONUS, a convening authority authorized under Article 23(a) may issue a search authorization for the particular person or location involved. See DoD 4525.6-M, *Department of Defense Postal Manual*, for procedures. For the inspection, search, and/or seizure of mail in the United States, a warrant or other court order issued by a federal civilian magistrate or civilian judge is generally required. See *United States Postal Service Administrative Support Manual*, Part 274.

**6.4. Government Information Systems.** Government information systems are subject to monitoring, interception, search, and seizure for all authorized purposes in accordance with the DoD Consent Banner placed on government information systems.

6.4.1. The DoD Consent Banner does not permit monitoring pursuant to a law enforcement investigation of the content of privileged communications or work product related to personal representation or services by attorneys, psychotherapists, or clergy, to include their assistants. Users should annotate their privileged communications in e-mails and documents to ensure such information is kept confidential and not inappropriately accessed or read during authorized search, seizure, interception, or monitoring activities. Failure to annotate that a communication is privileged does not, per se, waive the privilege. Investigators should consult with the appropriate legal office or OSI/JA prior to and during such activities to ensure privileged communications are appropriately protected and remain confidential.

6.4.2. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. See M.R.E. 314(d). However, if the totality of the facts and circumstances indicate that the subject has a reasonable expectation of privacy, usually because the government property was issued for exclusive personal use, obtaining a search authorization is warranted.

6.4.3. Monitoring of information on Government systems, including privileged communications, pursuant to the DoD Consent Banner may occur for other reasons, such as for Operations Security (OPSEC). See AFI 10-701, *Operations Security (OPSEC)*. In accordance with DoDI 8560.01, *Communications Security (COMSEC) Monitoring*, and AFI 10-701, it is DAF policy that information derived from obtained during an OPSEC electronic monitoring mission will not be used as evidence in a criminal prosecution without approval of SAF/GC.

### ***Section 6D—Investigative Subpoenas***

**6.5. Overview.** Investigative subpoenas may be issued at any point during the investigative or court-martial process (e.g., at any point after an allegation is received and prior to certification of the record of trial). Investigative subpoenas may be issued pre-referral either by counsel for the government (when authorized by the GCMCA or delegee) or by a military judge, and may be

issued post-referral by trial counsel. See R.C.M. 703. Investigative subpoenas may be issued for production of evidence, unless otherwise limited by law.

#### 6.5.1. Limitations of Investigative Subpoenas.

6.5.1.1. Pre-referral investigative subpoenas may not be used for witness testimony.

6.5.1.2. Investigative subpoenas may not be used to obtain the content of wire or electronic communications held by electronic service providers. **(T-0)** See [Section 6E](#), R.C.M. 309(b); R.C.M. 703A. However, this does not limit the issuing of an investigative subpoena for basic subscriber information.

6.5.1.3. Investigative subpoenas to members of the media are subject to the restrictions imposed under [Paragraph 16.5.2](#).

6.5.1.4. Investigative subpoenas served on financial institutions for records concerning a customer of that financial institution are subject to the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401, *et seq*, *Right to Financial Privacy Act*. Before serving such a subpoena on the financial institution, a copy of the subpoena must be served on the customer (or mailed to the last known address) along with the statement, motion paper template, sworn statement template, and other information required by 12 U.S.C. § 3405. At the expiration of any required notice period, an investigative subpoena served on a financial institution shall be accompanied by a certification that the issuer of the subpoena has fully complied with the requirements of the RFPA. Delayed notice to a customer may be authorized by a military judge in accordance with 12 U.S.C. § 3409, *Delayed Notice*.

#### 6.5.2. Trial Counsel Investigative Subpoenas.

6.5.2.1. Pre-Referral Investigative Subpoenas. Prior to issuing a pre-referral investigative subpoena, all government counsel must request authorization to issue each pre-referral investigative subpoena from the GCMCA. See R.C.M. 703(g)(3)(D)(v). The convening authority's authorization is limited to specific subpoenas. Blanket authorization to issue subpoenas is not authorized (e.g., a convening authority may not permit government counsel to issue "all the subpoenas necessary in the case of United States v. Amn Snuffy" but may permit government counsel to issue "a subpoena for bar receipts of Amn Snuffy and SSgt Doe to Bar X"). Authorization by the convening authority to government counsel must be in writing. A template can be found on the VMJD and AF/JAJM Teams page.

6.5.2.2. Post-Referral Subpoenas. Government counsel may issue post-referral subpoenas in accordance with R.C.M. 703(g)(3)(D). There is no requirement to obtain convening authority approval to issue any such subpoena.

6.5.3. Convening Authority Authorization to Issue Investigative Subpoenas. Convening authorities do not have the independent authority to issue investigative subpoenas. Investigative subpoenas may only be issued by government counsel. See R.C.M. 703(g).

6.5.4. GCMCA Delegation of Authorization to Issue Investigative Subpoenas. The GCMCA may delegate the authority to approve pre-referral investigative subpoenas to subordinate SPCMCAs, but such delegation must be in writing. A template for this delegation can be found on the VMJD and AF/JAJM Teams page.

6.5.5. Military Judge Investigative Subpoenas. Military judges may issue investigative subpoenas pre-referral, but may not issue investigative subpoenas post-referral.

6.5.5.1. Upon application by government counsel, a military judge may issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). See R.C.M. 309(b)(1); Articles 30a and 46, UCMJ.

6.5.5.2. Defense counsel may request that government counsel make an application for a pre-referral investigative subpoena. See R.C.M. 309(b) Discussion. Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. **(T-0)**

6.5.6. Victim Notification. Subpoenas for personal or confidential information about a victim named in a specification require the victim be given notice in accordance with R.C.M. 703(g)(3)(C)(ii) so that said victim has the opportunity to move for appropriate relief, unless exceptional circumstances exist. This notification is required regardless of whether the subpoena is issued by a military judge or by government counsel.

6.5.7. Required Format. Investigative subpoenas are issued on DD Form 453, *Subpoena*. **(T-0)**

6.5.7.1. In the absence of specific direction from a military judge, government counsel should ordinarily be listed on DD Form 453 as the individual to whom requests for relief should be directed.

6.5.7.2. While neither government counsel nor the convening authority have statutory ability to grant relief, government counsel is responsible for forwarding requests for relief to the detailed military judge or AF/JAT to request a military judge be detailed to address any such requests.

6.5.8. Service of Subpoenas and Other Legal Process.

6.5.8.1. It is the responsibility of government counsel to ensure the subpoena or other legal process is served on the subject party or their authorized agent in accordance with R.C.M. 703(g)(3)(E).

6.5.8.2. Informal service may suffice if a witness will voluntarily comply with the subpoena. Informal service is accomplished by mailing to duplicate copies of the subpoena to witness and a postage-paid envelope bearing a return address, with the request that the party sign acceptance of service and return it in the envelope provided. Because informal service limits the Government's ability to seek a Warrant of Attachment, contempt sanctions, or other appropriate relief for non-compliance with a subpoena, it should be used only when voluntary compliance is likely. See **Section 16B**. R.C.M. 703(g)(3)(H).

6.5.8.3. Formal service is advisable if the party subject to the subpoena may not comply voluntarily. Formal service should ordinarily be made by a person subject to the UCMJ. See R.C.M. 703(g)(3)(H). Formal service should also include a means for reimbursement for fees and mileage.

6.5.8.4. When serving an electronic service provider under **Section 6E** or other large business entity, evaluate service on the closest registered agent or through the entity's submission website for service of legal process. See [www.search.org/resources.isp-list](http://www.search.org/resources.isp-list).

*Section 6E—Stored Communications Act Data (R.C.M. 309 and 703A; Article 30(a), UCMJ)*

**6.6. General Provision.** A detailed military judge, upon application by government counsel in connection with an ongoing investigation of an offense under the UCMJ, may issue a warrant to a qualifying provider of electronic communications service or remote computing service for the disclosure of the contents of wire or electronic communications, both pre-referral (including pre-referral) and post-referral. See R.C.M. 703A. In addition, a military judge may issue a warrant or order for disclosure of non-content data and information pertaining to subscribers or customers of those services. See R.C.M. 703A; Articles 26 and 30a, UCMJ; *United States v. Carpenter*, 138 S.Ct. 2206 (2018), *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). See also 18 U.S.C. § 2701, *et seq.*, *Unlawful access to stored communications*. This does not limit the issuing of an investigative subpoena for basic subscriber information. Templates can be found on Knowledge Management under the Government Trial Counsel section.

6.6.1. Preservation Requests. Upon learning of the existence of evidence maintained by a provider of wire or electronic communication services or remote computing services, government counsel should coordinate with law enforcement to request that the provider preserve the pertinent records. Preservation requests should be issued on official Air Force letterhead.

6.6.1.1. A provider receiving such a request must preserve the records for 90 days, which may be extended an additional 90 days on receipt of another request. A provider has no legal obligation to preserve data beyond 180 days. Preservation requests are not prospective; requests apply only to data already in existence, not data created after the preservation request. See R.C.M. 703A(f).

6.6.1.2. When a provider makes a report of apparent child sexual abuse material to the National Center for Missing and Exploited Children as required under 18 U.S.C. § 2258A, *Reporting requirements of providers*, such a provider is required to preserve relevant data for 90 days from submission of the report even absent a request by law enforcement. The initial 90-day period may be extended one time on request of law enforcement for an additional 90 days. However, as above, a provider has no legal obligation to preserve data beyond 180 days.

6.6.2. Warrants Required for Certain Data. Some categories of remotely held data require a search warrant. Practitioners should be aware of current caselaw as to whether a search warrant is required to compel certain types of data or whether a judicial order will suffice.

6.6.2.1. Content Data. Judicial orders may not be used to compel a provider of electronic communication service or remote computing services to disclose the content of any wire or electronic communication that is in electronic storage in an electronic communication system. In accordance with *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), warrants are required for disclosure of the content of any wire or electronic communication in electronic storage in an electronic communications system, regardless of the length of time the content is maintained.

6.6.2.2. Location Data. Judicial orders may not be used to compel a provider to disclose detailed location data. See *United States v. Carpenter*, 138 S.Ct. 2206 (2018); *United States v. Jones*, 565 U.S. 400 (2012). Warrants are required for disclosure of detailed global positioning satellite (GPS) data and cell site location information (CSLI) data.



6.6.3. Providers of Services to the Public. The Stored Communications Act, Article 30a, and R.C.M. 703A and the procedures of this Section apply only to legal process directed to electronic communications services and remote computing services who provide services to the public. See 18 U.S.C. § 2510, *Definitions*, and 18 U.S.C. § 2711, *Definitions for chapter*.

6.6.4. Data Held Outside the United States. Generally, providers in the United States must provide data responsive to legal process when the data is in the provider's possession, custody, or control, irrespective of the physical location of the server on which communications are stored. 18 U.S.C. § 2713, *Required preservation and disclosure of communications and records*. When the provider is located outside of the United States or is otherwise beyond compulsory legal process, practitioners should evaluate whether there exists with the nation in which the target provider is located an executive agreement under 18 U.S.C. § 2523, *Executive agreements on access to data by foreign governments*, or a mutual legal assistance treaty. In rare circumstances, providers may also evaluate the appropriateness of letters rogatory. See 22 C.F.R. § 92.49 - § 92.71, *Depositions and Letters Rogatory*. Requests for data held outside of the United States should be coordinated with the Office of International Relations, Criminal Division, Department of Justice.

6.6.5. Request for Military Judge. Government counsel is responsible for requesting a military judge be detailed and for submitting the application for a warrant or order to the military judge, regardless of the author of the affidavit. **(T-0)**

6.6.6. Real Time Interception Not Affected. Neither this section nor R.C.M. 309 or 703A, or Article 30a, apply to "real-time" interception of wire, electronic and oral communications in accordance with DoDI 5505.09, *Interception of Wire, Electronic and Oral Communications for Law Enforcement* and 18 U.S.C. § 2510, *et seq.*

## **6.7. Warrants for Stored Communications Act Data.**

6.7.1. General Provision. A warrant is a writ, supported by probable cause, issued by a military judge directing an electronic communications service or remote computing service to produce data. Such warrants may be applied for and issued by a military judge both pre-referral (including pre-preferral) and post-referral. See R.C.M. 703A. While a warrant is required for content data or detailed location data as discussed in [paragraph 6.6.2](#), a warrant may also compel production of any data obtainable under a judicial order or an investigative subpoena.

6.7.2. Warrant Request. To obtain a warrant, government counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare a warrant application and draft warrant. Government counsel must submit the application, draft warrant, and supporting evidence, which may include sworn witness testimony, to the military judge.

6.7.3. Request for Non-Disclosure Order. If government counsel asserts that a non-disclosure order is necessary, government counsel indicates such on the warrant application and submit, in writing, the reasons for the request. Government counsel must also prepare a draft non-disclosure order. See [paragraph 6.9](#); 18 U.S.C. § 2705(b), *Delayed notice*.

6.7.4. Issuance by Military Judge. If the military judge determines there is probable cause to believe the information sought contains evidence of a crime, the military judge will issue the warrant to the requesting federal law enforcement officer or government counsel. **(T-0)** See

18 U.S.C. § 2703(b)(1)(A), *Required disclosure of customer communications of records*; R.C.M. 703A(b). If a request for a non-disclosure order is submitted with the warrant application, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing. **(T-0)**

6.7.5. Forms. Warrant applications are accomplished via DD Form 3057, *Application for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703* and DD Form 3056, *Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*.

## **6.8. Court Order for Stored Communications Act Data.**

6.8.1. General Provision. A judicial order, supported by reasonable grounds to believe that the records or information sought are relevant and material to an ongoing criminal investigation, may be issued to an electronic communications service or remote computing service for data other than content (e.g., basic subscriber information, detailed usage logs, session logs, friend lists, etc.). While a warrant is required for content data or detailed location data as discussed in [paragraph 6.6.2](#), a judicial order may also compel production of any data obtainable under an investigative subpoena. Consult current case law to determine whether an order is sufficient to obtain the data sought.

6.8.2. Order Request. To obtain an order, trial counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare an order application. Government counsel must submit the application and supporting evidence, which may include sworn testimony, to the military judge. The federal law enforcement agent or government counsel completing the order application should annotate whether delayed notification to the subscriber is requested. See 18 U.S.C. § 2705(b). The party seeking the order must notify the subscriber of the application for the order unless the party requests the military judge grant delayed notification. **(T-0)** The federal law enforcement agent or government counsel completing the order application must prepare a draft disclosure order and any draft delayed notification orders in writing for the military judge. If granted, the disclosure order and any delayed notification orders must be in writing.

**6.9. Non-Disclosure Order to Electronic Communications Service or Remote Computing Service.** In accordance with 18 U.S.C. § 2703(b)(1)(A), 18 U.S.C. § 2705(b) and R.C.M. 703A(d)(2), government counsel may request the military judge order the electronic communications or remote computing service not to disclose the existence of a warrant or order to any third party, including the subscriber. The non-disclosure order must be issued by the military judge consistent with R.C.M. 703A. **(T-0)** If a request for a non-disclosure order is submitted, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing for provision to the applicable service provider.

**6.10. Ex Parte or In Camera Nature of the Proceeding.** Proceedings related to requests for investigative subpoenas and warrants/orders for wire or electronic communications will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. The record of proceedings will consist of all documents considered or issued by the detailed judge in acting upon such requests. The military judge has discretion as to whether to hold a hearing in relation to requests for investigative subpoenas and warrants/orders for wire or electronic communications.

**6.11. Consequences of Failure to Comply.** Failure of an electronic communications service or remote computing service provider to comply with legal process may subject the provider to a warrant of attachment or contempt proceedings. See Article 48, UCMJ, **Section 16B** and **Section 19J**.

**6.12. Defense Requests for Warrants or Orders for Wire or Electronic Communications.** Defense counsel may request that government counsel make an application for a warrant or order both before and after referral. See R.C.M. 703(g)(3)(D) and 703A(a). Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. Government counsel should also consult with the investigating agency to determine the appropriateness of sending a preservation request at that time.

**6.13. Requests for Relief from Subpoena or Other Process.** Individuals or entities in receipt of an investigative subpoena, judicial order, or warrant to disclose information regarding wire or electronic communications may request relief on the grounds that compliance is unreasonable, oppressive or prohibited by law. The military judge will then make a determination as to whether the party must comply or will modify or quash the subpoena, warrant, or order. See R.C.M. 703A(c)(2).

**6.14. Post-Referral Requests for Warrants or Orders.** An Article 30a, UCMJ, proceeding is only required pre-referral. Requests for court orders or search warrants post-referral may require a hearing under Article 39(a), UCMJ.

***Section 6F—Immunity (R.C.M. 704, M.R.E. 301(d)).***

**6.15. Grants of Immunity.**

**6.15.1. Authority to Grant Immunity.**

6.15.1.1. Except as provided in [paragraph 6.15.1.2.](#), a GCMCA possesses the authority to grant or deny immunity to witnesses. The GCMCA may delegate this authority to subordinate SPCMCAs. The GCMCA's delegation must be in writing, and the authorization may not be further delegated. **(T-0)**. If the GCMCA delegates authority to grant immunity to the SPCMCA, the SPCMCA SJA must consult with the GCMCA SJA before requesting a grant of immunity from the SPCMCA. Ordinarily, the GCMCA with authority over the subject court-martial shall grant immunity. When another GCMCA retains administrative control over the witness to be immunized, prior coordination with the retaining GCMCA or delegee, if applicable, is recommended.

6.15.1.2. For offenses under OSTC authority, the LSTC possesses the authority to grant immunity to witnesses. The LSTC may delegate this authority to subordinate STC in writing. Requests for immunity should be routed through the OSTC District Office to OSTC Headquarters for LSTC approval.

6.15.1.3. A GCMCA or LSTC or their designees may grant immunity to a person subject to the UCMJ. However, such immunity may extend to a prosecution in a United States District Court only when specifically authorized by the Attorney General of the United States or other designated authority under Chapter 601 of 18 U.S.C.

6.15.1.4. A GCMCA or LSTC or their designees may grant immunity to persons not subject to the UCMJ only when specifically authorized to do so by the Attorney General of the United States or other designated authority under Chapter 601 of 18 U.S.C.

6.15.2. Procedure. All grants of immunity must be in writing, signed by the issuing authority, and attached to the record of trial (ROT). Grants of immunity should include language stating the immunity grant takes effect on the date the witness receives a copy of it. The convening authority shall order a person subject to the UCMJ who has received a grant of immunity to answer questions or testify, to include those receiving a grant of immunity from an STC. See R.C.M. 704(d)(2). Sample grants of immunity and orders to testify are available on the VMJD and AF/JAJM Teams page.

6.15.3. National Security Cases. Process immunity requests for witnesses suspected of criminal activity involving national security according to [paragraph 6.15.4](#), regardless of whether the witness is subject to the UCMJ. AF/JAJG is responsible for coordinating such cases with the Department of Justice and other interested United States agencies. If the case involves offenses under OSTC authority, coordination shall include the servicing OSTC District Office.

6.15.4. Cases Involving the Department of Justice. If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity, prepare the immunity request, regardless of whether the witness is subject to the UCMJ. **(T-0)** The GCMCA, LSTC, or delegee, as applicable, must indicate the intent to approve a request for immunity to the Department of Justice. A written memorandum from the GCMCA, LSTC, or delegee is then forwarded to AF/JAJG, who will staff the package to the Department of Justice. The Department of Justice (or other authority designated under 18 U.S.C. § 6004, *Certain administrative proceedings*) will then either authorize the GCMCA to offer immunity or will disapprove the request. If authorized, the GCMCA, LSTC, or delegee may then offer the person immunity. Prepare requests for Department of Justice authorization in accordance with [paragraph 6.15.5](#).

6.15.5. Requests for Department of Justice Authorization.

6.15.5.1. In cases requiring Department of Justice authorization, the SJA whose office is prosecuting the court-martial initiates the request for Department of Justice authorization. When the GCMCA, LSTC, or delegee, indicates in a memorandum the intent to grant immunity, the GCMCA SJA or SPCMCA SJA, if the authority to grant immunity has been delegated to the SPCMCA, forwards the request with written endorsement, by e-mail, directly to AF/JAJG, with information copies to the MAJCOM SJA and OSTC District Office, if applicable. The SJA should consult with AF/JAJG prior to forwarding the request as the Department of Justice requires requests be forwarded in a specific format. Requests are forwarded no less than 30 days in advance of the date the witness is expected to testify. SJAs should consider requesting a delay pursuant to R.C.M. 707(c)(1) while authorization is pending.

6.15.5.2. The written request should include the following information:

6.15.5.2.1. Case name and nature of the proceeding for which requesting immunity;

6.15.5.2.2. Nature of the charges against the accused and anticipated date of the proceeding;

- 6.15.5.2.3. Name, social security number (SSN), date and place of birth, and address of the witness;
  - 6.15.5.2.4. The witness's military status and organization, if any;
  - 6.15.5.2.5. Whether the defense or prosecution requested the immunity;
  - 6.15.5.2.6. Name, grade, organization, and mailing address of the GCMCA or delegee who will grant the immunity after receiving Department of Justice authorization, and a statement that the GCMCA or delegee supports the immunity request. **Note:** Immunity is not actually granted until approved by the GCMCA or delegee after receiving Department of Justice authorization;
  - 6.15.5.2.7. An explanation of why immunity is necessary, including whether any state or federal charges are pending against the witness and a description of those charges, if any;
  - 6.15.5.2.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;
  - 6.15.5.2.9. A summary of the witness's expected testimony;
  - 6.15.5.2.10. Factual basis for believing the witness will assert the privilege against self- incrimination, including the nature of the offenses in which the witness may be incriminated;
  - 6.15.5.2.11. The likelihood of the witness testifying, should immunity be granted; and
  - 6.15.5.2.12. Name, title, address and telephone number of the representative from the local State's Attorney's Office and United States Attorney's Office with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.
- 6.15.6. Preliminary Discussions of Immunity. Judge advocates and investigators are to be exceedingly careful in discussing the possibility of immunity with anyone involved in an investigation or potential prosecution. Avoid creating a perceived expectation of immunity that may be unfounded. The best practice is to first coordinate potential grants of immunity with the appropriate convening authority, and when appropriate, OSTC or AF/JAJG.

## Chapter 7

### PRE-REFERRAL JUDICIAL PROCEEDINGS (ARTICLE 30A, UCMJ; R.C.M. 309)

**7.1. General Provision.** A pre-referral proceeding may occur at any point prior to referral, to include pre-referral.

**7.2. Detailing of Military Judges for Pre-Referral Proceedings.** Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

**7.3. Covered Matters.** See Article 30a, UCMJ, and R.C.M. 309 for matters which may be addressed in pre-referral judicial proceedings. Additional requirements are discussed in this chapter.

**7.4. Pre-Referral Investigative Subpoenas.** If issuance of an investigative subpoena is requested from a military judge pre-referral, the military judge determines whether or not a hearing is required. See [Section 6D](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

**7.5. Pre-Referral Warrants or Orders for Stored Communications Act Data.** If issuance of a warrant or order from a military judge is requested pre-referral, the military judge determines whether or not a hearing is required. See [Section 6E](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

**7.6. Requests for Relief from Subpoena or Other Process.** Prior to referral, only the entities listed in R.C.M. 309(b)(3) may request relief from subpoenas or other judicial process.

**7.7. Pre-Referral Appointment of a Representative Pursuant to Article 6b.** Prior to referral, the military judge may designate a suitable person to assume the rights of a victim who is under 18 years of age (but who is not a member of the armed forces), or who is incompetent, incapacitated, or deceased. See Article 6b(c) UCMJ; R.C.M. 309(b)(5). This appointment allows military authorities to fulfill their obligations to crime victims, e.g., notice of pre-trial confinement, or right to speak at a pre-trial confinement hearing (see, e.g., [paragraph 9.3.2](#)). It also allows a suitable person to express the interests of the victim regarding pre-trial confinement, case disposition, victim participation, input in the court-martial process, and representation by a victims' counsel. The legal guardian of the victim, the representative of the victim's estate, a family member, or any other person designated as suitable by the military judge, may assume the rights of the victim. Under no circumstances may the military judge designate the accused to assume the rights of the victim.

**7.7.1. Initial Need Assessment.** Prior to referral, trial counsel determines whether an Article 6b representative should be appointed based on the totality of the circumstances, including personal interactions with the victim, input from law enforcement authorities, and input from any other persons involved in the case. In the case of a child victim, it may be appropriate for trial counsel to request input from a VC if a VC had been previously requested. If trial counsel determines an Article 6b representative is warranted, they must coordinate a suitable person to assume the rights of any named victim of potential charges who is under 18 years of age (but who is not a member of the armed forces) or any other category listed in R.C.M. 309(b)(5).



Trial counsel must seek appointment from a military judge prior to seeking input on any case for disposition for which a named victim lacks capacity to decide.

**7.7.2. Appointment Procedures.**

7.7.2.1. Generally, government representatives (e.g., trial counsel or the VWAP coordinator) will send a request to the trial judiciary's central docketing office to request detailing of a military judge. The government representative should include in the request to the judiciary, at a minimum, evidence of the victim's status, the status of the case against the accused (e.g., the Charge Sheet), and evidence of the relationship between the victim and the proposed Article 6b representative (e.g., 1168 from a non-offending parent).

7.7.2.2. If government representatives believe Article 6b representation is unnecessary, but a VC, based on interactions with the victim, believe 6b representation is warranted, the VC should engage the trial counsel to reconsider the position and request trial counsel submit a request to the trial judiciary's central docking office. If trial counsel still believes 6b representation is not warranted, the SJA will supply the VC with the substantiation necessary for the military judge to resolve the issues specified in [paragraphs 7.7.2.1](#). The VC may in this circumstance file a request directly with the trial judiciary's central docketing office to detail a military judge to resolve the issue.

**7.8. Recording of Pre-Referral Proceedings.** All hearings conducted pursuant to Article 30a, UCMJ, must be recorded verbatim and transcribed. For recording purposes, follow the procedures in [paragraph 12.8](#) used for recording an Article 32, UCMJ, preliminary hearing. See DAFMAN 51-203 for guidance on preparation of the record of proceedings required in R.C.M. 309. The trial counsel must ensure that the record of proceedings is maintained on behalf of or by the appropriate convening authority or commander, and such record will be included in the ROT if applicable.

## Chapter 8

### RELEASE OF INFORMATION

#### *Section 8A—Provision of Information to Defense Counsel*

**8.1. Release of Information to Defense Counsel.** SJAs and trial counsel are strongly encouraged to provide matters to defense counsel as soon as practicable. This may be prior to preferral of charges. At preferral, trial counsel must, at a minimum, provide defense counsel copies of the matters listed in R.C.M. 308(c). **(T-0)** If it is impractical to provide these matters, trial counsel must permit the defense to inspect them. The provisions in this section are not intended to create any additional substantive or procedural right to discovery, which is described in the MCM. After referral of charges to trial, both trial and defense counsel conduct discovery in accordance with R.C.M.s 701 and 703.

**8.2. Distinction Between Discovery and Freedom of Information Act (FOIA)/Privacy Act Release.** When stating that certain documents are protected from release, or that certain discoverable documents should be redacted before being provided to defense counsel, trial counsel should distinguish between rules pertaining to discovery and rules pertaining to the release of information to a third party (such as FOIA or Privacy Act). Trial counsel should maintain an unredacted copy of any redacted items provided to defense in the event unredacted items must later be provided to defense.

8.2.1. Releasing Privacy Act Material to Defense Counsel. When releasing Privacy Act material to defense counsel, trial counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this is DoD ID numbers of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. Contact information and dates of birth for witnesses, however, are usually relevant to defense preparation. When Privacy Act material is not redacted in discovery material, defense counsel must take appropriate steps to guard against improper release of this information. Additionally, if trial counsel elect not to redact Privacy Act material when providing discovery to civilian defense counsel, trial counsel should obtain a signed statement from the civilian defense counsel stating the defense counsel agrees not to release Privacy Act information to others not involved with the defense of the case, using the format set forth at the VMJD and AF/JAJM Teams page.

**8.3. Coordination for Review and Analysis of Child Sexual Abuse Material.** When evidence includes child sexual abuse material, refer to 34 U.S.C. § 20911 et seq., *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*, commonly known as “The Adam Walsh Act,” and 18 U.S.C. § 3509, *Child victims’ and child witnesses’ rights*, with regard to discovery. Review and analysis of all evidence of child sexual abuse material must be coordinated with the OSI detachment investigating the case. Misconduct involving child sexual abuse material constitutes a covered offense, and STC must be consulted for the review and analysis of evidence. **Note:** Responsibility for handling of child sexual abuse material differs based on the status of the material. See [Section 16C](#).



## ***Section 8B—Provision of Information to Victims' Counsel***

**8.4. Release of Records to VCs.** Requests from DAF VCs and VCs from other services for records pertaining to a court-martial proceeding involving their clients are properly addressed as “official use” requests under the Privacy Act and FOIA. See 5 U.S.C. § 552a(b)(1); DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2.1.. Victims may also hire civilian attorneys to serve as VC. In such cases, a civilian VC may request information pursuant to the “routine use” provision of the SORN “Military Justice and Civilian Criminal Case Records,” DoD 0006, consistent with law and policy as to victims’ rights and access to information.

### **8.5. SJA Release of Information.**

8.5.1. An SJA’s decision to release information is limited in scope to information generated and maintained by the servicing legal office in accordance with law and policy. See also SORN F051 AFJA I, Military Justice and Magistrate Court Records.

8.5.2. An SJA’s decision to release information pursuant to an official request or routine use request is discretionary, unless the SJA is otherwise required by law or policy to provide that information to the victim or VC. See DAFI 51-207, paragraph 5.11.

8.5.3. Pursuant to an official or routine use request, SJAs have discretion to release records that are minimally required to accomplish the VC’s intended use as articulated in the request. See DoD 5400.11-R, paragraph C4.2.1. Such records may include but are not limited to the following items:

8.5.3.1. Copies of the VC’s client’s statements and documents provided by the client.

8.5.3.2. Copies of or access to statements by the accused or another witness implicating an Article 6b, UCMJ right or privilege of VC’s client. For example, evidence that could potentially be covered under M.R.E. 412 or another privilege.

8.5.3.3. Copies of or access to any evidence or information that could suggest a safety concern to the VC’s client. Any victim or witness should immediately be informed of any information that suggests a safety concern for that victim or witness.

8.5.3.4. Copies of any evidence directly relating to or derived from the VC’s client. For example, photos, medical records, or communications by the VC’s client.

8.5.3.5. Copies of or access to evidence or information that could indicate retaliation against or ostracism towards the VC’s client.

8.5.3.6. Copies of or access to evidence directly relating to an alleged offense against the VC’s client.

8.5.4. Releasing Privacy Act Material to VC. Trial counsel should redact Privacy Act information regarding individuals other than the attorney’s client. An example is SSNs of other victims, which have no relevance to the case. When Privacy Act material is not redacted in official use material, VCs should take appropriate steps to guard against improper release of this information. SJAs should consider obtaining agreement from civilian counsel that they will return the Report of Investigation at the conclusion of the case or post-trial consistent with the admonitions of *Gray v. Mahoney*, 39 M.J. 299 (C.M.A. 1994), or in the alternative merely providing access to the report. Further, SJAs must obtain a signed statement from the civilian

VC stating counsel agrees not to release any protected information to others not involved with representing the victim. A template is available on the VMJD and AF/JAJM Teams page.

8.5.5. Releasing Privacy Act Material to Victims. When a victim is making the request on their own and is otherwise unrepresented, Government may provide access to requested material as a routine use under the Privacy Act SORN for “Military Justice and Civilian Criminal Case Records,” DoD 0006. If the government chooses to provide copies, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

8.5.6. Law Enforcement Records.

8.5.6.1. Draft Documents and Unpublished Reports of Investigations. SJAs may not release unpublished law enforcement ROIs (or portions of ROIs, to include statements and summaries of statements) without prior coordination with the relevant law enforcement agency. SJAs may either forward the request or direct the requester to the commander or equivalent for the law enforcement agency that generated the draft/unpublished report.

8.5.6.2. Published ROIs. SJAs must consult with the commander or equivalent for the law enforcement agency that generated the report before releasing published law enforcement ROIs or portions thereof to any DC or VC. The law enforcement commander or equivalent shall have the opportunity to object or raise any concerns (e.g., tradecraft, privileged matters) prior to the SJA carrying out discovery or disclosure requirements of such material as articulated in the UCMJ, R.C.M., and DoD and DAF policies.

8.5.7. Decisions to release any documents or portion thereof over the objection of the law enforcement commander, or to deny such release, must be memorialized in writing.

8.5.8. The responsibilities in this section are delegable no lower than the DSJA unless otherwise stated herein.

**8.6. Victims’ Counsel Responsibilities.** All requests must be in writing and sufficiently detailed to allow the SJA to respond to the request. All counsel must take necessary steps to protect information from improper release. See [paragraph 8.5.4](#).

### ***Section 8C—Confidential or Otherwise Protected Information***

#### **8.7. Restricted and Unrestricted Reports of Sexual Assault and Sexual Harassment.**

8.7.1. Restricted Reporting. Restricted reporting allows a sexual assault or sexual harassment victim to confidentially disclose the details of the assault to specified individuals and receive care and access to support services, including medical care and counseling, without triggering the official investigative process.

8.7.1.1. In cases where a victim of sexual assault selects the restricted reporting option by completing and signing Department of Defense (DD) Form 2910, *Victim Reporting Preference Statement*, providers authorized to receive such reports under DAFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program* or DoDD 6495.01, *Sexual Assault Prevention and Response (SAPR) Program*, may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by DoDI, DAF policy or law. **(T-0)** A sexual assault victim may

elect to convert a restricted report to an unrestricted report at any time by completing a DD Form 2910 and selecting the unrestricted reporting option.

8.7.1.2. In cases where a victim of sexual harassment selects the restricted reporting option by completing and signing the *Military Sexual Harassment Victim Reporting Preference Statement* (hereinafter *Preference Statement*) in accordance with DAFI 90-6001, those authorized to receive the restricted report may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by DoDI, DAF policy, or law. **(T-0)** A sexual harassment victim may elect to convert a restricted report to an unrestricted report by completing the *Preference Statement*.

8.7.2. The SARC, assigned Victim Advocate, and health care providers must consult with the servicing legal office, in the same manner as other recipients of privileged information, to determine if an exception applies permitting disclosure of identifying information. For offenses under OSTC authority, the servicing legal office shall coordinate with an STC prior to responding. Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter is resolved in accordance with DAFI 90-6001.

8.7.3. Unrestricted Reporting. Officially, an unrestricted report of a sexual assault can only be made via DD Form 2910. M.R.E. 514 protects statements made by the victim to specified individuals such as the SARC or a victim advocate, enabling the confidential disclosure of a sexual assault, but the filing of an unrestricted report triggers a notification to OSI.

8.7.4. OSTC Notification. Sexual assault, and substantiated formal allegations of sexual harassment after 1 January 2025, are covered offenses, and the OSTC District Office shall be notified of unrestricted reports of misconduct that may constitute sexual assault or sexual harassment.

8.7.5. Independent Investigation. An independent investigation is an official law enforcement investigation not initiated by a victim's report of sexual assault (via completion of DD Form 2910). An independent investigation may be initiated based on independently acquired information, such as when a commander immediately notifies OSI or the appropriate MCIO with information about a sexual assault from a source other than the victim or from other sources to law enforcement (e.g., friend of the victim or witness to the crime). Refer to [Section 33C](#) for Defense Sexual Assault Incident Database (DSAID) reporting requirements associated with unrestricted reports and independent investigations of sexual assault. OSI or the appropriate MCIO will follow the guidance in DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*, when they receive a third-party report of a sexual assault.

## **8.8. Restricted and Unrestricted Reports of Domestic Abuse.**

8.8.1. Restricted Reporting. Restricted reporting is a process allowing an adult victim of domestic abuse, who is eligible to receive military medical treatment the option of confidentially reporting an incident of domestic abuse to a DAVA, FAP staff member, or any MTF healthcare provider for the purpose of receiving medical care, supportive services, and/or advocacy and information without initiating the investigative process or notification to the victim's or alleged offender's commander. See DAFI 40-301, *Family Advocacy Program*; DoDI 6400.06. M.R.E. 514 protects statements made by an alleged victim to victim advocates.

8.8.2. Unrestricted Reporting. A process allowing a victim of domestic abuse to report an incident using chain of command, law enforcement or OSI and the FAP for clinical intervention. Victims of domestic abuse who choose to pursue an official command or criminal investigation of an incident should use these reporting channels. See DAFI 40-301.

8.8.3. OSTC Notification. Domestic violence is a covered offense, and the OSTC District Office shall be notified of unrestricted reports of misconduct that may constitute domestic violence.

**8.9. Confidential Drug or Alcohol Abuse Treatment Records.** Federal statutes and regulations restrict the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with a federal drug and alcohol abuse education, prevention, training, treatment, rehabilitation, or research program. Refer to 42 U.S.C. § 290dd-2, *Confidentiality of Records*, and 42 C.F.R. § 2.1, *Statutory authority for confidentiality of substance use disorder patient records*.

8.9.1. Although the interchange of records entirely within the armed forces is exempt from the prohibitions in [paragraph 8.9](#), the DoD adopted the standards as a matter of policy to the extent it provides such records may not be used to initiate or substantiate any criminal charges against the rehabilitant, except as authorized by a court order issued under 42 U.S.C. § 290dd-2 and as allowed in DAFMAN 44-197, *Military Drug Demand Reduction Program*.

8.9.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient, in the following circumstances:

8.9.2.1. As evidence for the defense before findings.

8.9.2.2. As evidence in mitigation or extenuation in pre-sentencing proceedings.

8.9.2.3. After trial in support of clemency or clemency petitions to TJAG or SecAF.

8.9.3. 42 C.F.R. § 2.31, *Consent requirements*, outlines the procedures to be followed in authorizing release of the records by the accused-patient. Discussion of the records in open court should be avoided to the extent feasible.

8.9.4. An accused may limit release to necessary and relevant records, but an accused cannot selectively authorize disclosure of the records to mislead the court or other parties to the trial (e.g., disclosing favorable early records, but not later ones indicating regression). If there is reason to believe an accused is selectively authorizing disclosure, the matter may be resolved among counsel or by an in camera review of the records by the military judge.

8.9.5. Drug and alcohol abuse records may be disclosed at trial without the consent of the accused to rebut or impeach evidence presented by the accused. See *United States v. Evans*, 20 M.J. 504 (A.F.C.M.R. 1985); *United States v. Fenyo*, 6 M.J. 933 (A.F.C.M.R. 1979), *pet. denied*, 7 M.J. 161 (C.M.A. 1979).

## **8.10. Limited Privilege Suicide Prevention (LPSP) Program.**

8.10.1. Overview & Responsibilities. The LPSP program is designed to facilitate timely mental health treatment for Airmen and Guardians facing adverse actions who are at risk of suicide. Counseling, therapy or treatment, and admissions can all qualify under this program.

8.10.1.1. Mental Health Facility Responsibilities. Mental health facilities provide patient care in accordance with their own regulations and guidance.

8.10.1.2. Commander Responsibilities. Commanders direct mental health evaluations in accordance with DoDI 6490.04, *Mental Health Evaluations of Members of the Military Services*, and AFI 44-172, *Mental Health*, paragraph 6.9.. (T-0)

8.10.1.3. Legal Office Responsibilities. Legal offices or medical law attorneys provide legal advice to the mental health facility and treatment providers regarding the LPSP program. Legal offices are responsible for training those involved in the military justice process on the LPSP program.

8.10.2. Program Objective. The objective of the LPSP program is to identify and treat Airmen and Guardians who, because of the stress of impending disciplinary action under the UCMJ, are at risk for suicide. Experience has shown that military members are often discouraged from seeking or participating in mental health treatment due to a perceived risk that doing so may result in worse outcomes in a future disciplinary action. In order to encourage and facilitate treatment, the LPSP program limits the use of certain confidential communications in disciplinary actions and service characterization in administrative separations.

8.10.3. Program Eligibility. Any Airman or Guardian who has been officially notified, verbally or in writing, that he or she is under investigation or is suspected of having committed an offense under the UCMJ is eligible for the LPSP program. Eligible Airmen and Guardians should be informed of the LPSP program and, when appropriate, encouraged to seek treatment from a mental health provider. Any person may inform the member about the program, including defense counsel and defense paralegals, commanders, first sergeants, supervisors and all those involved in the military justice process.

8.10.4. Initiation. An Airman or Guardian enters the LPSP program when, subsequent to the notification described in [paragraph 8.10.3](#), the Airman or Guardian receives treatment or care from a mental health provider (MHP). This may be the result of a command directed mental health evaluation, on the Airman's or Guardian's own initiative, or a continuation of ongoing or previous treatment.

8.10.5. Duration. The limited protections provided by the LPSP program shall apply until the member is no longer receiving mental health treatment or until the investigation and subsequent disciplinary action, if any, is closed. (T-1) However, matters that were disclosed while the member was in the LPSP program remain protected.

8.10.6. Limited Protection. Members in the LPSP program are granted limited protection with regard to information revealed in, or generated by, their clinical relationship with MHPs. Such information may not be used in any existing or future UCMJ action or when weighing characterization of service in an administrative separation. Commanders or persons acting under their authority, such as SJAs, squadron executive officers, or first sergeants, may use the information for any other purposes authorized by law, this instruction, and other AFIs and programs.

8.10.7. The limited protection provided by the LPSP program does not apply to:

8.10.7.1. The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which evidence, generated by and during the LPSP relationship, has first been introduced by the member.

8.10.7.2. Disciplinary or other action based on independently derived evidence (other than from communications falling under the LPSP program).

## Chapter 9

### PRETRIAL CONFINEMENT (R.C.M. 305)

**9.1. General Provision.** No person may be ordered into pretrial confinement except for when there is probable cause as defined in R.C.M. 305(d). **(T-0)** Normally, offenses intended to be disposed of by a SCM do not warrant pretrial confinement. **Note:** Imposition of pretrial confinement or restraint will trigger the speedy trial clock under R.C.M. 707 and the speedy trial analysis under Article 10, UCMJ.

**9.2. Limitation on Confinement Location.** Military members may not be placed in confinement in immediate association with enemy prisoners, or foreign nationals detained under the law of war who are not otherwise members of the armed forces. See Article 12, UCMJ. **(T-0)**

#### **9.3. Required Notifications.**

9.3.1. STC Notification. If the member is alleged to have committed an offense under OSTC authority, the servicing legal office must ensure the assigned STC is notified when the member is ordered into or released from pretrial confinement. See R.C.M. 305(f). Installation legal personnel should seek STC input, guidance, and assistance at all stages of the pretrial confinement process.

9.3.2. Victim Notifications. In cases involving a victim as defined by Article 6b, UCMJ, the SJA must ensure said victim is notified:

9.3.2.1. Upon the confinee's entering pretrial confinement. **(T-0)**

9.3.2.2. Upon the confinee's release from pretrial confinement. **(T-0)**

9.3.2.3. Additionally, the Pretrial Confinement Review Officer (PCRO), through the SJA or government representative, is required to ensure the victim has the opportunity to make a statement either personally or through counsel at the pretrial confinement review hearing. **(T-0)**. See R.C.M. 305(j)(2)(A)(iv).

**9.4. Procedures.** Once a member is ordered into pretrial confinement, follow the procedures required in R.C.M. 305, to include providing initial notifications to the accused.

**9.5. 48-Hour Probable Cause Determination (R.C.M. 305(j)(1)).** Within 48 hours of the imposition of military pretrial confinement (including confinement at a civilian facility at the request of the military), a neutral and detached officer must review the adequacy of probable cause to continue pretrial confinement. **(T-0)** R.C.M. 305(j)(1); *Gerstein v. Pugh*, 420 U.S. 103, 124–25 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 45 (1991). The determination must be in writing and included in the ROT. A template is available on the VMJD and AF/JAJM Teams page. If the probable cause determination is not made within 48 hours, the government may have to establish the existence of a bona fide emergency or other extraordinary circumstances.

9.5.1. An officer is neutral and detached if they have not demonstrated personal bias or involvement in the investigative or prosecutorial process against the accused. *United States v. McLeod*, 39 M.J. 278 (C.M.A. 1994). Factors to consider in determining whether an officer is neutral and detached include whether the officer is the formal accuser on the charge sheet, the officer who ordered the accused into confinement, or is directly or particularly involved in the



command's law enforcement functions. *United States v. Rexroat*, 38 M.J. 292, 298 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394, 397 (C.M.A. 1982).

9.5.2. The PCRO's seven-day review in [paragraph 9.7](#) may satisfy the 48-hour probable cause determination requirement if the PCRO's decision memorandum is completed within 48 hours of the imposition of confinement. In such cases, the PCRO's memorandum must specifically state when the probable cause determination was made. **(T-0)** Likewise, the 72-hour commander's decision and memorandum in [paragraph 9.6](#) may satisfy the 48-hour probable cause requirement if the commander is neutral and detached and the commander's memorandum is completed within 48 hours of the imposition of confinement.

9.5.3. If a military member is arrested by civilian authorities and subsequently transferred to military custody and placed in military pre-trial confinement, a 48-hour probable cause determination is still required regardless of whether civilian authorities made a probable cause determination. **(T-0)** If civilian authorities made a probable cause determination, include that in the ROT in addition to the 48-hour determination required under R.C.M. 305(j).

**9.6. 72-Hour Commander's Decision and Memorandum (R.C.M. 305(i)(2)(C)).** The commander shall decide whether to continue pretrial confinement no later than 72 hours after (a) a military member is ordered into pretrial confinement, or (b) after the commander's receipt of a report that a member of the commander's unit or organization has been confined under military custody, whichever situation is applicable. **(T-0)** The commander must address the requirements for confinement in R.C.M. 305(i)(2)(B) and should consider the factors in the Discussion to that section. When deciding to continue pretrial confinement, the commander must prepare a written memorandum in accordance with R.C.M. 305(i)(2)(C). The memorandum is then forwarded to the PCRO, through the SJA and SPCMCA. If a court-martial results, the commander's memorandum is included in the ROT. A template is available on the VMJD and AF/JAJM Teams page.

**9.7. Pretrial Confinement Review (R.C.M. 305(j)(2)).** Within seven calendar days of the member being placed in military pretrial confinement, the PCRO reviews the probable cause determination and makes a decision about the necessity for continued pretrial confinement. The day placed in confinement counts as day one and the date of review counts as one day.

9.7.1. Appointment of a Pretrial Confinement Review Officer (PCRO) (R.C.M. 305(j)(2)). The SPCMCA appoints, in writing, a reasonable number of qualified officers to serve as PCROs. Chaplains, legal office personnel, law enforcement personnel, and court-martial convening authorities may not serve as PCROs. When the situation warrants, a PCRO from another military service may be appointed. Similarly, an otherwise qualified Air Force or Space Force member may serve as a PCRO for another military service. SJAs must ensure PCROs are briefed on their duties when appointed and updated as appropriate thereafter.

9.7.2. The PCRO reviews the 72-hour commander's decision to continue pretrial confinement and considers any matters submitted by the pretrial confinee.

9.7.3. Hearing. The PCRO conducts a hearing at which the pretrial confinee and defense counsel, if practicable, are allowed to appear and make a statement before the PCRO. The accused does not have a right to have defense counsel appear in person before the PCRO. Defense counsel may represent their client at the hearing via telephone or video teleconference technology as long as there is a mechanism for defense counsel and accused to have private



and confidential communication as necessary. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the pretrial confinement review is not an adversarial proceeding, the PCRO may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. The PCRO completes a written summary of the relevant testimony of any witnesses, including information elicited by defense counsel. The only rules of evidence that apply are M.R.E. 302, 305, and 501-514. See R.C.M. 305(j)(2)(A)(ii).

9.7.3.1. If custody classification does not dictate a distinctive uniform, a pretrial confinee is allowed to wear a duty uniform for the hearing rather than civilian confinement attire. See DAFMAN 31-115, Vol 1, *Department of the Air Force Corrections System*.

9.7.3.2. The pretrial confinee, defense counsel, or both may present evidence related to confinement conditions in apparent violation of Articles 12 or 13, UCMJ. If such evidence is presented, the PCRO summarizes the evidence in the PCRO memorandum and informs the SJA. The SJA reviews the evidence pertaining to allegedly illegal confinement conditions and works with the member's commander and the local Security Forces commander or other confinement officials to remedy the situation as necessary.

9.7.4. Upon completion of the PCRO's review, the PCRO approves continued confinement or orders immediate release. The PCRO must find the requirements of R.C.M. 305(i)(2)(B) have been proven by a preponderance of the evidence in order to continue pretrial confinement. **(T-0)** If the requirements of R.C.M. 305(i)(2)(B) have not been proven, the PCRO orders immediate release of the pretrial confinee. The PCRO may not impose conditions on release but may recommend the commander impose a less severe form of pretrial restraint.

9.7.5. The PCRO must convey their pretrial confinement decision within seven days of the imposition of confinement. See R.C.M. 305(j)(2)(C). Within 24 hours of conveying the pretrial confinement decision, the PCRO must complete a memorandum of the PCRO's conclusions and the findings on which they are based. See R.C.M. 305(j)(2)(D). A copy of all documents and summaries of all oral statements considered by the PCRO are attached to the memorandum. The memorandum with attachments is provided to the SPCMCA, the SPCMCA's SJA, the confinement officer, the pretrial confinee, and the pretrial confinee's defense counsel. A sample format for the PCRO's memorandum is listed on the VMJD and AF/JAJM Teams page.

**9.8. Review by military judge.** A military judge shall review the propriety of pretrial confinement upon motion for appropriate relief in a pre-referral proceeding conducted in accordance with R.C.M. 309, or once the charges for which the accused has been confined are referred to trial. See R.C.M. 305(k).

**9.9. Pretrial Restraint Upon Release From Confinement.** A commander may impose any alternative lesser form of pretrial restraint authorized by R.C.M. 304(a)(1)-(3), if release is ordered by the PCRO. Re-confinement after release is limited to circumstances provided in R.C.M. 305(m). *United States v. Mahoney*, 36 M.J. 679 (A.F.C.M.R. 1992) (dictum). The requirements of this chapter apply to a member upon imposition of re-confinement.

**9.10. Suicide Prevention.** Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement or pretrial restraint. Such an accused should be referred to mental health practitioners for evaluation and treatment and, if

necessary, involuntary commitment in a mental health facility. *United States v. Doane*, 54 M.J. 978, 982 (A.F.C.C.A. 2001).

**9.11. Pretrial Determination of Mental Competence.** A convening authority may determine the place and condition of pretrial detention, including confinement in a civilian facility, for the purpose of evaluating the competency of the accused. The conditions may not be more harsh than necessary to ensure the accused's presence at trial, and the facility must be capable of conducting the competency evaluations and providing care and treatment of the accused. See Article 13, UCMJ; R.C.M.s 706 & 909; *Short v. Chambers*, 33 M.J. 49, 52 (C.M.A. 1991); 18 U.S.C. § 4241.

## Chapter 10

### CONSIDERATIONS PRIOR TO DETERMINING DISPOSITION OF CHARGES

#### *Section 10A—Victims of Sexual Offenses: Views on Prosecutorial Jurisdiction*

#### **10.1. Consideration of Victim's Views on Jurisdiction and Disposition (R.C.M. 306(e) and R.C.M. 306A(d)).**

10.1.1. Victim Preference for Civilian or Military Prosecution. Victims of any sex-related offense that occurs in the United States have the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

##### 10.1.1.1. Sex-Related Offenses.

10.1.1.1.1. Offenses under command authority are processed under R.C.M. 306(e), and qualifying sex-related offenses are allegations arising under Articles 120, 120a, 120b, 120c, or 125, UCMJ, including attempts thereof, which occurred prior to 1 January 2019; or any allegation arising under Articles 120, 120b, 120c, or 130, UCMJ, including attempts thereof, which occurred between on or after 1 January 2019 and before 28 December 2023.

10.1.1.1.2. Offenses under OSTC authority are processed under R.C.M. 306A(d), and qualifying sex-related offenses are allegations arising under Article 120, 120b, 120c, or 130, UCMJ, or any attempt thereof under Article 80, UCMJ, which occurred on or after 28 December 2023.

##### 10.1.1.2. Obtaining Victim's Preference for Jurisdiction.

10.1.1.2.1. In all cases where a sex-related offense is alleged to have occurred in the United States, the SJA must obtain the victim's preference as to whether the case should be prosecuted by the military or civilian prosecutors as early in the process as possible. **(T-0)** For sex-related offenses under OSTC authority, the legal office must coordinate with an STC prior to seeking a victim's jurisdictional preference.

10.1.1.2.2. The victim's preference will be annotated on the template found on the VMJD and AF/JAJM Teams Page. If the victim declines to complete the form, the SJA or STC must document on the template that the victim declined to complete the form. If seven days have passed from solicitation of the victim's preference without a response from the victim (or detailed VC), the SJA or STC may presume that the victim does not wish to express a preference. A copy of the notification memorandum and the indorsement with the victim's preference must be maintained in the case file. Template notification memoranda are available on the VMJD and AF/JAJM Teams Page.

10.1.2. Victim's Disposition Input. Although the victim's preference is not binding, the disposition authority, must consider the victim's views before taking action. Where the disposition authority is considering taking no action or disposition by means other than court-martial, the disposition authority will, through the SJA, solicit the victim's inputs prior to rendering a final decision. The disposition authority should consider the victim's input prior to rendering a final decision. For offenses under OSTC authority, the legal office shall

coordinate with an STC prior to seeking a victim's disposition preference. **(T-0)** If seven days have passed from solicitation of the victim's input without a response from the victim (or detailed VC), the SJA may presume that the victim does not wish to express input as to disposition. Refer to DAFI 51-207 for additional information.

#### 10.1.3. Civilian Prosecution Preferred.

10.1.3.1. If the offense was committed in an area of concurrent jurisdiction, the SJA, or STC for offenses over which OSTC has exercised authority, should determine whether the victim has a preference for prosecution by the state or federal government or has no preference.

10.1.3.2. In the event the victim indicates they prefer civilian prosecution of the sex-related offense, the SJA, or STC for offenses over which OSTC has exercised authority, must notify the prosecutorial agency or agencies in that jurisdiction of the victim's preference. If the offense was committed in an area of exclusive federal jurisdiction and the victim indicates a preference for civilian prosecution, the SJA or STC, as applicable, must notify the United States Attorney's Office. The SJA or STC must then notify the victim of the civilian agency's response. Forms for accomplishing both notifications are on the VMJD and AF/JAJM Teams page.

### ***Section 10B—Initial Disposition of Offenses under OSTC Authority (R.C.M. 306A)***

**10.2. Disposition Authority.** Only an STC may dispose of offenses under OSTC authority. These include covered, known, and related offenses, as outlined in [Chapter 4](#). See also Article 1(17), UCMJ, and R.C.M. 303A. Within OSTC, disposition authority is offense-specific and withheld to certain duty positions. For each offense under OSTC authority, an STC will either prefer a charge or defer the offense to command.

**10.3. Commander Disposition Input.** Commanders may provide non-binding disposition input via their servicing legal office to OSTC for members of their unit who are a victim and/or an accused of offenses under OSTC authority. A template for the commander's disposition input is on the VMJD and AF/JAJM Teams page.

**10.4. Deferral.** Deferred offenses will be forwarded by the OSTC District Office to the commander or convening authority via the servicing legal office.

10.4.1. Following deferral, command may take any lawful disposition action for the deferred offense(s), but a convening authority may not refer a deferred covered offense to a special or general court-martial (GCM).

10.4.2. If command seeks reconsideration of the deferral decision for covered offense(s), the servicing legal office will coordinate the request with the OSTC District Office. This includes requests for reconsideration following an accused's turndown of NJP and demand for trial by court-martial under Article 15, UCMJ.

***Section 10C—Initial Disposition of Qualifying Sex-Related Offense Allegation(s) Committed Prior to 28 December 2023 and Under Command Authority (R.C.M. 306)***

**10.5. Initial Disposition of Qualifying Sex-Related Offense Allegation(s) (R.C.M. 306).** This provision applies to offenses committed prior to 28 December 2023 and not otherwise under OSTC authority.

10.5.1. For qualifying offenses, the Secretary of Defense has withheld Initial Disposition Authority (IDA) from all commanders within the DoD who do not possess at least SPCMCA and who are not in the grade of O-6 or higher, with respect to any of the following alleged offenses if committed prior to 28 December 2023:

10.5.1.1. Rape or sexual assault, in violation of Article 120, UCMJ;

10.5.1.2. Forcible sodomy, in violation of Article 125, UCMJ (which was in effect prior to 1 January 2019); and

10.5.1.3. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

10.5.2. For those offenses for which IDA is withheld, the subordinate commander forwards the case file, along with a written recommendation, to the convening authority with IDA.

10.5.3. The convening authority with IDA is responsible for determining what initial disposition action is appropriate, including whether further action is warranted. **(T-0)** R.C.M. 306(c) describes initial disposition as no action, administrative action, NJP, or disposition of charges (dismissing, referring, or forwarding for disposition to a superior or subordinate authority). The initial disposition by the convening authority with IDA may be to permit the subordinate commander to take action in the case in accordance with the subordinate commander's recommendation. **Note:** Preferral is not an initial disposition action, thus a subordinate commander may prefer charges before forwarding them to the convening authority with IDA for disposition.

10.5.3.1. The convening authority with IDA shall base the disposition decision upon review of the following:

10.5.3.1.1. Matters transmitted;

10.5.3.1.2. Court-martial charges, if any;

10.5.3.1.3. Any independent review and recommendation received;

10.5.3.1.4. Matters submitted by the accused, if any;

10.5.3.1.5. Victim input, if any;

10.5.3.1.6. Consultation with a judge advocate; and

10.5.3.1.7. The factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense's Disposition Guidance).

10.5.4. The convening authority with IDA must provide the GCMCA (who would have been in the position to refer charges) in the grade of O-7 or above written notice of initial disposition within 30 days following the date of the initial disposition decision. See [paragraph 10.6](#). The SJA supporting the convening authority with IDA should consider coordinating with the GCMCA/SJA to determine whether the convening authority with IDA should await a GCMCA

review decision prior to taking further action (e.g., send the case back to the subordinate commander for appropriate action or otherwise dispose of a case).

10.5.5. Collateral Misconduct. The withholding of IDA applies to all alleged offenses arising from or relating to an allegation of a qualifying offense as listed in [paragraphs 10.5.1](#). This includes collateral misconduct by the accused or victim. See [paragraph 10.9](#) for the Safe-to-Report policy for victim collateral misconduct.

## **10.6. GCMCA Review of Initial Disposition Decision for Qualifying Sex-Related Offenses Under Command Authority.**

10.6.1. For offenses under command authority, if the convening authority with IDA recommends no qualifying specifications under paragraphs [10.5.1.1](#) through [10.5.1.3](#) as to a victim be referred, see [paragraph 13.6](#) for documentation and review requirements. Forwarding charges and specifications for referral to the GCMCA in the grade of O-7 or above satisfies this requirement, even in cases where the GCMCA subsequently declines to refer the charges.

10.6.2. When disposition of the alleged offense is complete, the GCMCA signs the written acknowledgment of the action by the convening authority with IDA. This responsibility is not delegable. A copy of the GCMCA's acknowledgment serves as a notice of disposition and is forwarded by the legal office supporting the SPCMCA to OSI. Refer to [Chapter 29](#) for additional information on disposition data submission to law enforcement. See, e.g., [Paragraph 29.12](#). Templates are located on the VMJD and AF/JAJM Teams page.

10.6.3. If the convening authority assesses there is insufficient evidence to support the prosecution of a qualifying sex-related offense and decides not to refer such specification to a general or special court-martial, consult DAFI 51-207 for notification requirements to victims.

### ***Section 10D—Coordination on All Cases Involving Separate but Concurrent Prosecution***

**10.7. Required Coordination for Cases Involving Concurrent Military and Civilian Prosecutions.** Additional coordination is required before proceeding in cases where the military will prosecute some specifications and the local civilian authorities prosecute other offenses.

10.7.1. The servicing legal office shall coordinate with AFSFC and AF/JAJG on the terms of the arrangement before entering into an arrangement or agreement with civilian authorities regarding the order in which the military and civilian cases will proceed and the order in which the accused will serve confinement, if any is adjudged after conviction. For offenses under OSTC authority, coordination must also include the assigned STC.

10.7.2. Specifically, the following matters should be considered and discussed with AFSFC, AF/JAJG, and OSTC, as appropriate:

10.7.2.1. The impact the order of prosecution will have on the subsequent prosecution;

10.7.2.2. Estimated trial dates for the military or civilian authorities;

10.7.2.3. Likelihood of a delay;

10.7.2.4. Potential for loss of evidence and/or witnesses between investigation, first trial, and the second trial;

10.7.2.5. Impact of result of first trial on the prosecution of the second; and

10.7.2.6. Impact of the order of military and civilian prosecutions may have on a plea agreement with the accused, if any.

10.7.2.7. The accused, if convicted, will remain in the military until the duration of military confinement is served. Therefore, if civilian confinement is served prior to military confinement, the accused will remain in the military for the duration of both the civilian confinement and the military confinement.

10.7.2.8. The impact a delay in serving military confinement may have on appellate rights of the accused.

***Section 10E—Command Influence (Article 37, UCMJ; R.C.M. 104)***

**10.8. Independent Command Authority.** The military justice system must promote the independence of command authority and operate free of unlawful command influence. To ensure a fair and just outcome in every case, court-martial convening authorities, commanders, SJAs, and all other personnel involved in the military justice process should be sensitive to unlawful command influence and circumstances that might lead to it. See Article 37, UCMJ.

***Section 10F—Safe-to-Report Policy (FY 2021 NDAA, Section 539A)***

**10.9. Safe-to-Report Policy.** If there are allegations of collateral misconduct committed by a victim of an alleged sexual assault, the Safe-to-Report Policy required by section 539A of the FY 2021 NDAA, and implemented by the DoD, prescribes how such misconduct will be handled.

10.9.1. For purposes of the Safe-to-Report Policy, “sexual assault” is more broadly defined than for IDA purposes as described above: alleged penetrative and non-penetrative violations of the applicable version of Article 120, UCMJ; alleged violations of Article 125, UCMJ for acts of forcible sodomy of a victim age 16 years old or older, occurring before 1 January 2019; and alleged attempts and conspiracies to commit any of these offenses.

10.9.2. Collateral misconduct means misconduct that is potentially punishable under the UCMJ that: 1) is committed close in time to or during the sexual assault, and directly related to the incident that forms the basis of the sexual assault allegation; and 2) is discovered as a direct result of the report of or the investigation into the sexual assault.

10.9.3. Collateral misconduct by a victim of an offense over which OSTC has exercised authority constitutes a related offense over which OSTC may choose to exercise authority. If OSTC declines to exercise authority or defers victim collateral misconduct to command, commanders must follow the Safe-to-Report Policy outlined in this section.

10.9.4. The Safe-to-Report Policy is applicable to any allegation of sexual assault, regardless of whether the victim has filed a restricted or unrestricted report. The threshold issue for the applicability of the Safe-to-Report Policy is determining whether the alleged collateral misconduct in question is “minor” or “non-minor.” The authority to make such a determination is withheld to the IDA, as outlined in [paragraph 10.5.1](#). The IDA’s determination is discretionary based on the totality of the circumstances involved in the case, but the IDA must assess the alleged collateral misconduct against the delineated aggravating and mitigating circumstances at a minimum.

10.9.5. If the alleged collateral misconduct is deemed minor, then the Safe-to-Report Policy applies and the victim will not be disciplined.

10.9.6. If the alleged collateral misconduct is non-minor, then the Safe-to-Report Policy does NOT apply, and the victim could be subject to disciplinary action.

10.9.7. In addition to evaluating the nature of the alleged collateral misconduct itself, commanders shall take into account the following factors in determining whether the alleged collateral misconduct is minor or non-minor.

10.9.7.1. Aggravating circumstances include, but are not limited to, whether the alleged misconduct intentionally or unintentionally: (a) Threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged perpetrator(s) of an assault; (b) Resulted or imminently threatened to result in failure of a specified military mission or objective; or (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.

10.9.7.2. Mitigating circumstances include, but are not limited to: (a) The victim's age and military experience level; (b) Whether the suspect is in a position of authority over the victim or a higher grade than the victim; (c) Whether the suspect 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; or (e) The victim engaging in misconduct after the sexual assault, which may be related to symptoms of exposure to trauma (e.g., the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms).

10.9.8. Convening authorities exercising IDA retain discretion to make the final determination of whether the alleged collateral misconduct is minor or not, based on their analysis of aggravating and mitigating factors. Commanders shall consult with their servicing SJA in reaching these determinations and shall make such determinations in writing. SJAs are required to track all such determinations to include why the collateral misconduct was deemed non-minor, or why the collateral misconduct was considered minor and subject to the Safe-to-Report Policy.

10.9.8.1. If the final determination is made that the alleged collateral misconduct is minor, the individual shall not be disciplined. In this context, the term "discipline" includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including: letters of reprimand, counseling, or admonishment; written records of individual counseling in official personnel files; imposition of NJP; preferral of charges; initiation of involuntary administrative separation proceedings; or administrative demotion. This also includes discipline under cadet/midshipman regulations at the Military Service Academies.

10.9.8.2. This policy does 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 temporarily suspending



access to critical positions such as positions in the personnel reliability program (PRP). It may be appropriate to temporarily decertify the victim from PRP status or other critical positions until appropriate evaluations can be conducted.

10.9.9. If the victim is a military member who falls under a separate chain of command, the convening authority exercising IDA shall consult with the SPCMCA in the victim's chain of command and shall document such consultation in writing before making the determination as to whether the collateral misconduct is minor or not.

## Chapter 11

### PREFERRAL OF CHARGES (ARTICLE 30, UCMJ; R.C.M. 307)

#### *Section 11A—Miscellaneous Considerations Prior to Preferral of Charges*

**11.1. Accuser is Senior to the Convening Authority.** Consult R.C.M. 504(c)(2) and (3) when the accuser is senior in rank to the convening authority.

**11.2. Effect of Preferral on Statute of Limitations in Lengthy Absence Cases.** Effective 14 November 1986, SCMCAs are no longer required to receipt for charges alleging either desertion or absent without leave in order to toll the statute of limitations. Article 43, UCMJ. Therefore, where an unauthorized absence began after 14 November 1986, the statute of limitations is automatically tolled. With the exception of those cases involving desertion or absent without leave during a time of war, if the unauthorized absence began before or on 14 November 1986, the statute of limitations was tolled only (1) upon receipt of sworn charges and specifications by an officer exercising summary court-martial convening authority within the statute of limitations period; or (2) if the accused was absent from territory in which the United States has authority to apprehend the accused, in the custody of civil authorities, or in the hands of the enemy.

#### **11.3. Involuntary Extension Beyond ETS.**

11.3.1. DAF members may be involuntarily retained beyond their ETS to undergo court-martial. The involuntary extension may be done in anticipation of the preferral of charges to include cases still in the investigative stage. The SJA notifies the Air Force Personnel Center's (AFPC) Separations Branch in writing through the local Force Support Squadron Career Development Section. Contact the Force Support Squadron Career Development Section to ensure the written notice was sent to AFPC and the involuntary extension was completed. AFPC/JA is available to assist SJAs with involuntary extensions of expiration of term of service. **Note:** An "administrative hold" may affect a member's date of separation and prevent a permanent change of station or temporary duty, but it does not affect a member's expiration of term of service or equate to an involuntary extension. See DAFI 36-2606; DAFI 36-3211, *Military Separations*; *Webb v. United States*, 67 M.J. 765 (A.F.C.C.A. 2009).

11.3.2. Time spent in confinement is considered "lost time" or non-creditable service if the member is currently serving an original enlistment, reenlistment or a voluntary extension of an enlistment. Time spent in confinement is not considered lost time if the member is serving on an involuntary extension of an enlistment. The member's expiration of term of service date will be adjusted to reflect either the amount of time the member spent in confinement, or the amount of time from date of confinement until the member reached their expiration of term of service in confinement, thereby extending the member's ETS. This is a result of the fact that a member signs a contract for a period of time, and the member still owes the government the amount of time that was lost to confinement. This is an automatic process that cannot be waived.

**11.4. Retirement Holds and Other Actions Taken to Suspend or Cancel Separation Processing.** If a member has applied to retire or has been approved to retire, the retirement may be suspended or cancelled by contacting the AFPC Retirements Branch with notice that the member is under investigation. For offenses under OSTC authority, notify the OSTC District Office of actions to suspend or cancel retirement. If charges do not materialize or a punitive

discharge is not adjudged at trial, the member's retirement may be reinstated, or they may reapply for retirement. Note that the common "administrative hold" may stop a member's permanent change of station or temporary duty, but it does not prevent a member from retiring on an approved retirement date or separating on an approved separation date. See DAFI 36-3203, *Service Retirements*.

**11.5. Accused With Prior Adjudged Punitive Discharge.** If an accused has an adjudged but unexecuted punitive discharge, the SJA for the SPCMCA immediately notifies AF/JAJM concerning preferral of new charges, with information copies sent to the appropriate GCMCA and MAJCOM/FLDCOM SJA. This notice enables AF/JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

**11.6. Recoupment.** If an accused received education assistance, special pay, or bonus money and faces separation or discharge before completion of the agreed-upon period of active duty, notice of recoupment should be given when court-martial charges are preferred, in accordance with 10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirements*, or 37 U.S.C. § 303a(e), *Special pay: general provisions*. The member should sign a statement of understanding regarding recoupment. A template is located on the VMJD and AF/JAJM Teams page. This notice is included in the ROT as an attachment in accordance with DAFMAN 51-203.

***Section 11B—Preferral of Charges (Article 30, UCMJ; R.C.M. 307)***

**11.7. Preparing the Charge Sheet for Preferral (DD Form 458, Charge Sheet).**

11.7.1. The servicing legal office prepares charges and specifications on the DD Form 458, *Charge Sheet*. The Charge Sheet is prepared by inputting the data into DCMS-AMJAMS and generating the electronic version of the DD Form 458. (**Note:** If DCMS-AMJAMS is unavailable, a charge sheet may be accomplished manually but must be updated immediately in AMJAMS once it becomes available.) Information in DCMS-AMJAMS is reflected as follows:

11.7.1.1. Blocks 1, 2, 3, and 4. Autofill information in DCMS-AMJAMS from AFPC and ensure its accuracy. Make pen and ink changes to the charge sheet to reflect any change in the accused's grade prior to arraignment by lining through and keeping the information legible. Government counsel should initial and date any changes. Changes should be updated in DCMS-AMJAMS.

11.7.1.2. Block 5. Enter the accused's assigned organization under the "Duty Status" tab. The address should reflect the base name, state and zip. Ensure the correct pull down is selected for the applicable MAJCOM or FLDCOM. For the squadron, enter "111th Civil Engineer Squadron," not "111th Civil Engineer Squadron Section." For ARC members serving on extended active duty, use the organization to which they are attached for active duty.

11.7.1.3. Block 6. The accused's current service is the date the current enlistment began for enlisted personnel or the Total Active Federal Military Service Date (TAFMSD) for officers. Extensions do not change the current enlistment date. This information can be found in the accused's personnel records or in the record review listing prepared by the

servicing personnel office. Double check the Reports on Individual Personnel (RIPs) against the information auto-filled from AFPC.

11.7.1.4. Block 7. The accused's current pay per month, to include cents, is entered automatically based on the listed grade and should be updated if necessary. If the accused's grade changes prior to the announcement of sentence, the pay may be corrected with a pen and ink change and initials. **Note:** Pay may also require correction if the incorrect grade is listed, the accused is promoted or demoted, or the accused is brought to trial in a subsequent calendar year.

11.7.1.5. Blocks 8 and 9. Include any form of restraint, including restraint by civilian authorities at the request of the Air Force. An example of this is when a member in "absent without leave" or "deserter" status is apprehended by civilian police and incarcerated or detained until DAF officials take custody of the accused. This is accomplished by adding the pretrial restraint folder under the pretrial information data in DCMS-AMJAMS.

11.7.2. Charges and Specifications. Consult R.C.M. 307 and refer to the sample specifications in the MCM, Part IV, and the Military Judges' Benchbook, Department of the Army (DA) Pamphlet 27-9. DCMS-AMJAMS will autofill the charge and specification indicators. When alleging Article 134, UCMJ, offenses, ensure the specification alleges the terminal element, as required by R.C.M. 307(c)(3). Review Appendix 12A in the MCM to determine if a lesser included offense (LIO) is designated as such by the President. 10 U.S.C. § 879(b)(2).

11.7.2.1. Format. Type the words "CHARGE" and "ADDITIONAL CHARGE" in all capital letters. "Specification" includes upper- and lower-case letters. Where more than one charge or specification is alleged, charges are numbered with Roman numerals (e.g., I, II, III) and specifications with Arabic numerals (e.g., 1, 2, 3). A single charge or specification is not numbered.

11.7.2.2. Additional Charges. When additional charges are preferred, add an "Additional Charges Preferred" Folder in DCMS-AMJAMS. If more charges are preferred after preferral of additional charges, add another "Additional Charges Preferred" folder in DCMS-AMJAMS. Manually edit the charge sheet to add the correct label with the written number for the additional charges (e.g., SECOND ADDITIONAL CHARGES, THIRD ADDITIONAL CHARGES).

11.7.2.3. Identification of the Accused. In the specifications, identify the accused by present grade, followed by the grade on the date of the alleged offense, if different. Use all capital letters. List known aliases. List the member's armed force. Do not include the MAJCOM or FLDCOM. For example. "In that TECHNICAL SERGEANT ADAM P. SMITH, United States Air Force, alias CAPTAIN JACK P. SMITH, United States Air Force, did,..." **Note:** Do not include the accused's unit or location of assignment unless directly pertinent to the offense charged. Change the accused's rank from the current rank to the rank at the time of the allegation only if pertinent to the offense charged. R.C.M. 307(c)(3), Discussion.

11.7.2.4. Identification of Victim. If the alleged victim is identified in the specification, do not put the victim's name or rank in all capital letters.

11.7.2.4.1. Victims of Sex-Related Offenses. Do not substitute initials for the name of sex offense victims. Initials will be substituted in an expurgated Statement of Trial Results (STR) and EoJ, if applicable.

11.7.2.4.2. Minors. Do not substitute initials for the name of children or minors listed in specifications, regardless of the nature of the offense charged. Initials will be substituted in an expurgated STR and EoJ, if applicable.

11.7.2.5. Pleading Check Cases. Where the offense involves use of a worthless check rather than a forged check, the contents need not be pled verbatim. See the Military Judges' Benchbook, DA Pamphlet 27-9, and consult with AF/JAJG.

11.7.2.6. Pleading Child Pornography Cases. Exercise care in drafting specifications in a case involving multiple images of child sex abuse. See *United States v. Piolunek*, 72 M.J. 830 (A.F.C.C.A. 2013), *aff'd*, 74 M.J. 107 (C.A.A.F. 2015). The best method of pleading a child pornography case will depend on the facts unique to that case. Offenses involving child sex abuse and child sex abuse material are covered offenses, so charges and specifications must be approved by an STC.

11.7.2.7. Pleading Article 93a, UCMJ, Cases. SecAF has promulgated required definitions for the offenses chargeable under Article 93a, UCMJ, in AFI 36-2909, *Air Force Professional Relationships and Conduct*. Counsel for the government must carefully review these definitions prior to drafting charges and specifications for such offenses to ensure the alleged misconduct fits under these definitions.

### 11.7.3. Preferral and Deferral.

11.7.3.1. Any person subject to the UCMJ may prefer charges. For offenses under OSTC authority, the District Chief STC will ordinarily be the preferral authority. The completed DD Form 458 should be routed to the OSTC District Office for STC signature as the accuser.

11.7.3.2. For all offenses, the immediate commander of the accused will cause the accused to be informed of the charges and the name of the accuser. R.C.M. 308. (T-0)

11.7.3.3. If OSTC declines to prefer charges for an offense over which it has exercised authority, the offense is deferred back to command. Deferred offenses are forwarded, through the installation legal office, to command for further disposition. Deferred covered offenses may not be referred by a convening authority to trial by general or special court-martial.

**11.8. Signing the Charge Sheet.** The DD Form 458 may be signed with pen and ink or electronically.

**11.9. Forwarding of Charges for offenses under Command Authority (R.C.M. 401).** The commander forwards the charges to the convening authority by attaching an indorsement to the charge sheet. Attach a personal data sheet on the accused and a copy of the report of investigation or other evidence supporting the charges. The servicing legal office should redact Privacy Act information not relevant to the charges from documents before forwarding them to the convening authority. The commander signs and dates the indorsement when preferring charges or when forwarding charges preferred by another. The indorsement must give each attachment a descriptive name (e.g., "Report of Investigation dated 1 January 2019" or "AF 1168 of Amn

Snuffy,” not “Evidence”). Address the indorsement to the officer exercising SPCMCA over the accused. If additional charges are later added, forward them with a new indorsement.

**11.10. Receipt of Charges (R.C.M. 404).** For all offenses, a judge advocate may receipt for charges on behalf of the SPCMCA if the convening authority delegates that authority in writing. If delegated, receive the charges “FOR THE COMMANDER.”

11.10.1. For all offenses, the SJA to the SPCMCA ensures that DAF-CJIC, OSI, and SF/S2I are sent copies of the charge sheet within three duty days of the accused being informed of the charges.

11.10.2. After recording receipt of charges under OSTC authority, the charge sheet shall be returned to the OSTC District Office.

## Chapter 12

### ARTICLE 32, UCMJ, PRELIMINARY HEARINGS (R.C.M. 405)

**12.1. Applicable Rules.** Conduct preliminary hearings in accordance with the guidance and procedures prescribed in R.C.M. 405, this chapter, and the Preliminary Hearing Officer's (PHO) Guide. In the recommendation required by R.C.M. 405(m)(2)(J), the PHO must include a discussion of the referral standard under R.C.M. 601(d)(2) and relevant factors in Appendix 2.1 to the MCM (The Secretary of Defense's Disposition Guidance). **(T-0)**

#### **12.2. Preliminary Hearing Personnel.**

##### 12.2.1. PHO.

12.2.1.1. The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the PHO. **(T-0)** For offenses under OSTC authority, an STC will determine whether a preliminary hearing is required and will contact the servicing legal office to request the convening authority appoint a PHO.

12.2.1.2. The accuser may not serve as the PHO.

12.2.1.3. The PHO will be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing unless the SJA expressly determines this to be impracticable. **(T-0)**

12.2.1.4. The PHO will be certified under Article 27(b), UCMJ. If precluded by military necessity or other compelling circumstances, the PHO may be a judge advocate who is not certified under Article 27(b), UCMJ.

12.2.1.5. The PHO may be a military judge. Requests for a military judge to serve as a PHO are coordinated with AF/JAT. No judge who has served on a pre-referral proceeding pursuant to Article 30a, UCMJ, may be detailed to an Article 32, UCMJ, preliminary hearing in the same case.

12.2.1.6. An ARC judge advocate may be detailed to serve as a PHO while on active duty or performing IDT. Article 136(b), UCMJ, authorizes AFR judge advocates to administer oaths while on active duty or performing inactive duty training. ANG judge advocates must be on Title 10 orders. **(T-0) Note:** Recommend all installations verify the certification status of a AFR or ANG judge advocate before appointment. Certification status of all judge advocates may be verified via the AF/JAX Knowledge Management page utilizing the annually published JAG Order 1 and JAG Order 2.

##### 12.2.2. Counsel.

12.2.2.1. Counsel for the Government. A judge advocate, who is not the accuser, serves as counsel to represent the United States. The judge advocate serving as the counsel for the government need not be certified under Article 27(b), UCMJ. For offenses under OSTC authority, an STC, in coordination with the servicing SJA, will detail counsel for the government. The determination by an STC to prefer or refer charges does not act to disqualify that STC as counsel for the government.

12.2.2.2. Counsel for the Accused. The accused has the right to be represented by military defense counsel certified under Article 27(b), UCMJ, and sworn under Article 42(a),

UCMJ. The accused may also be represented by civilian defense counsel at no expense to the government. Article 38, UCMJ. Civilian defense counsel must take an oath to perform their duties faithfully when representing an accused. The PHO administers this oath. Upon request of the accused, the accused is entitled to a reasonable time to obtain civilian counsel and have civilian counsel available for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for the accused to obtain and have present civilian counsel. **(T-0)** See R.C.M. 405(e)(3). The accused may represent him or herself, but this right is not absolute. See *United States v. Bramel*, 29 M.J. 958 (A.C.M.R. 1990), *aff'd*, 32 M.J. 3 (C.M.A. 1990).

12.2.3. Court Reporter. A court reporter is not normally detailed to a preliminary hearing. A court reporter may be detailed by AF/JAT. See DAFMAN 51-203.

12.2.4. Interpreter. An interpreter may be requested and detailed by the appropriate convening authority.

### **12.3. Pre-Hearing Matters.**

12.3.1. Appointment of PHO (R.C.M. 405(c)). A convening authority directs an Article 32, UCMJ, preliminary hearing by appointing the PHO in writing. If an STC requests a preliminary hearing, the convening authority will appoint a PHO who will conduct a preliminary hearing. A template is available on the VMJD and AF/JAJM Teams page.

12.3.2. Delays and Resulting Speedy Trial Issues. The convening authority may approve a delay of the Article 32, UCMJ, preliminary hearing. The period of time of such approved delays are excluded when determining whether the period in R.C.M. 707(a) has run. The convening authority may delegate the authority to grant a delay to a PHO. The convening authority may also grant the PHO the authority to exclude time under R.C.M. 707(c). The PHO has no independent authority to exclude time under R.C.M. 707(c).

12.3.3. Disclosures Prior to Preliminary Hearing.

12.3.3.1. R.C.M. 405(d) Disclosures. As soon as practicable, but no later than five days after the convening authority directs the preliminary hearing, counsel for the government must provide the defense copies of the matters listed in R.C.M. 405(d). **(T-0)** If provision of copies is impracticable, counsel for the government must permit the defense to inspect the matters listed in R.C.M. 405(d). **(T-0)**

12.3.3.2. Should government counsel fail to comply with the provisions of R.C.M. 405(d), the PHO shall note the issue in the preliminary hearing report. Further, if the convening authority has given the PHO the authority to grant delays, the PHO may grant a reasonable delay to allow government counsel to comply with the above disclosure requirements.

**12.4. Victims' Rights Regarding the Preliminary Hearing.** See R.C.M. 405(h), DAFI 51-207, and the PHO Guide on the VMJD and AF/JAJM Teams page for further guidance on specific victims' rights.

**12.5. VC Access to Hearing.** VCs are entitled to attend all open sessions (i.e., open to the public) and all closed sessions (i.e., not open to the public) involving their clients. **(T-0)**

**12.6. Production of Witnesses.** Follow the rules and procedures in R.C.M. 405(i) for the production of witnesses. See DAFI 51-207 for additional guidance.



**12.7. Production of Evidence.** Follow the rules and procedures in R.C.M. 405(i) for the production of evidence.

**12.8. Recording the Preliminary Hearing.**

12.8.1. Video and Audio Recording of the Preliminary Hearing. Government counsel will ensure the preliminary hearing is recorded by a suitable government recording device. Government counsel will also use a secondary suitable recording device to create a back-up recording. **(T-0)**

12.8.2. Transcribing the Preliminary Hearing. The SJA may authorize the completion of a verbatim transcript following the hearing, though a verbatim transcript is not required.

12.8.3. Providing Preliminary Hearing Recording to the Victim(s). Upon written request from a victim or VC of a victim named in one of the specifications, government counsel shall provide the victim or VC with access to, or a copy of, the recording. **(T-0)** Do not provide any portions of the recording ordered sealed by the PHO to the victim or VC. **(T-0)** Trial counsel is not normally required to redact the recording except as indicated below. However, to maintain compliance with the Privacy Act, the government should release the recording in the following manner:

12.8.3.1. If the victim is represented by a VC, the unredacted recording should be provided to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-R, paragraph C4.2. The VC must maintain the recording in accordance with the Privacy Act. **(T-0)**

12.8.3.2. If the victim is represented by a civilian VC, the recording should be provided to the VC in accordance with [paragraph 8.5.4](#). See DoD 5400.11-R, paragraph C4.2. The civilian VC must maintain the recording in accordance with the Privacy Act. **(T-0)**

12.8.3.3. An unredacted recording may be provided directly to the victim only if the victim is not represented by counsel. The recording is provided to an unrepresented victim as a routine use disclosure under the Privacy Act SORN for Air Force courts-martial records. See SORN, DoD 0006.

12.8.3.4. The Government may, in its discretion, provide a transcript to the victim or VC instead of a recording. See R.C.M. 405(k)(5). Personally identifiable information should be redacted from transcripts provided directly to victims.

12.8.4. Providing Preliminary Hearing Recording to the Accused. Government counsel will ensure the accused and counsel receives a copy of the preliminary hearing report, which includes a copy of the recording. **(T-0)** The accused or counsel will not receive any portions of the recording ordered sealed by the PHO. **(T-0)**

**12.9. Conducting the Preliminary Hearing.** Conduct the preliminary hearing in accordance with R.C.M. 405(k) and the PHO Guide on the VMJD and AF/IAJM Teams page.

12.9.1. Public Access. Ordinarily, preliminary hearings are open to the public, including access by news media, whenever possible. See R.C.M. 405 and the PHO Guide on the VMJD and AF/IAJM Teams page for further guidance.

12.9.2. Potential Witnesses. Although potential witnesses are normally excluded from watching the proceedings, the PHO has the authority to permit some potential witnesses (e.g.,

experts) to be present if the PHO considers their presence helpful to the proceedings. Victims have an Article 6b, UCMJ, right to be present at the preliminary hearing regardless of whether they testify.

#### 12.9.3. Uncharged Offenses.

12.9.3.1. Authority to Examine Other Offenses. The PHO may consider uncharged offenses as outlined in R.C.M. 405(f)(2).

12.9.3.2. Uncharged Covered Offenses. If the evidence indicates the accused committed any uncharged covered offense and the preliminary hearing was not requested by an STC, the PHO shall provide immediate notice to the servicing legal office, the convening authority, and the servicing OSTC District Office. A copy of the preliminary report shall be provided to the OSTC District Office. See R.C.M. 405(f)(3).

12.9.3.3. Later Preferral of Uncharged Offenses Examined at Preliminary Hearing. If an uncharged offense examined by the PHO in the preliminary hearing is later preferred, the GCMCA or STC, as applicable, may refer the offense to court-martial without convening an additional preliminary hearing, provided the SJA's Article 34, UCMJ pretrial advice or STC's written determination, as applicable, addresses the offense. See R.C.M. 406 and 601(d)(2).

12.9.4. R.C.M. 601(d)(2) and the Secretary of Defense Disposition Guidance at Appendix 2.1 of the Manual for Courts-Martial provide disposition guidance. In making a disposition recommendation, the PHO must address the R.C.M. 601(d)(2) referral standard and all relevant factors in Appendix 2.1.

**12.10. Supplementary Information.** No later than 24 hours after the preliminary hearing closes, counsel for the government, defense counsel, and any victim may submit supplemental matters in accordance with R.C.M. 405(l). **(T-0)** The parties and the victim(s) must follow the procedures in R.C.M. 405(l) when submitting supplemental information to the PHO. **(T-0)** The PHO must follow the procedures in R.C.M. 405(l) for the handling, sealing and examination of supplementary information. **(T-0)**

**12.11. Assembly of the PHO Report.** The PHO shall assemble the preliminary hearing report in accordance with R.C.M. 405(m). **(T-0)** In addition to those items listed in the rule, the preliminary hearing report will contain: DD Form 457, *Preliminary Hearing Officer Report*, and any attachments; DD Form 458, *Charge Sheet*, and any attachments; and the PHO appointment letter. Additionally, the PHO must include a copy of the preliminary hearing recording as an attachment to the report. **(T-0)**

**12.12. Distributing the PHO Report.** The PHO will deliver the PHO Report to the appropriate SJA within eight calendar days after the closure of the preliminary hearing or timely receipt of supplementary information under R.C.M. 405(l), whichever is later. **(T-3)** For hearings requested by a STC, the PHO will also deliver the PHO Report to the servicing OSTC District Office. **(T-0)** The SJA, in turn, delivers the report to the convening authority who directed the preliminary hearing. The convening authority must cause the PHO Report and a copy of the recording to be served on the accused and defense counsel. **(T-0)** Government counsel must obtain a receipt from the accused upon service of the PHO Report and recording. VC requests for copies of the PHO Report shall be processed as a For Official Use disclosure under the Privacy Act. **(T-0)** See [Section 8B](#); DoD 5400.11-R. The VC must maintain the recording in accordance with the Privacy

Act. Likewise, civilian victim's counsel requests should be processed in accordance with [paragraph 8.5.4](#).

**12.13. Objecting to the PHO Report.** The parties must submit any objections to the PHO Report in accordance with R.C.M. 405(m)(5) within five calendar days of receipt. **(T-0)** The day the accused receives the report is not counted in calculating the five-day window in which the accused may raise objections. The convening authority may refer the charge(s) or take other action within this five-day period. R.C.M. 405(m)(5).

**12.14. Forwarding the PHO Report to a Superior Convening Authority.**

12.14.1. For offenses under command authority, if the convening authority who directed the preliminary hearing decides to forward the PHO report to a superior convening authority for disposition, the convening authority who directed the hearing must prepare a forwarding letter providing a recommendation for disposition of the charge(s). The forwarding letter will include the following attachments: the charge sheet, the commander's indorsement to the charge sheet, and the PHO Report, with the attachments appended to the report. This letter is forwarded to the superior convening authority through the superior convening authority's SJA.

12.14.2. If the subordinate convening authority recommends disposition by court-martial, then the subordinate convening authority's SJA should provide a list of court member nominees and member data to the superior convening authority in the event the superior convening authority decides to refer the case.

**12.15. Reviewing Sealed Materials in or Attached to a PHO Report.** Refer to R.C.M. 1113 for authority, limitations, and procedures relevant to review of sealed materials in or attached to a PHO Report.

## Chapter 13

### FORWARDING AND DISPOSITION OF CHARGES

#### *Section 13A—Pretrial Advice, Forwarding, and Review of Offenses Under Command Authority*

**13.1. Pretrial Advice in General Courts-Martial.** The convening authority's SJA must prepare written pretrial advice for GCMs in accordance with R.C.M. 406. **(T-0)** A person other than the SJA may prepare the pretrial advice, but the SJA is, unless disqualified, responsible for and must personally sign the pretrial advice. The DSJA or other assistant staff judge advocate performing the duties of the SJA, in the absence of, or because of the disqualification of the SJA, signs "Acting as the Staff Judge Advocate."

13.1.1. Required Contents. The required contents for pretrial advice are prescribed in R.C.M. 406(a). A finding that there is not probable cause to believe the accused committed the offense charged in a specification prohibits that convening authority from referring that specification. SJAs should make such a finding only when advising the convening authority that the specification cannot be referred to trial. See Article 34(a)(1)(B), UCMJ, and *United States v. Murray*, 25 M.J. 445 (C.M.A. 1988). Additionally, SJAs must state that they have considered whether the admissible evidence will probably be sufficient to obtain and sustain a conviction. See R.C.M. 601(d)(2).

13.1.2. Format and Length. Pretrial advice need not contain any underlying analysis or rationale for the conclusions contained in it. In addition, lengthy summaries of evidence, detailed explanations of elements of offenses, and extensive discussions of possible defenses are not required. A sample format for pretrial advice is available on the VMJD and AF/JAJM Teams page.

13.1.3. Distribution. The government shall provide a copy of the pretrial advice to the defense for service upon the accused if charges are referred to a GCM. **(T-0)**

**13.2. Pretrial Advice in Special Courts-Martial (Article 34, UCMJ; R.C.M. 406).** Before referral of charges to a SPCM, to include a SPCM by a military judge alone, the convening authority shall consult a judge advocate on relevant legal issues. **(T-0)** Pretrial advice by a judge advocate in a SPCM does not need to be in writing and does not need to come directly from the SJA. However, any pretrial advice reduced to writing must be provided to defense counsel if charges are referred.

**13.3. Pretrial Advice in Summary Courts-Martial.** Pretrial advice is optional for SCMs.

**13.4. Disposition Guidance.** In addition to the pretrial advice and the referral standard under R.C.M. 601(d)(2), the Secretary of Defense Disposition Guidance at Appendix 2.1 of the Manual for Courts-Martial provides guidance referral authorities should consider before referring charges. The Disposition Guidance must be discussed either in the pretrial advice or directly with the convening authority.

**13.5. Forwarding of Pretrial Advice in General Courts-Martial.** The charge sheet, the commander's indorsement, forwarding letters or other indorsements, and, if applicable, the PHO's appointment letter with attachments (including the Article 32, UCMJ, preliminary hearing report, receipts of report, and any objections) should be forwarded with the pretrial advice to the GCMCA.

If the preliminary hearing is waived, forward the accused's waiver along with the documentary evidence that the SJA relied upon when drafting the pretrial advice, such as investigative reports, witness statements, and other documents containing relevant information. If the GCMCA must detail members to a court-martial to try the forwarded case, appropriate documentation should be forwarded for court-member selection. See [Section 14A](#).

### **13.6. GCMCA Decision Not to Refer Certain Sex Offense Charges Under Command Authority.**

13.6.1. In cases where the GCMCA does not refer any applicable sex-related specifications for a particular victim, the GCMCA forwards the decision to a superior convening authority for review as described below. **(T-0)** If at least one covered specification is referred as to each victim, then the review is not required. This requirement is victim-specific. See [paragraph 10.1](#) for the list of covered sex offenses. See also FY 2014 NDAA, Section 1744(d).

13.6.2. Superior GCMCA Review of Non-Referral Decision. In any case where the SJA's pretrial advice recommends against referring an applicable sex-related charge or specification to a court-martial and the GCMCA concurs, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined at [paragraph 13.6.4.1](#), to the next superior GCMCA for review. Template notifications and responses are on the VMJD and AF/JAJM Teams page.

13.6.3. SecAF Review of Non-Referral Decision. In any case where the GCMCA SJA's pretrial advice recommends referring an applicable sex-related charge or specification to a court-martial and the GCMCA non-concurs, such that the effect of that non-concurrence is that no covered offense as to that victim would be referred to trial, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined in [paragraph 13.6.4.1](#), to SecAF for review. The case file is transmitted to AF/JAJI through functional channels. A template for SecAF's response is located on the VMJD and AF/JAJM Teams page.

13.6.4. Request for SecAF Review of Non-Referral Decision. In addition to the circumstances mandating SecAF review described in [paragraph 13.6.3](#), the Chief, AF/JAJG, may request SecAF review in any case where the GCMCA decides not to refer the charge and any specification described in [paragraph 10.1.1.1](#).

13.6.4.1. Case File Required Contents. The case file that is forwarded to SecAF or GCMCA under [paragraph 13.6.3](#) shall include: **(T-0)**

13.6.4.1.1. All charges and specifications preferred;

13.6.4.1.2. All reports of investigations, including but not limited to the Article 32, UCMJ, PHO report, the OSI report of investigation, and any report of investigation by a military or civilian criminal investigative organization;

13.6.4.1.3. A certification that the victim of any alleged offense described in [paragraph 10.1.1.1](#) was notified of the opportunity to express a preference as to disposition of the alleged offense for consideration by the convening authority. See [paragraph 10.1.1.1](#). A template is located on the VMJD and AF/JAJM Teams page.

13.6.4.1.4. All statements from the victim provided to OSI and to the victim's chain of command relating to any alleged offense described in [paragraph 10.1.1.1](#);

13.6.4.1.5. Any statement provided by the victim to the convening authority expressing the victim's view on the preferred disposition of the pertinent alleged offense(s);

13.6.4.1.6. The SJA's pretrial advice pursuant to Article 34, UCMJ;

13.6.4.1.7. A written statement from the GCMCA explaining the reasons for the decision not to refer charges or specifications for trial by court-martial; and

13.6.4.1.8. A certification that the victim of any alleged offense described in [paragraph 10.1.1.1](#) was informed of the GCMCA's decision to forward the case for review under [paragraph 13.6.3](#).

13.6.4.2. Additional Matters. Additional matters may be included in the case file.

13.6.4.3. Applicable templates for the contents of the case file can be found at the VMJD and AF/JAJM Teams page.

13.6.5. Victim Notification of Results of Superior Review. The SJA ensures the victim of any offense described in [paragraph 10.1.1.1](#) is notified of the forwarding of the case for superior GCMCA or SecAF review. The victim must be notified of the results of the review conducted by superior GCMCA or SecAF. Templates for these documents can be found on the VMJD and AF/JAJM Teams page.

***Section 13B—STC Determination and Disposition of Offenses Under OSTC Authority (R.C.M. 306A, 401A, 406)***

**13.7. Disposition of Offenses Under OSTC Authority.** Only an STC may dispose of offenses under OSTC authority. These include covered, known, and related offenses, as outlined in [Chapter 4](#). See also Article 1(17), UCMJ, and R.C.M. 303A. Within OSTC, disposition authority is offense-specific and withheld to certain duty positions. Installation legal offices will work with the assigned STC and servicing OSTC District Office to coordinate disposition of offenses under OSTC authority. For each preferred offense under OSTC authority, an STC will either refer, dismiss, or defer the offense to command. Deferred offenses will be promptly returned to command via the installation legal office. Upon request from command, an STC may reconsider a disposition decision at any time.

13.7.1. Referral. Preferred offenses under OSTC authority may be referred by an STC to a general or special court-martial. STC must consider the referral standard in R.C.M. 601(d) prior to referring offenses to trial by court-martial.

13.7.2. Dismissal. Preferred offenses under OSTC authority may be dismissed by an STC. A dismissal may be accompanied by a deferral.

13.7.3. Deferral. Preferred offenses under OSTC authority that will not be referred may be deferred by an STC. After referral, an offense must be withdrawn before it can be deferred. Deferred offenses will be forwarded, through the installation legal office, to command for further disposition. A convening authority may not refer a charge alleging a deferred covered offense to a SPCM or GCM but may request STC reconsideration (such as when a deferred offense results in an NJP turndown).

**13.8. STC Written Determination.** For offenses under OSTC authority, referral to a SPCM or GCM may be made only by an STC. This decision must be accompanied by the STC's written determination.

13.8.1. Required Contents. The required contents for the STC written determination are prescribed in R.C.M. 406(b). In addition to these requirements, in the absence of a standing panel, the written determination will direct the convening authority to convene either a general or special court-martial.

13.8.2. Distribution. A copy of the STC written determination shall be provided to the defense if charges are referred to trial by general or special court-martial.

### ***Section 13C—Dismissal of Charges***

#### **13.9. Annotating the Charge Sheet for Charges Dismissed Prior to Referral.**

13.9.1. If the referral authority determines some or all of the charges or specifications will be dismissed instead of referred to court-martial, the dismissed charges or specifications should be "Z-ed" out on the charge sheet and annotated with the dismissal date and the initials of the person who lined through the charges (e.g., "Dismissed with(out) prejudice on 15 Sep 18, [initials]").

13.9.2. For offenses under command authority, this may be accomplished by the convening authority, a judge advocate authorized to sign referrals on the convening authority's behalf, or the trial counsel at the direction of the convening authority. Such delegation does not have to be in writing.

13.9.3. For offenses under OSTC authority, dismissal must be accomplished by an STC or trial counsel at the direction of an STC.

13.9.4. Following dismissal, the remaining charges, if any, are renumbered as necessary. **Note:** Charges or specifications dismissed by a military judge are not ordinarily lined out on the charge sheet. See the VMJD and AF/JAJM Teams page for guidance on how to complete post-trial paperwork to reflect such dismissals.

### ***Section 13D—Referral of Charges (R.C.M. 601)***

#### **13.10. Referral of Charges to Court-Martial.**

13.10.1. For offenses under command authority, the convening authority must sign either the referral section on the DD Form 458, *Charge Sheet*, or another document reflecting the intention to refer charges to trial by court-martial. Such other documents may include concurrence with an SJA's pretrial advice and recommendation to refer the case to trial by a specified court-martial.

13.10.2. For offenses under OSTC Authority, an STC must sign the referral section on the DD Form 458, *Charge Sheet*. A court-martial must be convened prior to STC signature in the referral section.

13.10.3. Completing the Referral Block on Charge Sheet. The designation of the convening authority on the charge sheet should be the same as on the convening order. The date in block 14c. should be the date the referral authority referred the charges. The next section of the



referral block details the type of court-martial and the special order convening the court, and should include the date on the convening order.

13.10.3.1. For offenses under command authority, if the convening authority personally signs the referral, the language of “By... Command or Order ... of...,” should be stricken and the convening authority’s signature block should be included. If the convening authority delegated authority to sign the referral block on the charge sheet to a judge advocate, the judge advocate signs the referral “FOR THE COMMANDER.”

13.10.3.2. For offenses under OSTC authority, the designated STC with referral authority will sign the referral. Installation legal offices will work with the servicing OSTC District Office to coordinate referral of offenses under OSTC authority.

13.10.3.3. Special instructions should be included in the referral block when appropriate. See R.C.M. 601(e). For example, when additional charges are referred, the following language should be included: “To be tried with the original (charge) (charges), dated [date of prefferal of original charge(s)].” When a case is referred as a capital case, the following language should be included: “To be tried as a capital case.”

13.10.3.4. When a case is referred to a SPCM by military judge alone under Article 16(c)(2)(A), UCMJ, the following language should be included: “To be tried by a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), UCMJ.”

13.10.3.5. The SJA to the SPCMCA ensures the accused’s records are examined to ascertain the accused’s nationality no later than twenty-four hours after referral, even if a claim of foreign nationality has not been made. See [Section 34C](#).

13.10.3.6. A copy of the referred charge sheet must be served upon the accused in accordance with R.C.M. 602.

13.10.3.7. The SJA to the SPCMCA ensures that DAF-CJIC, OSI, and SF/S2I are sent copies of referred charge sheets within 24 hours of service on the accused.

#### 13.10.4. Disqualification of Convening Authority (R.C.M. 601(c)).

13.10.4.1. Convening authorities may not refer charges to a GCM or SPCM if they are also the accuser of those charges. **(T-0)** Further, a convening authority with “an interest other than an official interest in the prosecution of the accused” is disqualified from referring that case to court-martial. **(T-0)** Article 1(9), UCMJ.

13.10.4.2. If the SPCMCA is disqualified, the case is forwarded to the GCMCA. If the GCMCA is disqualified, the GCMCA’s superior convening authority determines who shall act as the convening authority. If there is not an appropriate GCMCA within the command, the MAJCOM or FLDCOM SJA requests assistance from AF/JAJM in the designation of a commander to serve as the GCMCA.

13.10.4.3. STC are not convening authorities and are not disqualified by reason of prefferal. STC may refer charges they prefer.

#### 13.10.5. **Jurisdiction for Certain Sex Offenses (R.C.M. 201(f)(1)(D))** . Only a GCM has jurisdiction over the following offenses if committed on or after 24 June 2014:

13.10.5.1. Rape or sexual assault, in violation of Article 120(a) and (b), UCMJ;



13.10.5.2. Rape of a child or sexual assault of a child, in violation of Art 120b(a) and (b), UCMJ; and

13.10.5.3. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

**13.11. “Re-referral” of Charges.** After charges are referred to trial by court-martial, it may become necessary to withdraw and re-refer them on the same charge sheet. The following procedures are used for re-referring charges in rehearings and other cases, including withdrawn charges:

13.11.1. Withdrawal of Previous Charges. Prior to “re-referral,” the SJA, STC, or trial counsel, as directed, annotate the withdrawal on the DD Form 458. See [paragraph 16.2.4](#).

13.11.2. New Referral. After withdrawal of the previous charges, the new referral is documented in the same format as that on page two of the charge sheet, following the rules in [paragraph 13.8.1](#). The new referral is accomplished by using the referral section from page two of a blank DD Form 458, to include service on the accused. When completed, the new referral section should be cut out and attached to the charge sheet by stapling it immediately above the original referral section. A prior referral should never be removed or destroyed. If a third or subsequent referral is necessary, it should be attached in the same way as the second. Any new referral must include service on the accused.

13.11.3. Special Instructions for Rehearings. When a case is referred for a rehearing (whether in full, for a limited purpose, or for a new trial), the appropriate instructions should be incorporated in the referral section. R.C.M. 810. For example, in a rehearing on sentence only, the following special instruction should be included: “For a rehearing on sentence only, as ordered by General Court-Martial Order No. 17, Headquarters, 18 AF, dated 18 January 2019, as to the charge(s) and specification(s) affirmed by the AFCCA, dated 10 February 2019,” or a similar instruction. Consult AF/JAJM for assistance.

***Section 13E—Reporting Referral of Additional Charges in Cases Pending Appellate or Post-Trial Review***

**13.12. Notification of Referral of Later Charges in Pending Cases.**

13.12.1. Notification to AF/JAJM. If charges are referred to trial against a person who is the accused in a case under review under Articles 66, 67, 67a, or 69, UCMJ, the legal office for the convening authority must notify AF/JAJM immediately. The case currently under review is identified by the accused’s full name, rank, and SSN/DoD ID number and the case’s Army Court-Martial number (ACM), if available. The following information should also be provided: the nature of the new charges, the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information that might affect disposition of the current review concerning the case.

13.12.2. Follow-Up Messages. Follow-up messages should be sent to AF/JAJM to advise when trial is completed (including the result), if the charges are withdrawn or dismissed, or if there are other significant developments which may affect disposition of the case currently under review.

***Section 13F—Referral to Special Court-Martial by Military Judge Alone (Article 16(c)(2)(A), UCMJ)***

**13.13. General Provision.** A special court-martial by military judge alone is a type of special court-martial that has a statutory sentence cap of six months of confinement and no ability to adjudge a punitive discharge. In this limited special court-martial, a military judge is the finder of fact and sentencing entity; the accused may not request trial by members. No specification may be tried by a special court-martial consisting of a military judge alone if, before arraignment, the accused objects on the grounds provided in R.C.M. 201(f)(2)(E)(i)(I-II) and the military judge determines that either of the grounds are met. The referral authority may only refer a case to this forum if all of the charged offenses occurred on or after 1 January 2019.

**13.14. Required Language on Charge Sheet.** See [paragraph 13.10.3.4](#).

**13.15. Notice to Accused.** Inclusion of the special language in [paragraph 13.10.3.4](#) serves as notice to the accused that the charges are being referred to a limited special court-martial.

**13.16. Objection by Accused for Offenses Carrying More Than Two Years Maximum Confinement.** If the specifications preferred include violations of offenses for which the maximum authorized confinement at a GCM exceeds two years, excluding wrongful use or possession of a controlled substance under Article 112a(b), UCMJ, the accused may object to the forum choice at any point prior to arraignment. R.C.M. 201(f)(2)(E)(I). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

**13.17. Objection by Accused for Offenses Requiring Sex Offender Notification.** If the specification preferred would result in notification as a sex offender, the accused may object at any point prior to arraignment. R.C.M. 201(f)(2)(E)(II). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

***Section 13G—Transferring Charges***

**13.18. Transferring Charges to Parallel Convening Authority (R.C.M. 601(g)).** If it is impractical for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if already referred, to be transmitted to a parallel convening authority (defined as a convening authority of the same level, such as transfer from one SPCMCA to another SPCMCA). This transmittal must be in writing. The original convening authority's SJA coordinates with AF/JAJM and the gaining convening authority's SJA to transfer the case. For offenses under OSTC authority, the transfer of charges must be coordinated with the OSTC District Office.

## Chapter 14

### CONVENING COURTS-MARTIAL

#### *Section 14A—Detailing Members (R.C.M. 501, 502, 503, 911, 912A; Articles 25, 29, UCMJ).*

**14.1. General Provision.** Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(e)(2), UCMJ, and R.C.M. 502(a)(1). Convening authorities may detail members under their command or others made available by the appropriate commander. When detailing court members, convening authorities may consider nominees submitted by subordinate commanders. All members of the DAF are treated as being in the same armed force for purposes of detailing court members.

14.1.1. Advice to the Convening Authority. The SJA must guard against unlawful command influence in the court member selection process, which includes ensuring no involvement by trial counsel or assistant trial counsel in the identification of prospective court members. When advising the convening authority on court member detailing, the SJA reiterates the Article 25(e)(2), UCMJ, criteria. The SJA may prepare a list of proposed nominees. If such a list is used, the SJA also informs the convening authority that persons on the nomination list as well as any other eligible persons subject to their command or others made available by their commanders may be considered. The SJA maintains all documents submitted to the convening authority in the course of detailing members to a court-martial.

14.1.2. Commanders are prohibited from considering race and gender in court member selection, regardless of the race or gender of the accused. See *United States v. Jeter*, \_\_ M.J. \_\_, No. 22-0065, slip. op. at 9 (C.A.A.F. 25 Sep. 2023). Accordingly, legal offices should not include race, ethnicity, or gender on court-member data sheets.

**14.2. Standing Courts-Martial Panels.** To facilitate randomization and assembly of the court-martial panel under R.C.M. 911, convening authorities will detail members to, and convene, standing courts-martial.

14.2.1. Convening authorities will convene courts-martial and detail court members in accordance with the provisions of this chapter.

14.2.2. At least once per fiscal year, GCMCAs will convene and detail at least one GCM for each subordinate SPCMCA location, with a standing panel of at least 60 officer and at least 40 enlisted members. The GCMCA determines the duration of any convened standing panel. At least once per fiscal year, SPCMCAAs will convene and detail at least one standing panel of at least 30 officer and at least 20 enlisted members. The SPCMCA determines the duration of any convened standing panel. If a convening authority does not have sufficient personnel assigned to their command to meet panel size requirements, they may detail members from other commands or tenant units with the concurrence of the commander concerned.

14.2.3. After docketing, the legal office will provide the applicable general or special court-martial convening order to the detailed military judge for randomization in accordance with R.C.M. 911. Prior to assembly of the court-martial, at an open session of the court-martial, the military judge will assign random numbers to the members detailed by the convening authority. In accordance with procedures prescribed by AF/JAT, the military judge will inform the legal office how many members must be present for the initial session at which members are

required. Proceeding in order of the random numbers assigned to the panel members by the military judge, the legal office will notify the members who are required to be present for the initial session of the court-martial. If necessary, the convening authority or designee may temporarily excuse members from the standing panel and the convening authority may replace members as permitted by R.C.M. 505.

**14.3. Impaneling Alternate Members.** The convening authority must state, in writing, whether alternate members are authorized. If the convening authority authorizes impanelment of alternate members, the convening authority must either specify a number of alternate members or authorize the military judge to impanel alternates only if excess members remain after exercise of challenges. **(T-0).** See R.C.M. 912A. Templates are located on the VMJD and AF/JAJM Teams page.

14.3.1. If the convening authority designates a specified number, the military judge must impanel that number of alternates in addition to the primary members on the fixed panel. Therefore, if after challenges there is an insufficient number of alternate members, the convening authority must detail additional members to the panel until the specified number of alternates are seated on the panel.

14.3.2. If the convening authority states that alternates may be impaneled only if excess members remain, the military judge shall impanel remaining members as alternates, but no more than three. If no excess members remain after challenges, then the convening authority is not required to detail additional members to serve as alternates.

**14.4. Replacing or Excusing Detailed Members (R.C.M. 505).** Before the court-martial is assembled, the convening authority may excuse or replace detailed members of a court-martial without showing cause. The convening authority may delegate to the servicing SJA or other principal assistant the authority to excuse detailed members of a court-martial before a court is assembled. Any such delegation must be in writing. However, the SJA or other principal assistant may excuse no more than one-third of the detailed members. Only the convening authority may detail new members to a court-martial panel. See R.C.M. 505(c).

#### ***Section 14B—Preparing the Convening Order***

**14.5. Special Order Convening Courts-Martial.** Convening orders are prepared in accordance with R.C.M. 504, 1302, and this chapter and shall designate the type of court-martial and detail the members, if any, in accordance with R.C.M. 503(a). A convening order may designate where the court-martial will meet based as determined by the convening authority. Sample convening orders are provided on the VMJD and AF/JAJM Teams page.

14.5.1. Authority Cited in Convening Order. The current Department of the Air Force Special Order or Designation Memorandum (i.e., the “Worldwide Convening Order” or “Worldwide Convening Authority Designation Memorandum”), or other document authorizing the commander to convene courts is cited as authority for convening the court-martial.

14.5.2. Numbering Convening Orders. Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The first order for each series should state the last order number from the previous fiscal year, or state that no orders from that series were published in the previous fiscal year. A sample convening order with this language is located on the VMJD and AF/JAJM Teams page. The number follows an A-series letter prefix. Use an A letter prefix for general courts-martial, an AB letter prefix

for special courts-martial, an AC letter prefix for summary courts-martial, and an AD letter prefix for special courts-martial by military judge alone under Article 16(c)(2), UCMJ. The convening order must be memorialized in the convening order log as noted in [Section 28A](#).

14.5.3. Identification of Members. Special orders convening a court-martial must contain the name, rank and unit of all persons detailed. Do not include personal information (e.g., SSN). If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member was detailed with the concurrence of the member's commander.

14.5.4. If the convening authority directs the military judge to appoint alternates, it must be so annotated on the convening order. A sample convening order including the authorization to impanel alternates is located on the VMJD and AF/JAJM Teams page.

14.5.5. If the convening authority refers a case to a special court-martial by military judge alone, the convening authority must convene such a court pursuant to Article 16(a)(2), UCMJ. A sample convening order is located on the VMJD and AF/JAJM Teams page.

14.5.6. Amendments. Convening orders may be amended. A sample amended convening order is provided on the VMJD and AF/JAJM Teams page. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military judge or trial counsel announces the excusal on the record. No more than two amendments to the original order may be issued. If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order with a savings clause is included on the VMJD and AF/JAJM Teams page. All amendments to a convening order and all convening orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders must be provided to the military judge and included in all copies of the ROT.

14.5.7. Correcting Convening Orders. The header, order number, and date of a convening order can be corrected without an amendment in a corrected order. The phrase "corrected copy – destroy all others" must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**). Strike through the information and underline the correct information.

**14.6. Docketing.** AF/JAT is responsible for docketing procedures, which are described in the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

## Chapter 15

### COURT-MARTIAL COMPOSITION AND COURT REPORTERS

#### *Section 15A—Military Judges (R.C.M. 503(b))*

**15.1. Detailing Military Judges.** The Chief Trial Judge, TJAG's designee for detailing military judges, details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as a DAF military judge. A military judge with the authority to detail military judges may detail himself or herself to a court-martial. Orders detailing military judges may be oral or written. Any written orders are included in the ROT. The authority who detailed the military judge is announced on the record.

15.1.1. A military judge from another U.S. armed force may be detailed to a DAF court-martial according to the other armed force's regulations applicable to military judges and with the approval of TJAG.

15.1.2. TJAG has authority to make DAF military judges available for detail to trials convened by another U.S. armed force.

15.1.3. No judge may be detailed to a court-martial if that judge served as a PHO at the preliminary hearing in the same case. Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

#### *Section 15B—Counsel (R.C.M. 503(c))*

#### **15.2. Detailing Defense Counsel.**

15.2.1. The Chief, AF/JAJD, has the authority to detail the Deputy Chief, a CDDC, SDC, or ADC to any court-martial, and may delegate such authority.

15.2.1.1. A SDC may detail an ADC within that district to a court-martial outside of that district, with the concurrence of the Chief, AF/JAJD, or a CDDC.

15.2.1.2. Military defense counsel will announce on the record by whom they were detailed.

#### **15.3. Detailing Trial Counsel.**

15.3.1. For offenses under command authority, an SJA, or the Director of Operations (or Chief), AF/JAJG may detail trial counsel or assistant trial counsel to a court-martial. The order detailing trial counsel may be oral or written. Announce orders detailing counsel orally on the record at trial. Attach written or message orders, if any, to the ROT.

15.3.2. For offenses under OSTC authority, STC shall be detailed as trial counsel. STC may detail other trial counsel who are judge advocates. For installation legal office personnel, detailing decisions will be with the concurrence of the SJA. Detailing of District Trial Counsel requires concurrence of the Director of Operations (or Chief), AF/JAJG.

15.3.3. R.C.M. 503(c)(3) and other armed forces' regulations govern detailing counsel from other armed forces to DAF courts-martial. The Chief, AF/JAJM, is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to AF/JAJD,

available for detail to trials convened by another armed force. AF/JAJD exercises this authority over defense counsel.

#### **15.4. Qualifications of Counsel.**

15.4.1. General Courts-Martial. Only attorneys certified according to Article 27(b), UCMJ, may be detailed as trial counsel, defense counsel, or assistant defense counsel for a GCM. Any person detailed as assistant trial counsel must be designated as a judge advocate in accordance with DAFI 51-101.

15.4.2. Special Courts-Martial. Only attorneys certified according to Article 27(b), UCMJ, and DAFI 51-101 may be detailed as defense counsel or assistant defense counsel for a special court-martial. Any person detailed as trial counsel or assistant trial counsel for a SPCM must be designated as a judge advocate under DAFI 51-101 in order to be competent for purposes of Article 27(c)(2), UCMJ.

15.4.3. Capital Cases. Where possible, in capital cases at least one defense counsel should have knowledge and/or experience in capital litigation. See Article 27(d), UCMJ. The Chief, AF/JAJD will continue to identify capital litigation training opportunities for defense counsel.

15.4.4. Special Trial Counsel. A judge advocate qualified, certified, and assigned as an STC will be detailed to general and special courts-martial for offenses under OSTC authority. See R.C.M. 502(d)(1), Article 24a, UCMJ. The presence of an STC is required unless an STC determines otherwise and another trial counsel, certified according to Article 27(b), UCMJ, is present. See R.C.M. 804(d).

15.4.5. ARC Members. See [Chapter 3](#) for ARC-specific requirements.

15.4.6. Civilian Counsel (R.C.M. 502(d)(2)(b)). When a civilian counsel represents an accused at a court-martial, the counsel's qualifications to serve as defense counsel, including information about the counsel's bar membership and standing, should be included in the record. Ordinarily, the military judge will have the civilian counsel announce their qualifications on the record during court-martial proceedings.

#### **15.5. Disqualifications (Articles 26(d) and 27(a)(2), UCMJ; R.C.M. 502(d)(3)).**

15.5.1. A PHO who conducted an Article 32, UCMJ, preliminary hearing may not serve as a member of the prosecution or as military judge in the same case.

15.5.2. No person who, with respect to a case, has served as a PHO, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

**15.6. Request for IMDC (R.C.M. 502(d)(2)(B) and 506(b)).** An accused may request representation by IMDC for any administrative discharge board proceeding, court of inquiry, Article 32, UCMJ, preliminary hearing, and/or at a court-martial. The accused does not have to wait until official notice of the proceeding to make this request, and the approval authority is not barred from processing and fulfilling this request prior to the official notice of the proceeding. This request may be made and fulfilled anytime the approval authority reasonably believes the

member will be facing one of the covered proceedings. The requested counsel represents the accused, if reasonably available.

15.6.1. Format of IMDC Requests. An IMDC request must be in writing and signed by the accused or detailed counsel. The request shall include the following, as applicable:

15.6.1.1. The date of the discharge board, Article 32, UCMJ preliminary hearing or trial. For issues where the member has not been served official notice, it will include the reason the member believes their matter will result in one of the covered processes;

15.6.1.2. Any special qualifications of the requested counsel relevant to the case;

15.6.1.3. Whether the accused is represented by other counsel (not the requested counsel) and, if so, the name of that counsel;

15.6.1.4. Whether the accused has entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried (including any statement required by [paragraph 15.6.4.](#));

15.6.1.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the discharge board, Article 32, UCMJ, preliminary hearing, or trial; and,

15.6.1.6. A statement acknowledging the accused's understanding that, if the IMDC request is granted, detailed defense counsel may be excused from further participation in the case at the sole discretion of the detailing authority.

15.6.2. Non-Availability of Certain Counsel. In addition to those persons listed in R.C.M. 506(b)(1), the following persons are not ordinarily reasonably available to serve as IMDC because of the nature of their duties, positions, or geographic locations:

15.6.2.1. Attorneys in the National Capital Region assigned to AF/JAJ, AF/JAC, AF/JAO, or subordinate divisions, excluding any individual detailed to perform duties as a District Defense Counsel or Area Defense Counsel;

15.6.2.2. Attorneys attending an Air Force Institute of Technology sponsored program such as a Master of Laws program;

15.6.2.3. Attorneys assigned or attached to the OSI;

15.6.2.4. Attorneys detailed to perform duties as a DTC, detailed trial counsel, and assistant trial counsel in the same or an allied case;

15.6.2.5. SJAs, and for legal offices responsible for advising commands having a GCMCA, DSJAs; and

15.6.2.6. Attorneys assigned to OSTC.

15.6.2.7. ARC Attorneys not readily available to be placed on extended Title 10 active duty tours. Requests for an ANG Defense Counsel will route through the Chief, ANG Defense Services and the State SJA of the State Defense Counsel for a determination of availability. In the event of a dispute, the matter should be resolved by the ANG Assistant to DJAG. Special consideration should be given to a member from the ARC making an IMDC request for otherwise qualified counsel from their particular Component. See [Chapter 3](#) for additional guidance.



15.6.3. Reasonably Available. A counsel is “reasonably available” if not considered unavailable by the terms of the MCM or this instruction, and the appropriate approval authority determines if the requested counsel can perform the duties of an IMDC without unreasonable expense or detriment to the United States and without unreasonable delay in the proceedings. In determining the reasonable availability of a counsel, the approval authority may consider the following:

- 15.6.3.1. The duties, workload, and assignment status of the requested counsel;
- 15.6.3.2. The experience level, duties, and workload of the military counsel already detailed to represent the accused;
- 15.6.3.3. The nature and complexity of the charges and legal issues involved in the case;
- 15.6.3.4. Whether a certified assistant defense counsel is detailed to the case;
- 15.6.3.5. The workload of the office to which the requested counsel is assigned, and the availability of personnel to meet those demands;
- 15.6.3.6. The distance from the expected site of the proceedings; and
- 15.6.3.7. Whether requested counsel is likely to be a necessary witness at trial or is otherwise conflicted from representing the accused under the DAF Rules of Professional Conduct or DAF Standards for Criminal Justice.

15.6.4. Exception to Non-Availability: Existing Attorney-Client Relationship. An IMDC request is not required in circumstances where an attorney-client relationship already exists. In these cases, this previous relationship creates an exception to the non-availability based upon assignment to a position identified in R.C.M. 506(b)(1) and [paragraph 15.6.2](#). An attorney-client relationship exists when the accused and the requested attorney had a bilateral understanding as to the nature of services to be provided in the case, and the requested attorney was actively engaged in the preparation and pretrial strategy of the case. *United States v. Spriggs*, 52 M.J. 235 (C.A.A.F. 2000). Whether a continuing attorney-client relationship exists will be dependent upon the facts and circumstances of a given case.

15.6.5. Processing IMDC Requests for ADC, SDC, and CDDC.

- 15.6.5.1. IMDC requests for ADC and SDC are forwarded through defense channels to the appropriate approval authority as follows:
- 15.6.5.2. The Chief, AF/JAJD, has the authority to act on any IMDC request for any CDDC, SDC, or ADC, and may delegate such authority.
- 15.6.5.3. If the Chief, AF/JAJD chooses to delegate such authority, an accused may appeal the disapproval of an IMDC request to the Chief, AF/JAJD, whose decision is final. There is no appeal from an IMDC request disapproved by the Chief, AF/JAJD.

15.6.6. Processing IMDC Requests for Other Counsel. IMDC requests for all other counsel (not addressed in [paragraph 15.6.4](#) and [paragraph 15.6.5](#)) are forwarded to the convening authority through the trial counsel, if any. The convening authority will process the request in accordance with R.C.M. 506(b)(2). Because AF/JAJD is responsible for defense services throughout the Air Force and Space Force, it is incumbent upon those IMDC who are not assigned to AF/JAJD to notify the Chief, AF/JAJD, of their association with a case as soon as practicable. These IMDC should also keep CDDC informed about the progress of the case.

Additionally, the IMDC must coordinate in advance any anticipated expenditure of AF/JAJD funds for travel or other reasons.

15.6.6.1. Disposition When Counsel is Not Reasonably Available. If the requested counsel is not reasonably available for a reason identified in R.C.M. 506(b)(1) or [paragraph 15.6.2](#), and the accused does not assert an attorney-client relationship, the convening authority will deny the request and notify the accused.

15.6.6.2. Disposition When Counsel May Be Available. If the requested counsel appears to be reasonably available (i.e., not apparently unavailable in accordance with R.C.M. 506(b)(1) or [paragraph 15.6.2](#)), the convening authority forwards the request to the appropriate approving authority identified below. The approving authority evaluates availability (see [paragraph 15.6.3](#)), decides whether to grant the request, and informs the forwarding convening authority of the decision and the reasons for the decision. The convening authority notifies the accused of the decision.

15.6.6.2.1. Attorneys Assigned to Headquarters Department of the Air Force. Send requests for attorneys assigned to AF/JAC, AF/JAJ, AF/JAO, AF/JAS, The Judge Advocate General's School (AFJAGS), or HAF Directorates to the respective Director. Requests for ADC and SDC shall be forwarded per [paragraph 15.6.5](#).

15.6.6.2.2. Master of Laws Students. Send requests for attorneys in a Master of Laws program to JAX.

15.6.6.2.3. SJAs. Send requests for SJAs to the SJA's commander.

15.6.6.2.4. USAFA professors/instructors. Send requests to the USAFA Staff Judge Advocate and Head, USAFA Department of Law (USAFA/DFL).

15.6.6.2.5. All Others. Send requests for all other attorneys to the requested counsel's SJA, supervising officer, or commander.

15.6.7. Appeals. The accused may request review of a disapproved IMDC request (other than those covered by [paragraph 15.6.5](#)) by the next higher level of supervision of the officer who denied the request. Appeals are forwarded to the convening authority through the trial counsel.

15.6.7.1. If the convening authority originally denied the request, and declines to grant the request on appeal, the appeal is forwarded to the convening authority's superior officer for review and decision. The final decision is returned to the convening authority, who notifies the accused. There is no appeal from an IMDC request initially disapproved by a MAJCOM or FLDCOM commander or higher authority.

15.6.7.2. With the exception of attorneys assigned to AF/JAJD, if an approval authority originally denied the request, the appeal is forwarded by the convening authority to that approval authority. If the approval authority declines to grant the request on appeal, the appeal is forwarded to the approval authority's superior officer for review and decision. DJAG reviews denials by Headquarters DAF Directorates. There is no further review of denials by DJAG. The final decision is returned to the convening authority, who notifies the accused of the decision.

15.6.7.3. Prior to referral, a military judge may review an accused's IMDC request in accordance with R.C.M. 309(b)(8). A military judge may, for good cause, determine that

a particular IMDC is reasonably available, notwithstanding any provision of this instruction.

***Section 15C—Oaths (Article 136, UCMJ; R.C.M. 807)***

**15.7. One-Time Oath.** The following personnel take a one-time oath: military judges certified according to Article 26(b), UCMJ; military counsel certified according to Article 27(b), UCMJ; and court reporters.

15.7.1. Any person authorized by Article 136, UCMJ, may administer the one-time oath. The person administering the oath completes a certificate indicating the place and date the oath was administered. The oath contains the typed name, signature, and qualifications of the person administering the oath. Give a copy to the person taking the oath.

15.7.2. For military judges, send the original and one copy to JAX. Use the following oath: “I (name of military judge), do (swear) (affirm) that I will faithfully and impartially perform the duties of military judge in any proceeding under the UCMJ to which I am detailed to perform such duties, (so help me God).”

15.7.3. For military counsel, the SJA or designee should ensure the original and one copy is sent to JAX. The following oath is used: “I [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the UCMJ to which I am detailed to perform such duties or in any court-martial in which I am to perform duties of individual defense counsel, (so help me God).”

15.7.4. For court reporters, the military judge or designee should give the original to the reporter and file one copy with the court reporter administrator directly supervising the individual. Use the following oath: “I (name of reporter), do (swear) (affirm) that I will faithfully perform the duties of (reporter) in any proceeding under the UCMJ to which I am detailed, (so help me God).”

**15.8. Uncertified Military Counsel and Civilian Defense Counsel.** Military counsel not certified according to Article 27(b), UCMJ, and civilian defense counsel are sworn for each court-martial. In a GCM or SPCM, the military judge administers the oath. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding.

**15.9. Court Members.** Court members are sworn for each court-martial to which they are detailed. The trial counsel administers the oath. See R.C.M. 807.

**15.10. Interpreters.** In a GCM or special court-martial, the trial counsel or military judge administers an oath to the interpreter. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding. An interpreter is properly sworn after an affirmative response to the following oath: “Do you, [name of interpreter], (swear) (affirm) that you will faithfully perform the duties of interpreter in this proceeding, (so help you God)?”

***Section 15D—Court Reporters***

**15.11. Court Reporter Duties.** Court reporters are detailed in accordance with AF/JAT guidance to all GCMs and SPCMs.

**15.12. Transcription Requirements.** See DAFMAN 51-203 for transcription requirements for Article 30(a), UCMJ, proceedings, other pretrial R.C.M. 309 hearings, and courts-martial.

## Chapter 16

### PRE-TRIAL MATTERS

#### *Section 16A—Changes to and Withdrawal of Charges and/or Specifications*

**16.1. Changes to Charges or Specifications.** Changes may be made to charges or specifications after referral as authorized and explained in R.C.M. 603. Changes should be made by lining through the charges or specifications in whole or in part, or writing in additional language while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel. Do not use white-out tape or liquid for any changes to the charge sheet.

16.1.1. Minor Changes. Minor changes may be accomplished without having the charge sworn anew by the accuser. Trial counsel shall provide the accused and defense counsel with copies of the charge sheet with the changes. After arraignment, only a military judge may authorize minor changes to the charge sheet. R.C.M. 603(a) and its accompanying Discussion provides a definition of a “minor change.”

16.1.2. Major Changes. Major changes or amendments to a referred charge or specification may not be made over the objection of the accused. If such changes need to be made the charge(s) and specification(s) must be withdrawn and referred anew. If a charge is withdrawn and amended, follow the re-referral procedures outlined in [paragraph 13.11](#).

16.1.2.1. In the case of a GCM, a new Article 32, UCMJ, preliminary hearing may be required if the charge(s) or specification(s), as changed, were not considered in the prior preliminary hearing. See R.C.M. 603(d).

16.1.2.2. New preferral and referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421 (C.M.A. 1990).

16.1.3. Authority.

16.1.3.1. For offenses under command authority, major changes are made only with the permission of the convening authority.

16.1.3.2. For offenses under OSTC authority, major and minor changes are made only with the permission of an STC.

#### **16.2. Withdrawal of Charges or Specifications (R.C.M. 604).**

16.2.1. For offenses under command authority, the convening authority may withdraw any charge or specification before findings are announced. An officer authorized to receipt for referral or trial counsel may withdraw charges or specifications at the direction of the convening authority.

16.2.2. For offenses under OSTC authority, an STC may withdraw any charge or specification before findings are announced. Trial counsel may withdraw charges or specifications at the direction of an STC.

16.2.3. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Charges or

specifications may be withdrawn from a court-martial at any time before findings are announced. Withdrawn charges or specifications must be disposed of (e.g., dismissed, referred to another court-martial, deferred, or forwarded to another convening authority for disposition). **Note:** If a /discharge, resignation, or retirement in lieu of court-martial is approved, any pending charges must be withdrawn and dismissed.

16.2.4. Complete Withdrawal. To withdraw all charges and specifications from a court-martial, trial counsel should “Z-out” the referral section (Part V) of the charge sheet, specify the disposition and the date, and initial the action taken (e.g., “Withdrawn on 28 Aug 20, [initials]”). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed with(out) prejudice on 28 Aug 20, [initials]”).

16.2.5. Partial Withdrawal. To withdraw a specific charge or specification from a court-martial, while allowing the other offense(s) to proceed to trial, trial counsel should “Z” out the charge and specification and annotate the dismissal date and the initials of the person who lined through the affected charge or specification. Specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 18 Jan 20, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, both actions should be reflected accordingly (e.g., “Withdrawn and Dismissed on 18 Jan 20, [initials]”). The trial counsel determines whether any remaining charges and/or specifications should be renumbered (and if renumbered, initials the renumbering). The following rules apply to renumbering charges and/or specifications:

16.2.5.1. When charges or specifications are withdrawn before arraignment, trial counsel ensures the remaining charges or specifications are renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

16.2.5.2. When charges or specifications are withdrawn after arraignment but before the court members are aware of the charges, the military judge directs whether the remaining charges or specifications are renumbered.

16.2.5.2.1. If the military judge directs renumbering, the new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. Withdrawn charges or specifications should not be brought to the attention of the members.

16.2.5.2.2. If the military judge does not direct renumbering, the remaining charges or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications.

16.2.5.3. When charges or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges or specifications ordinarily are not renumbered. The military judge instructs the members that the withdrawn charges or specifications should not be considered for any reason.

16.2.6. Notification to the Accused. If charges are withdrawn and dismissed, the trial counsel must notify the accused, through the accused’s counsel, of such withdrawal and dismissal.

16.2.7. Notification to indexing officials. If charges are withdrawn and dismissed, the SJA to the SPCMCA must provide a copy of the charge sheet reflecting the withdrawn and dismissed charges to DAF-CJIC, OSI, and SF/S2I within 24 hours of service on the accused.

### ***Section 16B—Evidentiary Matters***

**16.3. Warrants of Attachment.** A warrant of attachment directs law enforcement personnel to seize a person or property, without consent, and deliver the person or property to the military judge or court-martial.

16.3.1. Requirements for a Warrant of Attachment. A Warrant of Attachment may be issued only if in compliance with the provisions set out in R.C.M. 703.

16.3.2. Processing a Warrant of Attachment.

16.3.2.1. In most cases, a Warrant of Attachment should be executed by the United States Marshals Service. Otherwise, anyone 18 years or older may execute a Warrant of Attachment. Military law enforcement may execute a Warrant of Attachment; however, military law enforcement should only be considered a last resort.

16.3.2.2. Provide the United States Marshals Service with the following:

16.3.2.2.1. A copy of the Warrant of Attachment;

16.3.2.2.2. A copy of the subpoena;

16.3.2.2.3. A copy of the certificate of service or receipt;

16.3.2.2.4. An affidavit indicating that appropriate fees and mileage were tendered to the witness where applicable, or that the witness was provided a means for reimbursement for fees and mileage, and the dollar amount;

16.3.2.2.5. The reasons that witness is material and why it is believed the witness refuses or willfully neglects to appear; and

16.3.2.2.6. A Military Interdepartmental Purchase Request number. Legal office personnel should consult with their local finance office to obtain this information.

16.3.2.3. The General Counsel's Office for the United States Marshals Service will review the Warrant of Attachment and determine the appropriate executing office. As this process can take some time, trial counsel or the Government representative may consider requesting relief pursuant to R.C.M. 707(c) if applicable.

16.3.2.4. If the United States Marshals Service is executing the Warrant of Attachment, it will make travel, lodging, and housing arrangements for the escorts and witness as appropriate. If the United States Marshals Service is not executing the Warrant of Attachment, the Government is responsible for making travel, lodging and housing arrangements for the escorts and witness. See DAFI 51-207 for further guidance regarding witness escorts, funding, and housing.

16.3.2.5. Only such non-deadly force as is necessary to bring the witness to the proceeding is authorized.

16.3.2.6. A convening authority may only issue a Warrant of Attachment to compel compliance with an investigative subpoena issued prior to referral. R.C.M. 703(g)(3)(H)(i)

and Discussion. Military judges may also issue Warrants of Attachment as appropriate including when detailed under Article 30a, UCMJ.

#### **16.4. Depositions.**

16.4.1. Requesting and Ordering a Deposition. If it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial, government or defense counsel may request the convening authority or the military judge order a deposition pursuant to R.C.M 702(a).

16.4.1.1. For offenses under OSTC authority, only a military judge may order a deposition. See R.C.M. 702(b).

16.4.1.2. For offenses under command authority, before referral, a convening authority may order a deposition. After referral, the convening authority or the military judge may order a deposition. See R.C.M. 702(b).

16.4.1.3. The convening authority or military judge determines whether the requesting party has demonstrated that, because of exceptional circumstances and in the interest of justice, the testimony must be taken and preserved for use at trial. See R.C.M. 702(a). A victim's declination to testify at a preliminary hearing pursuant to Article 32(d)(3), UCMJ, or declination to submit to pretrial interviews shall not, by itself, be considered exceptional circumstances. See R.C.M. 702(a)(3).

16.4.1.4. When a request for deposition is approved, the convening authority details a deposition officer with the qualifications set forth in R.C.M. 702(d)(3)(A). A sample appointment memorandum is provided on the VMJD and AF/JAJM Teams page. The duties of the deposition officer are described in R.C.M. 702(e).

16.4.1.5. If the deposition is taken by agreement of both trial and defense counsel, the convening authority is not required to produce an order but must still detail a deposition officer.

16.4.2. Counsel for Depositions. The rules governing qualification of counsel who may perform duties before courts-martial apply to counsel representing the parties at a deposition. The deposition should affirmatively indicate the qualifications of counsel.

16.4.3. Recording and Authentication of Depositions.

16.4.3.1. Written Depositions. Depositions taken on written interrogatories are recorded and authenticated using a DD Form 456, *Interrogatories and Depositions*. DD Form 456 is not used for oral depositions.

16.4.3.2. Oral Depositions. Oral depositions are conducted in accordance with the procedures in R.C.M 702(g)(1) and DAFMAN 51-203. Formats for conducting, transcribing, and certifying oral depositions may be found in DAFMAN 51-203. The deposition officer is the custodian for the record of deposition.

#### **16.5. Subpoena Limitations.**

16.5.1. A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at a pre-referral proceeding (Article 30a, UCMJ or Article 32, UCMJ hearings).



16.5.2. Subpoenas to the Media. DAF policy requires the exercise of due care when issuing subpoenas to media organizations to avoid unnecessary imposition on the news gathering process and thereby protect the media's First Amendment role.

16.5.2.1. Prior to issuing a subpoena to a member of the news media, trial counsel will consult with the base-level SJA. The SJA forwards a request to the GCMCA's SJA addressing the following:

16.5.2.1.1. That all reasonable attempts were made to obtain the information sought from alternative sources;

16.5.2.1.2. That all reasonable alternative investigative steps were taken to obtain the information sought;

16.5.2.1.3. The results of negotiations with the media. Negotiations should make clear the government's needs in the particular case and its willingness to respond to particular concerns of the media;

16.5.2.1.4. That reasonable grounds exist to conclude, based on information obtained from other sources, that a crime has occurred and the information sought is essential to the case; and

16.5.2.1.5. That to the extent possible, the subpoena is directed at material information regarding a limited subject matter, will cover a reasonably limited period of time, and will avoid requiring production of a large volume of unpublished material.

16.5.2.2. The GCMCA's SJA approves or disapproves the issuance of the subpoena. The base-level SJA immediately files a SIR in accordance with [Chapter 31](#) of this instruction.

16.5.2.3. In the event exigent circumstances prevent prior consultation with the GCMCA's SJA, a trial counsel may issue a subpoena with the base-level SJA's approval. In that case, the base-level SJA immediately informs the GCMCA's SJA, MAJCOM SJA, and AF/JAJM by email of the issuance of the subpoena and the exigent circumstances that precluded prior consultation.

16.5.2.4. The principles set forth in this guidance are not intended to create or recognize any legally enforceable right in any person.

### ***Section 16C—Child Sexual Assault Material in Evidence and Exhibits***

**16.6. Distinction between Evidence and Exhibits.** Evidence is retained by law enforcement. Exhibits are retained by the court. Child sexual abuse material seized and maintained by OSI as evidence of the crime is retained by OSI or other responsible law enforcement. Child sexual abuse material admitted as an exhibit at trial is separate and distinct from evidence seized and retained by law enforcement; such exhibits often consist of a forensic copy of the original evidence seized and retained by law enforcement. Child sexual abuse material admitted as exhibits in a court-martial are the property and responsibility of the court-martial (i.e., the court reporter and/or servicing legal office, depending on who is tasked with maintaining admitted exhibits while the ROT is being prepared and ultimately maintained in accordance with the Air Force Records Disposition Schedule located in AFRIMS). See 18 U.S.C. § 3509. Absent a written, advance agreement between the legal office and servicing OSI detachment, admitted exhibits shall not be transferred back to OSI for "safekeeping."

## ***Section 16D—Defense Investigative Support***

### **16.7. Defense Investigative Capability.**

16.7.1. The Defense Investigative Capability provides direct investigative and litigation support to detailed defense counsel in a wide range of potential adverse actions. When detailed to the defense team, a defense investigator (DI) is a “lawyer’s representative” within the meaning of M.R.E. 502 and works at the direction of the detailed military defense counsel on behalf of the client.

16.7.2. The Chief, AF/JAJD, is responsible for providing defense investigatory capabilities to DAF defense counsel.

16.7.3. Chief District Defense Counsel (CDDC) are responsible for detailing DIs to individual cases. The CDDC may delegate detailing authority to a supervising defense investigator. The detailing decision is protected work product insofar as it is based on privileged input from defense counsel regarding each case’s likely disposition, status of discovery, potential conflicts, investigative needs, potential case theories and strategies, etc. There is no appeal of a CDDC’s decision whether or not to detail a DI to a particular case; nor is the decision subject to review by a military judge. The CDDC’s decision to detail, or not detail, a DI to a particular case does not impede a detailed military defense counsel from requesting additional/alternative investigative support from the convening authority per [paragraph 16.8](#).

16.7.4. Once detailed, the investigative activities of a DI will be in support of the military defense counsel detailed to the case. As a member of the defense team, the DI must abide by the attorney-client and work product privileges. The efforts of the DI are work-product. See M.R.E. 502 and R.C.M. 701(f).

### **16.8. Defense Requests for Investigative Support from OSI.**

16.8.1. If a DC representing a DAF member requests investigative support from outside AF/JAJD, such requests are made in writing to the servicing SJA, who forwards the request along with a recommendation to the convening authority. The SJA may consider whether DC has made a sufficient case as to why investigative support is needed as well as whether DC has first requested support from AF/JAJD in making the recommendation to the convening authority. If the convening authority grants the request and investigative resources are available within the convening authority’s command that would satisfy the needs of the defense, other than OSI investigators, the convening authority appoints an investigator.

16.8.2. If the convening authority determines that other investigative resources are not available and appointment of an OSI special agent is necessary under the circumstances, the convening authority informs the local OSI detachment commander. The OSI detachment commander forwards the request through command channels for a determination of whether to support the defense request. If the commander, OSI (OSI/CC) agrees that appointment of a special agent is appropriate and an agent is available, OSI/CC appoints a special agent. OSI/CC is the decision authority for appointment of OSI agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an OSI special agent. In all cases, the convening authority provides the requisite funding. See also *United States v. Pomarleau*, 57 M.J. 351 (C.A.A.F. 2002).

16.8.3. Contact OSI/JA with any questions regarding this policy or its application, including provisions that apply to permissible activities, access to law enforcement resources, and level of assistance which may be provided by special agents who are assigned to provide defense investigative support.

## Chapter 17

### PLEA AGREEMENTS AND CONDITIONAL GUILTY PLEAS

#### *Section 17A—Conditional Guilty Plea*

**17.1. Conditional Guilty Plea.** When approving a guilty plea conditioned on preserving review of an adverse determination of a pretrial motion, the military judge should make the following findings on the record: (1) the offer is in writing and clearly details the motion that the accused wishes to preserve on appeal; (2) the government’s consent is in writing and signed by an official authorized to consent; (3) the particular motion was fully litigated before the military judge; and (4) the motion is case dispositive as to one or more charge or specification. See R.C.M. 910(a)(2); *United States v. Monroe*, 50 M.J. 550 (AFCCA 1999); and *United States v. Phillips*, 32 M.J. 955 (A.F.C.M.R. 1991). The SJA, person “Acting as the Staff Judge Advocate” to the convening authority, the trial counsel at the direction of the SJA, or the STC is authorized to consent for the government to the accused entering a conditional guilty plea.

#### *Section 17B—Plea Agreements (Article 53a, UCMJ, R.C.M. 705, and R.C.M. 910)*

**17.2. Applicability.** Plea agreements may only be used in cases where all offenses occurred on or after 1 January 2019 or if the accused opts into the Military Justice Act of 2016 (MJA16) sentencing framework. If all offenses occurred prior to 1 January 2019, a pre-trial agreement (PTA) must be used. For cases where at least one offense occurred prior to 1 January 2019 and at least one offense occurred on or after 1 January 2019, either: (1) apply the pre-MJA16 sentencing rules to the entire case and use a PTA; (2) separate the case into two proceedings, one for pre-1 January 2019 offenses (with a PTA) and one for on or after 1 January 2019 offenses (with a plea agreement); or (3) the Accused may opt into the MJA16 sentencing rules and use a plea agreement.

**17.3. Policy Considerations for Plea Agreements.** SJAs and STC have an obligation to preserve a military justice system that promotes good order and discipline and is fair, timely, and transparent to the military community and the public at large. The authority entering into a plea agreement should consider the benefits to the government and the accused as well as the costs to the military justice system of entering an agreement in order to properly balance the considerations. Plea agreements should not be used to mask case-processing inefficiencies. Prior to entering into a plea agreement, disposition authorities should consider the Disposition Guidance found in Appendix 2.1 of the MCM.

17.3.1. The use of a plea agreement may be advisable in the following situations:

17.3.1.1. Cases where the victim has indicated support for the plea agreement, though a victim’s preference is not binding.

17.3.1.2. Cases where sensational information involving persons other than the accused can be avoided through a negotiated plea.

17.3.1.3. Cases where several accused are involved, and the testimony of one is required in the trial of one or more of the others. In this case, a plea agreement may be more desirable than a grant of immunity.

17.3.1.4. Cases where essential witnesses are located at exceptional distances, are not amenable to process or are not otherwise available. Current operations, in some circumstances, may make critical witnesses unavailable.

17.3.1.5. Cases involving national security where harm to the government of a fully litigated trial should be avoided. In these cases, plea agreements can be used so that evidence involving exposure of national security information can be protected.

17.3.2. Cost, expediency, collateral consequences, forum selection, and litigation risk are all factors the disposition authority should consider in determining whether a plea agreement is warranted. However, individually they are not ordinarily factors that outweigh possible detrimental aspects of plea agreements.

17.3.3. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met. For example, when an accused enters a no-pay status upon the expiration of their term of service (or expiration of his/her Title 10 federal active-duty orders, in the case of ARC members), there will be no pay available to forfeit, and therefore, no amount to waive for the benefit of dependents. See [paragraph 20.31.2.5](#). An agreement predicated upon terms including a waiver that is thwarted due to no pay entitlement may render pleas by an accused improvident and result in reversal of a conviction. *United States v. Mitchell*, 58 M.J. 251 (C.A.A.F. 2003); *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

17.3.4. Defense Offer. Although discussions about plea agreements or alternate disposition agreements may occur at any time in the trial process and may be initiated by trial counsel or defense counsel, ordinarily, the initial written offer will be provided by the defense. The SJA, STC, or trial counsel, as applicable, and counsel for the accused may clarify the terms of a defense offer to obtain sufficient information to enable the disposition authority to decide whether to accept or reject the offer.

#### **17.4. Plea Agreements in National Security and Related Cases.**

17.4.1. The SJA must obtain permission from the Chief, AF/JAJM to enter into plea agreement discussions in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive rules or regulations and criminal statutes concerning classified information or the foreign relations of the United States. AF/JAJM ensures coordination with the Department of Justice according to DoDI 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*. For national security offenses under OSTC authority as a known or related offense, OSTC will coordinate with the Chief, AF/JAJM prior to entering a plea agreement. AF/JAJM permission is not required for the disposition authority to reject a plea agreement offer.

17.4.2. Request for Permission to Negotiate. For offenses under command authority, the GCMCA personally or through the SJA requests by the most expeditious means available permission from AF/JAJM to negotiate a plea agreement. The following information should be included in the request:

17.4.2.1. Background information on the accused including name, rank, and organization;

- 17.4.2.2. The offenses charged;
- 17.4.2.3. A summary of evidence against the accused;
- 17.4.2.4. Terms of the accused's plea agreement offer; and,
- 17.4.2.5. Factors warranting a plea agreement.

17.4.3. Permission to Proceed. A grant of permission to enter into plea agreement discussions does not amount to approval of the terms or conditions of any plea agreement, which may result from the negotiations.

### **17.5. Authority to Approve a Plea Agreement.**

17.5.1. For offenses under command authority, the decision to accept or reject a plea agreement offer submitted by an accused is within the sole discretion of the convening authority who referred the case to trial or the successor convening authority. *United States v. Caruth*, 6 M.J. 184 (C.M.A. 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. *United States v. Upchurch*, 23 M.J. 501 (A.F.C.M.R. 1986). A convening authority, through the servicing SJA, must make the best effort to provide the victim(s) an opportunity to submit views, and the convening authority shall consider these views before accepting the plea agreement offer. **(T-0)** See R.C.M. 705(e)(3)(B) and DAFI 51-207.

17.5.2. For offenses under OSTC authority, the decision to accept or reject a plea agreement is within the sole discretion of OSTC. Any such agreement may bind convening authorities and other commanders. STC must make the best effort to provide the victim(s) with an opportunity to submit views, and STC shall consider these views before accepting the plea agreement.

### **17.6. Plea Agreement Terms (R.C.M. 705(b)-(d)).**

17.6.1. Accused Opt-in to MJA16 Sentencing Rules. In cases where at least one offense occurred prior to 1 January 2019 and at least one offense occurred on or after 1 January 2019, the accused can agree to opt in to MJA16 sentencing rules as a term of the plea agreement.

17.6.2. Sentencing Agreements. The parties can agree to a limit on the maximum and minimum amount of punishment, and a plea agreement may contain a specified sentence or portion of a sentence that shall be imposed by the court-martial. See R.C.M. 705(d)(1). **Note:** R.C.M. 705 prohibits disclosure of the existence of a plea agreement to the members unless one of the enumerated exceptions applies. In the event of sentencing by members, the military judge provides appropriate instruction on any sentencing limitations that exist in a case.

17.6.3. Segmented Sentencing by Military Judge. A plea agreement that requires sentencing by a military judge and includes sentencing limitations must specify any agreed upon limitations regarding confinement and fines, if any, for each enumerated offense. See [paragraph 17.6.2](#) and R.C.M. 1002(d)(2). The plea agreement may also specify whether any terms of confinement are to be served concurrently or consecutively. See R.C.M. 1002(d)(2)(B) (2019 MCM).

17.6.4. Unitary Sentencing by Members and Summary Court Officers. Any plea agreement that permits sentencing by members (for offenses before 28 December 2023) or a summary court officer and includes sentencing limitations must specify a single maximum, minimum,

or maximum and minimum punishment for the offenses for which the accused is pleading guilty. See R.C.M. 1002(d)(1) (2019 MCM).

#### 17.6.5. Plea Agreement Format.

17.6.5.1. Plea agreements must be in writing and signed by the accused and counsel. When a disposition authority accepts a plea agreement, the convening authority or STC, as applicable, personally signs the agreement. For offenses under OSTC authority, the convening authority will not sign the plea agreement. For offenses under command authority, the convening authority may authorize, in writing, another individual such as the SJA or trial counsel to sign. If the SJA or trial counsel sign a plea agreement on behalf of the convening authority, an authority line such as “FOR THE COMMANDER” must accompany the signature.

17.6.5.2. Oral plea agreements are prohibited, as are promises to intervene on the accused’s behalf in any manner in exchange for a guilty plea. **(T-0)** The SJA or designee ensures all documentation pertaining to a plea agreement is included in the ROT.

17.6.6. Changes to Plea Agreements. If at any point after the plea agreement is signed by the accused and convening authority or STC, as applicable, further negotiation results in an agreement for different relief or different terms than that included in the original offer, an updated plea agreement must be drafted and signed anew.

17.6.7. Stipulations of Fact. A plea agreement may require the accused and counsel to enter into stipulations of fact or expected testimony. See R.C.M. 705(c)(2)(A).

17.6.8. Withdrawal from Plea Agreements. Either party may withdraw from a plea agreement as provided in R.C.M. 705(e)(4).

17.6.8.1. Withdrawals by the convening authority or STC should be in writing and signed by the convening authority or STC, as applicable. The SJA or designee gives a copy of any withdrawal to the accused and defense counsel.

17.6.8.2. Withdrawals by the accused should be in writing and given to the SJA, trial counsel, or STC, as applicable.

17.6.8.3. The SJA or designee ensures the plea agreement and the withdrawal, by either side, is included in the ROT or, if not in writing, is discussed on the record. See DAFMAN 51-203.

17.6.9. Accused’s Failure to Satisfy Plea Agreement Condition. If the accused does not fulfill a promise to satisfy certain conditions before action or during any period of suspension of the sentence as agreed to in the plea agreement, the convening authority may be relieved of the obligation to fulfill the agreement, provided that the accused’s promise was included in the agreement and the hearing requirements in R.C.M. 1108 have been satisfied. See R.C.M. 705(c)(2); *United States v. Smith*, 46 M.J. 263 (C.A.A.F. 1997); *United States v. Hunter*, 65 M.J. 399 (C.A.A.F. 2008); *United States v. Shook*, 70 M.J. 578 (AFCCA 2011).

17.6.10. Convening Authority’s Failure to Satisfy Plea Agreement Condition. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused’s expectations will be met (e.g., to ensure that there are forfeitures to waive, in the event the accused is an ARC member or the accused’s ETS is

going to run during the period of possible confinement). See [paragraph 17.3.3.](#), [paragraph 20.12](#), and [Section 20F](#).

17.6.11. In-Court Inquiry. Trial counsel should notify the military judge or summary court officer of a plea agreement before arraignment, or as soon as practicable thereafter. The military judge or summary court officer must question the accused prior to accepting the plea to determine whether the accused understands and agrees to the meaning and effect of each plea agreement condition and the agreed upon sentence limitations.

17.6.11.1. Where there is a plea agreement, the sentence limitations should be inquired into by the military judge or summary court officer and included within the plea agreement. R.C.M. 910(f)(3).

17.6.11.2. Plea agreements that are subject to in-court inquiry, whether or not accepted by the military judge or summary court officer, are appellate exhibits in the ROT if a ROT is required. See DAFMAN 51-203.



## Chapter 18

### RESIGNATION AND RETIREMENT IN LIEU OF COURT-MARTIAL

#### *Section 18A—Officer Resignation in Lieu of Trial by Court Martial (RILO)*

**18.1. General.** Officers (including USAFA cadets) may submit a RILO request with the understanding that SecAF may direct a discharge under other than honorable conditions when their conduct makes them subject to trial by court-martial. A RILO is a type of resignation for the good of the service. A template is located on the VMJD and AF/JAJM Teams page.

**18.2. Considerations.** Commanders should not recommend SecAF accept a RILO for expediency when the alleged offense(s) would be more appropriately resolved at trial. Before making any recommendation, reviewing commanders at all levels should consider the best interests of the DAF and the effect a resignation would have on good order and discipline. Reviewing commanders should consider the Disposition Guidance found in Appendix 2.1 of the MCM. The time and expense of a court-martial is rarely the deciding factor.

#### **18.3. Timing.**

18.3.1. Pre-Referral RILOs. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to submit RILO requests before charges are referred to trial by court-martial. Any reviewing commander may deny a RILO request submitted prior to the referral of charges. If denied, the officer may resubmit the request after referral of charges. Pre-referral RILO requests supported by all reviewing authorities are forwarded expeditiously to AF/JAJI through functional channels.

18.3.2. Post-Referral RILOs. If a request is submitted after referral and prior to arraignment, the request may only be acted upon by SecAF. RILO requests are forwarded expeditiously to AF/JAJI through functional channels. A RILO request may not be submitted post-arraignment.

18.3.3. For offenses under OSTC authority, the installation legal office shall notify the assigned STC of a submitted RILO request immediately. AF/JAJI will coordinate with the servicing OSTC District Office and Headquarters OSTC for LSTC input.

**18.4. Defense Counsel.** Before submitting a RILO request, officers may consult with counsel and are provided military defense counsel unless they expressly decline one.

18.4.1. If an officer refuses military counsel, the officer should so state in the request.

18.4.2. The DAF does not pay for or reimburse members for the costs of retaining civilian defense counsel.

**18.5. Recoupment.** Officers should understand that if SecAF accepts their resignation, they may be required to reimburse a portion of advanced education assistance, special pay, or bonuses received if they leave active duty before completing the period of active duty they agreed to serve. See DAFI 36-3211, *Military Separations*. Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their request. This includes USAFA cadets with an active-duty service commitment or who are found to have committed serious misconduct. A template is located on the VMJD and AF/JAJM Teams page.

**18.6. Resignation in Lieu of Trial by Court-Martial Request and Additional Documents.** The RILO package includes all of the documents and recommendations listed in the Comprehensive RILO Checklist on the VMJD and AF/JAJM Teams page. This includes the views of any victims on the alternate disposition. See DAFI 51-207.

**18.7. Review and Recommendation.** The wing commander or equivalent authority reviews and makes a recommendation and forwards the package to the GCMCA (or to the SPCMCA if the wing commander or equivalent authority does not exercise special court-martial convening authority). For offenses under OSTC authority, the District Chief aligned with the GCMCA must also coordinate on the recommendation. A template is located on the VMJD and AF/JAJM Teams page.

18.7.1. The GCMCA and aligned District Chief, for offenses under OSTC authority, review and make a recommendation and forwards the package to the requesting officer's MAJCOM or FLDCOM commander, if applicable.

18.7.2. The MAJCOM or FLDCOM commander (or deputy commander, if delegated), if applicable, reviews and makes a recommendation and forwards the package to AF/JAJI with an information copy of the officer's request to HQ AFPC's Military Transition Operations Branch (Retirements and Separations) (HQ AFPC/DPMSSR) (HQ ARPC or NGB as appropriate for ARC members).

18.7.3. The wing or equivalent commander or any superior reviewing commander may return to an officer, without action, a request that is conditioned on the characterization of discharge SecAF may direct or on a specific date of separation.

**18.8. Legal Review.** The required legal review is done by the servicing legal office supporting the initial reviewing commander and should address the views of any victims on whether the resignation in lieu of trial by court-martial should be approved. Written legal reviews by legal offices at intermediate levels of command and District Chiefs, for offenses under OSTC authority, are not required unless the intermediate legal office or reviewing authority non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Written coordination indicating concurrence is required.

18.8.1. AF/JAJI reviews the entire package, writes a comprehensive legal review, and processes the RILO package for Headquarters DAF review, including LSTC review for offenses under OSTC authority, and action by SecAF or designee.

18.8.2. Headquarters AFPC/DP2SSR schedules the officer's date of separation as soon as possible upon receiving notification from AF/JAJI that a RILO request has been approved.

18.8.3. The processing of a court-martial and court-martial charges should not be delayed solely because a RILO request may be or has been submitted, subject to [paragraph 18.9](#).

**18.9. Permission to Proceed to Trial Pending Action on a RILO Request.** For offenses committed after 24 June 2014, Article 60, UCMJ, prevents a convening authority from setting aside the findings of court-martial even if the Secretary later accepts a RILO. *In re Vance*, 78 M.J. 631 (ACCA 2018).

18.9.1. For offenses under command authority, prior permission from AF/JAJI is required before a case proceeds to trial if the officer accused has submitted a RILO on which action is pending. For purposes of this paragraph, the start of trial is defined as the acceptance of pleas

at or after arraignment. SJAs should consider requesting permission to proceed prior to arraignment. The SJA for the SPCMCA decides whether to request permission to proceed. A request for permission to proceed should include a justification for why the trial should proceed while the RILO request is pending action, such as witness availability for the scheduled trial date.

18.9.1.1. Permission to proceed is not required to conduct preliminary sessions pursuant to Article 39(a)(1), (2) and (4), UCMJ, including evidentiary hearings, and other motion practice that may expedite case processing in the interest of judicial economy, if such sessions occur prior to acceptance of pleas.

18.9.1.2. Thirty-Day Rule. AF/JAJI will normally approve requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request more than 30 calendar days after service of charges under R.C.M. 602. In such cases, it is sufficient to justify the request for permission to proceed by citing the untimely submission of the RILO request. However, additional justification should be submitted if such justification exists.

18.9.1.2.1. AF/JAJI will normally disapprove requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request within 30 calendar days of service of charges under R.C.M. 602, unless circumstances warrant trial while the RILO request is pending.

18.9.1.2.2. A RILO request will be processed and not stopped, delayed, returned or rejected solely because it was submitted more than 30 calendar days after service of charges unless submitted after arraignment.

18.9.2. For offenses under OSTC authority, STC determine whether to proceed to trial, and the servicing OSTC District Office will coordinate this decision with AF/JAJI.

18.9.3. RILO requests pending action upon findings.

18.9.3.1. A resignation cannot be substituted for a finding of guilt. Instead, the RILO will automatically convert to a request for sentence relief under Article 74, UCMJ.

18.9.3.2. If an officer is fully acquitted prior to action on the RILO, the RILO becomes moot and SecAF or designee shall not act on the RILO.

**18.10. Subsequent Resignation in Lieu of Trial by Court-Martial Requests.** The wing commander (or equivalent), or any superior reviewing commander, may return to an officer a subsequent RILO request that is based on the same grounds, supported by the same evidence, or is similarly insufficient as a previously disapproved resignation in lieu of trial by court-martial request, with the following exceptions:

18.10.1. An officer whose RILO request has been disapproved prior to referral of charges may resubmit the request after charges are referred to trial. A resubmitted request should be processed expeditiously to the command level that disapproved the original request. Additional indorsements or recommendations should not be attached unless different from those accompanying the original request or required by changed circumstances.

18.10.2. The Show Cause Authority (as defined in DAFI 36-3211) may determine that circumstances warrant processing the subsequent RILO request.

**18.11. Withdrawing RILO Requests.** If an officer who submitted a RILO request subsequently submits a request to withdraw it, the wing-level or equivalent SJA or designee must notify AF/JAJI and intermediate legal offices of the request to withdraw as soon as practicable.

18.11.1. If the withdrawal notification is made to AF/JAJI prior to AF/JAJI forwarding the RILO request for review and action by SecAF or designee, AF/JAJI will not forward the RILO request for review. If the RILO request has not yet been submitted to AF/JAJI, the office in possession of the RILO request suspends further processing of the RILO request.

18.11.2. If the withdrawal notification is made to AF/JAJI after AF/JAJI forwarded the RILO request for review and action by SecAF or designee, AF/JAJI must notify reviewing agencies that a request to withdraw has been made and to suspend further processing of the RILO request. The request to withdraw is processed in the same manner as the RILO request and forwarded to AF/JAJI through functional channels. See the RILO Withdrawal Checklist on the VMJD and AF/JAJM Teams page for minimum package requirements and detailed processing instructions. AF/JAJI will forward the withdrawal request as soon as it is received.

**18.12. RILO Processing Time Management.** Expeditionary processing of RILOs is essential to preventing judicial inefficiency, unnecessary trial delay, wasted resources, disruptions for victims and witnesses, prolonged uncertainty and anxiety for the accused, and impairment of mission accomplishment. The following measures are established for RILO processing:

18.12.1. Process a RILO request within 60 calendar days from the date the officer submits the request to the date the officer is notified of final action on the request. The 60 days are allotted as follows (all timelines are calendar days as opposed to duty days):

18.12.1.1. Wing-level (or equivalent) legal office processes and forwards the RILO package to AF/JAJI with electronic copies for review and processing by legal offices at intermediate levels of command within ten days from the date the officer submits the RILO request.

18.12.1.2. NAF/FLDCOM-level or GCMCA (or equivalent) legal office processes and forwards the GCMCA's recommendation within seven days, in accordance with the RILO Checklist on the VMJD and AF/JAJM Teams page, after the wing-level legal office provides the electronic copy. For offenses under OSTC authority, the District Chief aligned with the GCMCA provides a recommendation. See [paragraph 18.8](#).

18.12.1.3. GCMCA legal office processes and forwards the MAJCOM or FLDCOM commander's recommendation, in accordance with the RILO Checklist on the VMJD and AF/JAJM Teams page, within seven days after the NAF-level or equivalent legal office (if applicable) provides an electronic copy of the GCMCA's recommendation.

18.12.1.4. AF/JAJI and AF/JAJ process and forward the RILO package to AF/JA within seven days after receipt of the complete package, including required recommendations by reviewing commanders and legal reviews. For offenses under OSTC authority, AF/JAJI will coordinate with Headquarters OSTC for LSTC input.

18.12.1.5. AF/JA processes and forwards the RILO package for Headquarters DAF coordination within five days after receipt of the package from AF/JAJ.

18.12.1.6. This leaves 24 days for Headquarters DAF coordination, SAF/MRBP recommendation, and SAF/MRB action or recommendation followed by SecAF action.

18.12.2. Failure to meet these time measures at any stage of resignation in lieu of trial by court-martial processing does not confer any rights or benefits on the accused.

**18.13. Withdrawal and Dismissal of Charges.** If a RILO request is pending action and the disposition authority withdraws and dismisses all charges, the legal office must notify AF/JAJI. The RILO request becomes void on the date the charges are dismissed. If charges are later preferred anew and the officer submits another resignation in lieu of trial by court-martial request, the process also begins anew.

**18.14. Retirement in Lieu of Trial by Court-Martial (RetILO).** If an officer or enlisted member submits a RetILO request, the wing/garrison-level (or equivalent) SJA or designee immediately contacts AF/JAJI for further guidance in cases involving officers, and AFPC/JA in cases involving enlisted members.

18.14.1. In order to be eligible to request a RetILO, the member must be otherwise eligible to retire. This includes either meeting 20 years of TAFMS (and ten years of TAFMS to retire as an officer if requesting to retire as an officer) or equivalent ARC requirements for retirement as of the date the member submits the RetILO. DAFI 36-3203. The member must request, and use the process for, the type of retirement he/she is eligible for: active-duty retirement or transfer to the Retired Reserve for reserve retired pay. **Note:** That the requesting member is pending trial by court-martial and trial has not yet begun is a retirement restriction that may be waived by SecAF or delegee in the best interest of the DAF. The RetILO request is considered both a request to RetILO and a request for waiver of the retirement restriction of a pending trial by court-martial.

18.14.2. If the member is not retirement eligible, the RetILO may be denied at the local level. If the member is retirement eligible, generally, a RetILO request is processed in the same manner as a RILO request. See RetILO Checklist on the VMJD and AF/JAJM Teams page for package and processing requirements.

## Chapter 19

### TRIAL MATTERS

#### *Section 19A—Rules of Court-Martial Practice (R.C.M. 108)*

**19.1. Authority to Prescribe Rules of Court-Martial Practice.** TJAG designates the Chief Trial Judge as the official responsible for making and disseminating rules for the conduct of DAF court-martial proceedings, including rules pertaining to courtroom security. AF/JAT publishes the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

#### *Section 19B—Arraignment and Pleas*

**19.2. Arraignment and Pleas (Article 39(a), UCMJ).** When an Article 39(a), UCMJ, session is conducted by the military judge, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter findings of guilty on an accepted plea of guilty at that time.

#### *Section 19C—Trial by Members*

**19.3. Randomization and Assembly.** For referral occurring on or after 27 December 2023, follow the procedures described in [paragraph 14.2.3](#).

**19.4. Impanelment.** There is a fixed-panel requirement for all cases. Capital GCMs require impanelment of 12 members and any alternates required by the convening authority; non-capital GCMs require impanelment of eight members and any alternates required by the convening authority; and SPCMs require impanelment of four members and any alternates required by the convening authority. The composition of a non-capital GCM can be reduced to no fewer than six members after impanelment as a result of challenges or excusals. See R.C.M. 501. Under the impanelment process prescribed in R.C.M. 912 and 912A, it is possible that a panel for an enlisted accused will be comprised entirely of enlisted members.

#### *Section 19D—Trial by Military Judge Alone at the Request of the Accused*

**19.5. Requesting Trial by Military Judge Alone (R.C.M. 903).** In the absence of a plea agreement term that the accused be tried by military judge alone, to request a trial by military judge alone, the accused should use the DD Form 1722, *Request for Trial Before Military Judge Alone*. If the DD Form 1722 is used, the military judge admits it as an appellate exhibit. See DAFMAN 51-203.

#### *Section 19E—Audiovisual and Teleconferencing Technology*

**19.6. Use of Audiovisual and Teleconferencing Technology.** The use of audiovisual and teleconferencing technology is authorized by the SecAF to the extent and under the conditions allowed for in R.C.M. 804, 914A, and 914B.

### *Section 19F—Classified, Confidential and Privileged Matters*

**19.7. General Provision.** See M.R.E. 501-514 for a general discussion of evidentiary privileges that apply in the military justice system. This section is intended only to clarify application of certain rules and discuss privileges or confidential matters not included in the rules of evidence. See [Section 8C](#) for additional discussion of confidential matters outside of trial proceedings.

**19.8. Classified or Controlled Information (M.R.E. 505).** Special procedures and requirements apply in cases where classified information may be used as evidence. In all such cases, AF/JAJM should be contacted as soon as possible for guidance on how to proceed.

19.8.1. Declassification. At the earliest stage practicable, government counsel should coordinate with the original classification authority to request declassification of potential evidence as permitted by law, policy, or regulation. Requests should be narrowly tailored and limit declassification as to the minimum amount necessary to permit any military justice function.

19.8.2. Asserting the M.R.E. 505 Privilege. Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a non-DAF government agency for documents owned by agencies outside the DAF, may claim the privilege from disclosure of classified information. See M.R.E. 505(h)(1)(A). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on the person's behalf. Requests for assertion of the privilege are forwarded through command channels to AF/JAJI.

19.8.3. Classified Material in the Record. When a ROT contains classified material, the SJA or designee takes appropriate steps to declassify the material when proper. If it is impossible to declassify the material, the record must be classified. In determining whether a particular ROT must be classified because of its content, consideration should be given to DoDM 5200.01V1\_AFMAN16-1404V1, *Information Security Program: Overview, Classification, and Declassification* and DoDM 5200.01V2\_AFMAN16-1404V2, *DoD Information Security Program: Marking of Information*. DAFMAN 51-203 provides additional guidance.

19.8.4. **Controlled Material in the Record.** When a ROT contains controlled material (e.g., promotion testing materials, professional military education test materials, and career development course exams), the materials should be safeguarded to prevent further disclosure or unauthorized access. DAFMAN 51-203 provides additional guidance.

### **19.9. Government Information Other than Classified Information (M.R.E. 506).**

19.9.1. Asserting the M.R.E. 506 Privilege. Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a government agency in the case of documents/information owned by agencies outside the DAF, may claim the privilege from disclosure of government information other than classified information. The privilege for records and information of The Inspector General (IG) may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, The Inspector General, or any other superior authority. See M.R.E. 506(d). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on their behalf. Requests for assertion of the privilege are forwarded through command channels to AF/JAJI.



19.9.2. Requests for assertion of the safety privilege should be forwarded through command channels and the Air Force Safety Center Office of the SJA (AFSC/JA) to AF/JAJI.

**19.10. Lawyer-Client Privilege with the Air Force or Space Force as the Client.** If waiver of any privilege on behalf of the Air Force or Space Force is contemplated, contact AF/JAJI.

**19.11. Psychotherapist-Patient Privilege (M.R.E. 513).**

19.11.1. The M.R.E. 513 privilege applies to confidential communications between a military member and a psychotherapist. Diagnoses and treatments contained within medical records are not themselves uniformly privileged under M.R.E. 513. See *United States v. Mellette*, 82 M.J. 374 (C.A.A.F. 2022).

19.11.2. The M.R.E. 513 privilege does not apply if access to the confidential communications between a military member and a psychotherapist is sought for a non-UCMJ-related purpose except for any proceeding as required under equivalent or otherwise applicable state or federal law. In these situations, confidential communications should be disclosed to persons or agencies with a proper and legitimate need for the information and authorized by law or regulation to receive them. When UCMJ proceedings are pending against the member whose confidential communications are being sought for a non-UCMJ-related purpose, no privilege applies for the non-UCMJ-related purpose.

19.11.3. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. In such circumstances, release of mental health records, like all protected health information, is made in accordance with DoDM 6025.18, *Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DOD Health Care Programs*, AFI 41-200, *Health Insurance Portability and Accountability Act (HIPAA)*, and other applicable law. The SJA in possession of any crime victim's mental health records related to a UCMJ case guards against improper disclosure of inadmissible evidence to investigators and trial counsel that may disqualify them from participating in a case.

19.11.4. See [paragraph 8.10](#) for guidance on the Limited Privilege Suicide Prevention Program, if applicable.

***Section 19G—Pre-sentencing Matters (R.C.M. 1001)***

**19.12. Personnel Records of the Accused.** “Personnel records of the accused,” as referenced in R.C.M. 1001, includes those records made or maintained in accordance with DAF directives that reflect the past military efficiency, conduct, performance, and history of the accused, as well as any evidence of disciplinary actions, including punishment under Article 15, UCMJ, and previous court-martial convictions.

19.12.1. NJP. Records of NJP under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted.

19.12.2. Performance Reports. Trial counsel offers all enlisted and/or officer performance reports maintained according to departmental directives, as evidence of the character of the accused's prior service. See R.C.M. 1001(b)(2); *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988).



19.12.2.1. USAFA cadets do not have official performance reports. Counsel should consult with a USAFA cadet's chain of command to obtain equivalent USAFA-specific training records that record a USAFA cadet's performance.

19.12.3. Previous Convictions. The DD Form 493, *Extract of Military Records of Previous Convictions*, may be used to introduce evidence of an accused's previous conviction. Punishment at a SCM after review has been completed pursuant to Article 64(a), UCMJ, is admissible as personal data of the accused, not as a prior conviction, under R.C.M. 1001(b)(2).

**19.13. Intentional Selection of a Victim.** Trial counsel may present evidence in aggravation that the accused intentionally selected a victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, sex (including pregnancy), gender (including gender identity), disability or sexual orientation of any person. See R.C.M. 1001(b)(4).

**19.14. Appeals by the United States from an Adverse Ruling by a Military Judge (R.C.M. 908).**

19.14.1. For offenses under command authority, trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and R.C.M. 908, only after consultation with AF/JAJG. The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

19.14.2. For offenses under OSTC authority, trial counsel may file a notice of appeal only after consultation with AF/JAJG and with the concurrence of the detailed STC.

19.14.3. After filing a notice of appeal conforming to the requirements of R.C.M. 908(b) with the military judge, trial counsel sends notice to AF/JAJG within 20 days, requesting that office file the appeal with AFCCA. In the request, trial counsel will identify the ruling or order to be appealed and include the following:

19.14.3.1. A copy of the charges and specifications;

19.14.3.2. An original and two copies of the certified verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;

19.14.3.3. Trial counsel's certification that the appeal is not taken to delay the case;

19.14.3.4. Trial counsel's certification that, if the order or ruling excludes evidence, the excluded evidence is substantial proof of a fact material in the proceeding; and

19.14.3.5. A memorandum opinion on the law applicable to the issues appealed, including an explanation why the issues appealed are significant enough to require appeal by the United States.

19.14.4. For offenses under command authority, AF/JAJG decides whether to file the appeal with AFCCA, and notifies the trial counsel, SJA, and AF/JAJM Appellate Records Branch.

19.14.5. For offenses under OSTC authority, the LSTC makes the decision to file the appeal with AFCCA. The LSTC, or designee, will coordinate this decision with AF/JAJG. If an appeal is filed, AF/JAJG will litigate those appeals on behalf of the United States and will be responsible for the substance and content of submissions to the appellate courts.

**19.15. Extraordinary Writs by TC or VC.** A petition for extraordinary relief by the prosecution or VC in a court-martial is a rare course of action. In the event a servicing legal office receives or intends to file an extraordinary writ, contact AF/JAJG for guidance.

### *Section 19H—Sentencing*

**19.16. Applicable Sentencing Rules.** Only one sentencing system applies in a court-martial. If convicted of any offense committed on or before 27 December 2023, the accused shall be sentenced in accordance with the R.C.M. in effect prior to 28 December 2023. If any referred offenses occurred prior to 1 January 2019, the military judge shall inquire into the accused's election of sentencing rules after the announcement of findings. **(T-0)** If convicted of only offenses committed after 27 December 2023, the accused shall be sentenced in accordance with R.C.M. 1002(a)(2). **(T-0)**

**19.17. Plea Agreements and Sentencing Rules.** If any offense was committed prior to 1 January 2019, the accused can opt-in to MJA16 sentencing rules for all offenses. This includes opting into the MJA16 plea agreement rules to cover all of the offenses. In such cases, if the accused does not opt in to MJA16 sentencing rules in a straddling case, then the parties may not enter into a plea agreement under Article 53a, UCMJ. **Note:** If all offenses occurred before 1 January 2019, then the accused may not opt-in to the MJA16 plea agreement framework regardless of when the case is referred. See [Section 17B](#) for additional sentencing considerations related to pretrial agreements and plea agreements.

**19.18. Sentencing by Members.** Any sentence by military members will be a single, unitary sentence for all offenses of which the accused was found guilty in that court-martial. **(T-0)**

### **19.19. Sentencing by Military Judge Alone.**

19.19.1. Segmented Sentencing. Military judges assign a separate term of confinement, if any, and fine, if any, for each specification of which the accused is found guilty. If multiple terms of confinement exist, the military judge determines if the terms run concurrently or consecutively. See R.C.M. 1002(b)(1).

19.19.2. Default Military Judge Sentencing. For cases applying MJA16 sentencing rules, if an accused elects members for findings but does not affirmatively elect members for sentencing, the military judge will sentence by default. See Article 53(b)(1)(B), UCMJ.

**19.20. Announcement of the Sentence.** The sentence, whether determined by military judge or members, is announced by the military judge.

**19.21. Completion of the AF Form 304, *Request for Appellate Defense Counsel*.** In all GCMs or SPCMs in which there was a finding of guilty, the accused must complete an AF Form 304. If not accomplished as part of the court-martial proceeding, an AF Form 304 must be completed as part of the immediate post-trial paperwork. See [paragraph 24.1](#). If the member declines appellate representation, see [paragraph 24.3](#).

**19.22. Recommendation for Suspension of Sentence.** A military judge may make a recommendation that all or part of a sentence be suspended. R.C.M. 1109(f). The recommendation must be included, along with a statement explaining the recommendation and a specified time period for the recommended suspension, on the STR. If the military judge makes this recommendation, there is no requirement that it be announced on the record.

### *Section 19I—Waiver of Appellate Review*

#### **19.23. Waiver of Appellate Review (Article 61, UCMJ; R.C.M. 1115).**

19.23.1. If an accused wishes to waive Article 66, UCMJ, appellate review, including the right to a direct appeal under Article 66(b)(1)(A), follow the procedures outlined in R.C.M. 1115. The request to waive must be filed after the EoJ. The waiver should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*. **Note:** Ensure use of the correct version of DD Form 2330, which is dictated by referral date. See Appendix 13, MCM.

19.23.2. A valid waiver of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

19.23.3. In the event of waiver, the servicing legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.3](#) and [paragraph 24.16](#).

### *Section 19J—Contempt Proceedings*

**19.24. General Overview of Contempt Proceedings.** Any person who uses any menacing word, sign or gesture in the presence of the judicial officer during the proceeding; disturbs the proceeding by any riot or disorder; or willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding may be punished for contempt. See Article 48(a), UCMJ.

**19.25. Punishment Authority.** The following judicial officers have the authority to punish a person for contempt: an appellate judge of the CAAF or AFCCA, military trial judges detailed to a court-martial or any other proceeding under the UCMJ, or the president of a court of inquiry. See Article 48(a)(2), UCMJ.

**19.26. Contempt Punishment.** The maximum punishment for contempt is confinement for 30 days, a fine of \$1,000 or both. Article 48(b), UCMJ. A sentence to confinement begins when announced by the judicial officer unless the person held in contempt notifies the judicial officer of an intent to file an appeal, and the judicial officer, in the exercise of discretion, defers the sentence pending the decision of the reviewing authority. See R.C.M. 809(d) and 809(e)(4).

**19.27. Process.** The process for imposition of punishment for contempt varies based on whether it was directly witnessed by the judicial officer authorized to impose punishment. See R.C.M. 809(b)-(c). To punish the alleged offender, the contempt must be proven beyond a reasonable doubt. **(T-0)** See R.C.M. 809(b)(2).

**19.28. Record.** A record of the contempt proceedings must be included as part of the record. **(T-0)** If the offender was held in contempt, a separate record of the contempt proceedings must be prepared and forwarded for review. Contact AF/JAJM for guidance with any record of contempt proceedings.

## Chapter 20

### STR THROUGH EOJ (POST-TRIAL PROCESS)

#### *Section 20A—General Post-Trial Overview*

**20.1. Applicability.** This chapter applies only to GCMs and SPCMs in which charges were referred on or after 1 January 2019. For SCMs, see [Chapter 23](#). For cases referred before 1 January 2019, contact AF/JAJM for assistance.

**20.2. Definition of “Victim” for Post-Trial.** Practitioners should be cognizant of the changing definition of victim throughout the post-trial process. In certain circumstances, “victim” refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, “victim” refers only to named victims whose specifications resulted in a conviction.

20.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the STR and the EoJ. R.C.M. 1101(d), 1111(f).

20.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

20.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

#### *Section 20B—STR*

**20.3. Requirement for a STR and Exceptions to Requirement.** Following final adjournment in a GCM or SPCM, the military judge must ensure an STR is prepared and signed by the military judge. **(T-0)** However, in cases where the accused was arraigned and the trial resulted in a full acquittal, mistrial, dismissal of charges, or is otherwise terminated without findings, there is no requirement for a STR. In such cases, complete and distribute an EoJ as outlined in [Section 20I](#). Do not complete a STR in SCMs. See [Chapter 23](#) for further guidance in SCMs.

**20.4. Mandatory Contents of STR.** The STR must contain the content required under R.C.M. 1101. **(T-0) Note:** In cases where an expurgated STR is required, both an expurgated and unexpurgated STR must be prepared and signed by the military judge. See [paragraph 20.8](#) for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel and military judges must follow the format and checklists provided on the VMJD and AF/JAJM Teams page.

**20.5. Military Judge Recommendation for Suspension of Sentence.** See [paragraph 19.22](#) for guidance.

**20.6. Requirement for First Indorsement to STR.** Prior to distribution, the SJA must sign and attach to the STR a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11, *Fingerprint Reporting Requirements*; firearm prohibitions are triggered; and/or sex offender

notification is required. See [Chapter 29](#) and AFMAN 71-102 for further information. Templates are available on the VMJD and AF/JAJM Teams page. The first indorsement is distributed with the STR. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

**20.7. Distributing the STR.** The SJA distributes the STR and first indorsement to those recipients identified in the STR/EoJ distribution list on the VMJD and AF/JAJM Teams page.

**20.8. Unexpurgated and Expurgated Statements of Trial Results.**

20.8.1. An expurgated copy of the STR is required in every case that otherwise requires a STR when the contents of a STR includes classified or other matters implicating privacy interests, as annotated in the paragraphs below. In such cases, legal offices must prepare both an expurgated and unexpurgated copy. The version with the content replaced is called the expurgated STR. Only certain parties receive the unexpurgated version. See [paragraph 20.8.2](#). When making expurgated copies, the initials should match the way the name is written on the charge sheet (e.g., “Jane Doe” becomes “J.D.” and “Jane B. Doe” or “Jane Belinda Doe” becomes “J.B.D.”) Make the following substitutions in the expurgated STR:

20.8.1.1. Names of individuals who were children under 16 years of age at the time of the offense are replaced with initials, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR). **Note:** If offenses only contain names of victims listed in this paragraph, only an expurgated copy of the STR is required;

20.8.1.2. Names of victims who were under 18 years of age at the time of the offense are replaced with initials when the charged offense is a child pornography offense, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR);

20.8.1.3. Names of sex offense victims are replaced with initials, regardless of the final outcome of the case. **Note:** For purposes of expurgation, a “sex offense” is any offense which requires sex offender notification in accordance with DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*.

20.8.1.4. Names of victims listed in paragraphs [20.8.1.1-20.8.1.3](#) when listed in other offenses on the charge sheet should be replaced with initials, regardless of the final outcome of the case (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge); and

20.8.1.5. Classified information is replaced with asterisks.

**20.8.2. Distribution.**

20.8.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated STR contains classified information, ensure the STR is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. Provide the unexpurgated classified STR to AF/JAJM as part of the original ROT and maintain an unexpurgated classified copy in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see DAFMAN 51-203.

20.8.2.2. Unexpurgated STR—Unclassified Cases. For cases not involving classified information, distribute the unexpurgated STR to only the following parties within three duty days of completion of the STR:

20.8.2.2.1. AF/JAJM, (send as part of the original ROT, need not be within three duty days);

20.8.2.2.2. The confinement officer, noncommissioned officer, or commanding officer responsible for the confinement facility where the accused is held;

20.8.2.2.3. DAF-CJIC;

20.8.2.2.4. AFSFC/FC; and

20.8.2.2.5. AFSFC/FCV.

20.8.2.3. Expurgated STR. All other individuals or organizations required to receive a STR are provided expurgated copies within five duty days of completion of the STR.

20.8.2.4. The full distribution list should be used on both versions of the STR. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list, add “\*Recipients of unexpurgated STR.”

20.8.2.5. Refer to the STR/EOJ Distribution Checklist on the VMJD and the AF/JAJM Teams page for the most current guidance on distribution.

### ***Section 20C—Accused’s Submission of Matters***

**20.9. General Requirement.** The accused may submit written post-sentencing matters for the convening authority’s consideration in accordance with R.C.M. 1106. Submissions may not include matters that relate to the character of a victim unless such matters were admitted as evidence at trial. **(T-0)** See R.C.M. 1106.

20.9.1. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority.

20.9.2. If a victim submits post-sentencing matters under R.C.M. 1106A and **Section 20D**, trial counsel shall serve those matters on the accused and provide a copy to defense counsel. **(T-0)** The copy shall be provided within two duty days to allow the accused an opportunity to provide a written rebuttal. A template notification to the accused of the opportunity to rebut the victim’s submission of matters is available on VMJD and the AF/JAJM Teams page.

### **20.10. Time Periods for Submissions.**

20.10.1. In a GCM or SPCM, the accused may submit matters within ten calendar days after the sentence is announced.

20.10.2. If a victim submits post-sentencing matters under R.C.M. 1106A, the accused has five calendar days from receipt of those matters to submit matters in rebuttal. See R.C.M. 1106(d)(3). A sample notice to the accused of the opportunity to submit rebuttal matters is located on the VMJD and AF/JAJM Teams page. The day on which the accused is served victim’s matters does not count against the five-day time period.



20.10.3. The convening authority may extend the time periods for submission up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted by the accused or defense counsel, in writing, to the trial counsel who will then provide it to the convening authority.

20.10.4. Notification to Accused. Immediately following the announcement of the sentence, the SJA or trial counsel notifies the accused of the right to submit matters under R.C.M. 1106. A template letter is provided on the VMJD and AF/JAJM Teams page. At a minimum, the notification letter must advise the accused:

20.10.4.1. The process for submitting matters to the convening authority;

20.10.4.2. That the convening authority will consider timely written matters submitted by the accused before deciding whether to grant the accused post-sentencing relief;

20.10.4.3. That the convening authority may not consider character evidence related to the victim unless such evidence was admitted at trial;

20.10.4.4. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;

20.10.4.5. That any matters submitted by the victim under R.C.M. 1106A and [Section 20D](#) will be provided to the accused for rebuttal;

20.10.4.6. That a failure to submit matters by the prescribed time constitutes a waiver;

20.10.4.7. That submission of any matters under R.C.M. 1106 shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limit is expressly reserved in writing;

20.10.4.8. That if the accused waives the opportunity to submit matters, the waiver may not be revoked; and

20.10.4.9. That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters. **Note:** There is no audio recording in a summary court-martial.

**20.11. Access to Court-Martial Recordings and Evidence.** To facilitate preparation of matters, the defense counsel or accused may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

20.11.1. The government shall not release the recording under R.C.M. 1106 unless the government receives a written request from the defense. Upon receiving such a request, trial counsel is only authorized to release the recording of open court-martial sessions. Trial counsel must not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any person or party (including defense counsel or VC). **(T-0)** Trial counsel is not required to further redact the recordings (e.g., for personally identifying information), but shall not provide such recordings directly to the accused, only to defense counsel. Defense counsel must maintain the recording to prevent the unauthorized release of third-party personal information to any other party, including to the accused.

20.11.2. The government must provide access to exhibits upon written request from the defense but should not normally provide copies of exhibits. **Note:** See [paragraph 20.11.1](#) for discussion on sealed exhibits.

20.11.3. In the event an accused is not represented by either military or civilian defense counsel, contact AF/JAJM for guidance.

**20.12. Application to Defer Sentence and Waive Required Forfeitures.** Before the convening authority makes a decision as to whether to grant relief in a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(b) and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA at the same time the accused submits post-sentencing matters, or any time after the sentence is announced and before the convening authority's decision on action. The convening authority's decision on an accused's application for deferral should be in writing and explain the reasons for any denial. The convening authority may not defer any portion of a sentence without a request from the accused, except for a sentence to confinement. See Article 57(b), UCMJ, and R.C.M. 1103. The convening authority may waive automatic forfeitures of pay and allowances without a request from the accused. **Note:** Automatic and adjudged forfeitures go into effect automatically 14 days after the announcement of the sentence. See [Section 20F](#) for additional guidance on deferring and waiving forfeitures of pay and allowances.

**20.13. Return to Duty.** The return to duty system may offer selected enlisted personnel with exceptional potential the opportunity for relief concerning the characterization of their discharges and possible return to duty. See DAFMAN 31-115, Vol 1, and Attachment 18 of that instruction for additional guidance on applications and requirements for applications for return to duty.

### *Section 20D—Victim's Submission of Matters*

**20.14. Generally.** In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the SJA must ensure the victim is provided an opportunity to submit written matters for consideration by the convening authority before the convening authority considers taking action. **(T-0)** See R.C.M. 1106A.

20.14.1. Submissions may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial. **(T-0)**

20.14.2. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority and the accused. The accused has an opportunity to rebut statements made by the victim in accordance with R.C.M. 1106(d)(3).

### **20.15. Time Periods for Submissions.**

20.15.1. In a GCM or SPCM, the victim must submit any matters within ten calendar days after the sentence is announced. **(T-0)**

20.15.2. The convening authority may extend the time period for submissions up to an additional 20 calendar days, if the victim shows good cause for the extension. Extension



requests must be in writing and submitted by the victim or VC to the trial counsel, who will provide it to the convening authority.

**20.16. Notification.** Immediately following trial, the SJA or trial counsel must provide a letter to eligible victims as defined in [paragraph 20.14](#), if any, notifying them of their right to submit matters under R.C.M. 1106A. A template letter notifying a victim of the right to submit a Victim Impact Statement is provided on the VMJD and AF/JAJM Teams page. At a minimum, the notification letter must advise the victim:

20.16.1. That the convening authority will consider any timely written matters submitted by the victim before deciding whether to grant the accused post-sentencing relief;

20.16.2. That the convening authority may not consider character evidence related to the accused unless such evidence was admitted at trial;

20.16.3. That the convening authority may not consider character evidence related to the crime victim unless such evidence was admitted at trial;

20.16.4. That the convening authority may not consider evidence of offenses of which the accused was not convicted at trial;

20.16.5. The process for submitting matters to the convening authority;

20.16.6. That any matters submitted by the victim will be provided to the accused and defense counsel for rebuttal by the accused;

20.16.7. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;

20.16.8. That the victim is entitled to only one opportunity to submit matters, and that a failure to submit matters by the prescribed time constitutes a waiver;

20.16.9. That if the victim waives the opportunity to submit matters the waiver may not be revoked; and

20.16.10. That the victim is entitled to request a copy of the recording and copies of, or access to, the exhibits to assist in the preparation of matters.

**20.17. Access to Court-Martial Recordings and Evidence.** To facilitate preparation of matters, the VC or victim may request a copy of the court-martial recording and copies of, or access to, the exhibits.

20.17.1. The government may release the recording under R.C.M. 1106A only upon receiving a written request from the eligible victim or VC. Upon receiving such a request, trial counsel is only authorized to release the recordings of open court-martial sessions. Trial counsel may not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any other party or person (including defense counsel or VC). Trial counsel is not normally required to further redact the recording (e.g., for personally identifying information) except as indicated below. However, to ensure compliance with the Privacy Act, the government should release the recording in the following manner:

20.17.1.1. If the victim is represented by a VC, trial counsel should provide the recording to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-

R, *Department of Defense Privacy Program*. The VC must maintain the recording in accordance with the Privacy Act. **(T-0)** If the victim is represented by a civilian VC, trial counsel may provide the recording in accordance with the Privacy Act. See [paragraph 8.5.5](#).

20.17.1.2. An unredacted recording (e.g., a recording of all open sessions that has not been redacted for PII) may be provided directly to the victim only if the victim is not represented by counsel. **Note:** Such recording may not include any closed, sealed or classified sessions absent an order from the military judge. See [paragraph 20.17.1](#). The recording may be provided to an unrepresented victim as a routine use under the Privacy Act system of records notice for Air Force courts-martial records. See SORN DoD 0006.

20.17.2. The government must provide access to exhibits upon written request from the VC, if the victim is represented, or to the victim if the victim is unrepresented, but should not normally provide copies of exhibits. If the government chooses to provide copies of exhibits, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

### ***Section 20E—Convening Authority Decision on Action***

**20.18. Applicable Version of Article 60, UCMJ.** The convening authority may grant clemency on a case depending on what version of Article 60, UCMJ, applies. To determine the applicable version of Article 60, UCMJ, look at the date the earliest offense resulting in a conviction was committed. The version of Article 60, UCMJ, in effect on that date applies to the entire case.

20.18.1. In any court-martial where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, a convening authority errs if he or she fails to take one of the following post-trial actions: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

**20.19. Convening Authority Discretion.** The convening authority may grant post-sentencing relief on the findings and/or sentence of a court-martial in accordance with the applicable versions of Articles 60, 60a, and 60b, UCMJ, and their associated R.C.M.s.

20.19.1. When deciding whether to grant relief under these rules, the convening authority has two options: act on the findings and/or sentence or not act on the findings and/or sentence. A decision to act, or take action, is tantamount to granting relief, whereas a decision not to act, or to take no action, is tantamount to granting no relief. Granting post-sentencing relief (i.e., a decision to act) is a matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. See [paragraph 20.18](#).

20.19.1.1. The process of documenting the convening authority's decision on whether or not to grant relief in general and special courts-martial is reflected in the convening authority's decision on action memorandum (CADAM). For summary courts-martial, refer to [paragraph 23.22](#). A template for the CADAM is located on the VMJD and AF/JAJM Teams page. The template includes language to address a potentially ambiguous development in Article 60, UCMJ with respect to the word, "action." Prior to MJA16, a convening authority was required to take post-trial "action" in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in

part. Following MJA16, new Articles 60a and 60b, UCMJ, use the words, “act” and “action” differently. These terms mean granting any form of relief.

20.19.1.2. Where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, the convening authority must take action in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. For cases where an accused is found guilty only of offenses committed after 1 January 2019, the convening authority may choose to take no action—in which case no relief will be granted—or the convening authority may choose to act—in which case some relief will be granted in the form that the convening authority determines. See [paragraph 20.25](#) and *United States v. Brubaker-Escobar*, 81 M.J. 471 (C.A.A.F. 2021).

20.19.1.3. Drafting a reprimand that was announced as part of the sentence does not constitute action. Thus, even in a case where the convening authority does not take action (i.e., does not grant relief), the convening authority must still provide the language for the reprimand. Similarly, stating a requirement for the accused to be placed on excess leave is not action, but will be included in the CADAM. Finally, making a decision on deferment or waiver does not constitute action, but will be included in the CADAM.

20.19.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may recommend administrative, rather than punitive, discharge to SecAF under Article 74(b), UCMJ. If a convening authority is considering making such a recommendation, the convening authority’s SJA should contact AF/JAJI for assistance and coordination.

**20.20. Military Judge Suspension Recommendation.** In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge’s recommendation as annotated on the STR. See Article 60a(c), UCMJ. However, the convening authority may not suspend a mandatory minimum sentence or exceed the suspension recommendation of the military judge. **(T-0)** Further, the duration of the suspension may not be less than that recommended by the military judge. **(T-0) Note:** Separation which terminates status as a person subject to the UCMJ will result in remission of the suspended portion of the sentence. See R.C.M. 1107(e).

**20.21. Required Considerations.** Before making a decision to take action or to take no action, the convening authority must:

20.21.1. Consult with a SJA or legal advisor **(T-0)**; and

20.21.2. Consider matters timely submitted by the accused under R.C.M. 1106 and the victim(s), if any, under R.C.M. 1106A. **(T-0)**

**20.22. Consultation with Staff Judge Advocate.** For cases referred on or after 1 January 2019, legal advice should generally not be provided in writing, as it is not required. However, if written legal advice is prepared, then the SJA must serve it on the accused and accused’s counsel, as well as on any victim(s) and VC. Likewise, if any subsequent legal reviews are prepared in writing and raise new matters to which the accused has not had an opportunity to provide rebuttal matters, such legal reviews must also be served on the accused and accused’s counsel and on any victim(s).

**20.23. Matters Adverse to the Accused.** If the convening authority wishes to consider any matters adverse to the accused that were not admitted at trial, then the convening authority must first cause those matters to be served on the accused with an opportunity to rebut. **(T-0)**

20.23.1. The SJA shall serve any such matters on the accused and the accused's counsel, and shall notify the accused, in writing:

20.23.1.1. That the convening authority may consider information adverse to the accused not previously admitted at trial;

20.23.1.2. That the accused has a right to rebut the information; and

20.23.1.3. The date on which the accused's rebuttal matters are due to the SJA, which should be no less than five calendar days from the date on which the accused is notified.

20.23.2. This notification memo will be attached to the record of trial, behind the memo documenting the convening authority's decision to take action or to take no action. See [paragraph 20.25](#).

20.23.3. Upon receiving rebuttal matters, if any, from the accused, the SJA provides those to the convening authority. The SJA does not have to prepare a corresponding written legal review or memo.

20.23.4. The convening authority indicates, in writing, whether such matters were considered and, if so, whether the accused submitted matters in rebuttal. This may be incorporated into the same CADAM the convening authority uses to document the decision to take action or to take no action. See [paragraph 20.21](#) and [paragraph 20.25](#). Templates are available on the VMJD and AF/JAJM Teams page.

**20.24. Timing of Convening Authority Decision to Take Action/No Action.** The convening authority must generally act before the EoJ. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the EoJ by accomplishing a new memorandum. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the EoJ, the convening authority who convened the court-martial or that convening authority's successor in command may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) are met.

**20.25. Documenting Convening Authority Action/No Action in a GCM or SPCM.**

20.25.1. For cases where all offenses resulting in a conviction occurred after 1 January 2019, the convening authority may either take action to reduce the findings or sentence, in accordance with Article 60, UCMJ, or take no action. The date of the earliest offense for which an accused is found guilty controls which version of Article 60, UCMJ, applies, and thus what a convening authority must do. See [paragraph 20.19](#).

20.25.2. In any case where an accused is found guilty of at least one specification where the offense was committed before 1 January 2019, a convening authority errs if he or she fails to take one of the following mandated post-trial actions in a case: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. See [paragraph 20.19](#).

20.25.3. If all offenses for which the accused is found guilty occurred after 1 January 2019, the convening authority does not need to take action to approve the findings or sentence. See [paragraph 20.19](#).

20.25.4. The convening authority's decision must be in writing. If the convening authority decides to take no action in a GCM or SPCM, no rationale is required. If the convening authority decides to take action in a GCM or SPCM, the convening authority's decision must include a paragraph explaining the reasons for the action. This includes if any part of the sentence is disapproved, reduced, commuted, or suspended. The action shall clearly state which part or parts are disapproved, reduced, commuted, or suspended. **(T-0)**

20.25.5. The convening authority's written decision to take action or no action in a GCM or SPCM must be attached to the ROT. Templates, checklists, and sample action language are located on the VMJD and AF/JAJM Teams page. At a minimum, the convening authority's written decision on action must:

20.25.5.1. Indicate the action taken, if any, on the findings or the sentence and the rationale (to include whether the action was taken as a result of a trial counsel substantial assistance recommendation);

20.25.5.2. Express the convening authority's decision on a military judge suspension recommendation, if any;

20.25.5.3. Annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and the dependent who will receive waived forfeitures. If the convening authority denies a deferral request in the CADAM, the reason for denial must be articulated;

20.25.5.4. Direct the member to be placed on excess leave pending appellate review if required under [Section 20M](#); and

20.25.5.5. State whether the convening authority consulted with the SJA and considered any matters submitted by the accused and/or victim, as applicable.

20.25.6. The CADAM must include any reprimand language in cases in which a reprimand was adjudged by the court, provided the convening authority does not disapprove the reprimand. See [paragraph 20.19](#).

**20.26. Service of the CADAM in a GCM/SPCM.** The SJA must serve the CADAM on the military judge, court reporter, counsel for the accused, counsel for the victim, and detailed STC, if applicable. **(T-0)** In the event the accused or victim is not represented by counsel, the CADAM must be served on the accused or victim, as applicable. If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0)**

**20.27. Documenting and Serving Convening Authority Action in an SCM.** See [Chapter 23](#).

**20.28. Disqualification of a Convening Authority.** A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (C.A.A.F. 2002); *United States v. Voorhees*, 50 M.J. 494 (C.A.A.F. 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 2 C.M.R. 161 (C.M.A. 1952).

***Section 20F—Forfeitures of Pay, Deferment and Waiver (Articles 57(b) and 58b, UCMJ; R.C.M. 1103)***

**20.29. Adjudged Versus Automatic Forfeitures.** The ability of a convening authority to defer or waive forfeitures of pay and allowances hinges on whether the forfeitures are adjudged or automatic (the latter of which is also known as “mandatory forfeitures”).

20.29.1. Adjudged forfeitures are those forfeitures imposed as part of a court-martial sentence. See Article 57(a), UCMJ, and R.C.M. 1103. Adjudged forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2. Automatic forfeitures are forfeitures that take effect by operation of law. See Article 58b, UCMJ. An accused must forfeit pay and allowances if sentenced to confinement for more than six months or if sentenced to a punitive discharge or dismissal and any length of confinement.

20.29.2.1. Automatic forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2.2. The amount of automatic forfeitures in a GCM is all pay and allowances otherwise due to the accused. The amount of automatic forfeitures in an SPCM is two-thirds pay otherwise due to the accused. Allowances otherwise due are not subject to mandatory forfeitures in an SPCM.

20.29.2.3. Automatic forfeitures only take effect if the following three conditions exist:

20.29.2.3.1. The adjudged sentence includes confinement for more than six months or death, or confinement for six months or less and a punitive discharge;

20.29.2.3.2. The accused is in confinement or on parole; and

20.29.2.3.3. The accused is otherwise entitled to pay and allowances that are subject to automatic forfeitures. If the adjudged sentence includes forfeitures, the accused is not entitled to the adjudged forfeited amount unless they are deferred or otherwise made available to the member.

20.29.2.4. Automatic forfeitures do not apply to summary courts-martial. See R.C.M. 1003(b)(2), Discussion.

**20.30. Required Adjustment of Forfeitures.** If the convening authority takes action on a sentence that then creates an illegal punishment (e.g., no confinement but a forfeiture exceeding 2/3 pay per month) or an accused is otherwise released from confinement while forfeitures exceeding 2/3 pay per month are still in effect (e.g. due to pretrial confinement credit), legal offices should ensure that, prior to EoJ, the convening authority takes action to reduce the forfeitures to no more than 2/3 pay per month for the period the accused is not confined. See R.C.M. 1003(b)(2); R.C.M. 1102(b)(1)(B).

**20.31. Deferment Versus Waiver.** Deferment and waiver of forfeitures are distinct concepts that operate differently depending on whether the forfeitures are adjudged or automatic.

20.31.1. Deferment (Article 57(b), UCMJ). Deferment is a postponement of the running of a sentence. Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures until the EoJ or, in the case of a SCM, until a convening



authority acts on the sentence. Deferred forfeitures are paid directly to the accused. The accused may apply for deferment regardless of whether the accused has dependents. The convening authority may rescind a deferment at any time.

20.31.1.1. The factors an accused must establish in a deferment request, and the factors a convening authority must consider, are provided in R.C.M. 1103(d)(2).

20.31.1.2. The convening authority's action on the deferment request must be in writing and must include the basis for any denial. **(T-0)** Annotate whether the accused requested deferment of confinement, forfeitures or, reduction in grade. If the accused requested more than one deferment, address each. Specify the nature of the request, the convening authority's decision, the reason for the convening authority's decision if denied (see, R.C.M. 1103(d)(2)), the effective date if approved, and the expiration date. A copy of the convening authority's action on the deferment request must be included in the record of trial and provided to the military judge, accused, and detailed STC, if applicable. **(T-0)** Inclusion of the convening authority's action on deferment in the CADAM satisfies this requirement.

20.31.1.3. If the convening authority grants deferment, the deferment continues until EoJ unless the convening authority mitigates, suspends or disapproves the adjudged forfeitures prior to EoJ, in which case the deferment or adjudged forfeitures ends at the time at which the convening authority acts, and are thereafter mitigated, suspended or disapproved.

20.31.2. Waiver (Article 58b, UCMJ). The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived forfeitures are paid directly to the accused's dependents. Dependent is defined by 37 U.S.C. § 401, *Definitions*. See [paragraph 20.33](#).

20.31.2.1. The convening authority may not waive adjudged forfeitures. **(T-0)** However, the convening authority may take action under Articles 60, 60a or 60b, UCMJ, to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any resulting automatic forfeitures. See *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). Sample language the convening authority may use to defer, suspend, mitigate or disapprove all or part of adjudged forfeitures can be found on the VMJD and AF/JAJM Teams page.

20.31.2.2. The factors a convening authority may consider before granting a waiver are provided in R.C.M. 1103(h)(2).

20.31.2.3. The convening authority may waive automatic forfeitures for the purpose of providing support to the accused's dependents even if the accused does not apply for a waiver.

20.31.2.4. The convening authority may waive automatic forfeitures at any point before the EoJ. The waiver can be retroactive, designated to begin on a date no earlier than 14 days after the sentence is adjudged.

20.31.2.5. Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point. Practitioners shall always verify the accused is entitled to pay before recommending the convening authority waive forfeitures as a part of the plea agreement.

20.31.2.6. If the convening authority grants waiver of any portion of automatic forfeitures, the convening authority should specify the date on which the waiver is effective. The waiver may begin no later than the EoJ.

20.31.3. A request for a combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family members. For example, the accused may request that the convening authority defer automatic and adjudged forfeitures until the EoJ and then disapprove adjudged forfeitures and waive automatic forfeitures starting on the EoJ for a period not to exceed six months. However, a convening authority who waives automatic forfeitures starting at EoJ must first consider disapproving, commuting or suspending some or all of the adjudged forfeitures for the same period as the waiver. *U.S. v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). Transitional compensation is a separate and distinct application process from deferral and waiver; nevertheless, it is also an opportunity to assist victims and it begins when the EoJ is signed. See DAFI 51-207 and DAFI 36-3012, *Military Entitlements*, Chapter 8.

**20.32. Mechanics of Deferring and Waiving Forfeiture of Pay.** [Table 20.1](#) explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period.

20.32.1. Accused's Deferment Request. If an accused requests deferment of a reduction in grade, a forfeiture of pay and allowances, or sentence to confinement until EoJ, the convening authority may approve the request, in full or in part, or may disapprove the request. See [paragraph 20.31.1.2](#).

20.32.1.1. The accused's deferment request as to forfeitures should specify whether it is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferment of both.

20.32.1.2. The convening authority's decision on the request should be reflected in a signed and dated document. This includes the basis for any denial. See [paragraph 20.31.1.2](#).

20.32.1.3. The terms of approved deferment requests are reported in a 14-day/24-hour memorandum and the CADAM signed by the convening authority. Templates for both documents can be found on the VMJD and AF/JAJM Teams page. See [paragraph 20.31.1.2](#).

20.32.1.4. A deferment of forfeitures may be for adjudged forfeitures, automatic forfeitures or both, and for all pay and allowances to which the accused is entitled or a lesser sum. However, deferment does not extend beyond the time at which the EoJ is completed in a GCM or SPCM or beyond action in a SCM. R.C.M. 1103(f).

20.32.2. Waiver of Automatic Forfeitures. In cases where automatic forfeitures are waived, whether prior to or as part of the convening authority's action, the approved waiver should state the amount approved in whole dollar amounts per month, unless the waiver is for total pay and allowances in a GCM. If waiver of forfeiture of two-thirds pay is approved in a special court-martial, the total should be reflected in whole dollar amounts.

20.32.2.1. The convening authority must identify the dependents who will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other



person on behalf of minor dependents, the SJA or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent and that the accused does not have access to the account. Legal offices should provide information described in AFMAN 65-116V1, *Defense Joint Military Pay System Active Component (DJMS-AC) FSO Procedures*, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

20.32.2.2. If automatic forfeitures are waived before the decision on action, the convening authority must reflect approval in a signed and dated document at the time forfeitures are waived. Such a waiver of automatic forfeitures is also reported in the 14-day/24-hour memorandum and in the CADAM.

20.32.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. **Note:** These considerations could affect the enforceability of a plea agreement or pretrial agreement. A number of factors can impact the following entitlements:

20.32.2.3.1. Basic Allowance for Subsistence. The accused loses Basic Allowance for Subsistence upon entry into confinement, thus the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

20.32.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

20.32.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration. To the extent that it is allowed by law under Article 58a, UCMJ, a grade reduction can be deferred but cannot be waived.

20.32.2.3.4. Active-Duty Spouse. A spouse who is also a Regular DAF member may receive only waived forfeiture of pay, not pay and allowances. **(T-0)**

20.32.2.3.5. ETS. There are no forfeitures to waive on any date after the accused's ETS. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their ETS may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0)** See *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

20.32.2.3.6. Foreign Accounts. The Defense Finance and Accounting Service (DFAS) has experienced difficulties making deposits into certain foreign bank accounts. Plea

agreement and pretrial agreement terms requiring deposits of pay into foreign account may be impractical to accomplish.

20.32.2.3.7. Title 10 Status. As with ETS, if a member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. See [Chapter 3](#) for further guidance.

### **20.33. Dependency Determinations for Waivers under Article 58b, UCMJ.**

20.33.1. Dependent is defined by 37 U.S.C. § 401.

20.33.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b, UCMJ, waiver. The nature of this evidence will depend on the status of the dependent.

20.33.2.1. Dependency status for a spouse or child may be established by their enrollment in the Defense Enrollment Eligibility Reporting System or by other competent evidence, such as, a marriage certificate, a birth certificate, or a court order establishing paternity or child support obligations for a child.

20.33.2.2. Dependency determinations for a child over 21 years of age, parents or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A precondition for waiving forfeitures for the benefit of one of these dependents should be an approval letter of dependency from DFAS. The accused, or other party requesting the waiver, should provide a copy of the DFAS approval letter with any request to waive mandatory forfeitures. If an accused is unable to qualify one of these persons as a dependent with DFAS, then there will normally be insufficient evidence of dependency to support an Article 58b, UCMJ, waiver of mandatory forfeitures.

**20.34. Deferment and Waiver in Cases with Offenses Committed Prior to 1 April 1996.** See the VMJD and AF/JAJM Teams page for information on forfeitures related to offenses committed prior to 1 April 1996. Contact AF/JAJM for assistance.

**Table 20.1. Relationship between Adjudged and Automatic Forfeitures.**

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service.	Not in effect. Accused continues to be paid unless post expiration of term of service.

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED UNTIL EOJ	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents (in the case of a waiver). (See Notes 3 & 4)
EOJ	In effect unless the convening authority approves, disapproves, commutes or suspends the adjudged forfeitures in whole or in part.	In effect, except any portion the convening authority has waived. Waiver period may not exceed six months. (See Notes 4 & 5)

**Notes:**

- Automatic forfeitures only apply when the three conditions listed in **paragraph 20.29.2.3** exist.
- If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or automatic forfeitures 14 days after the date on which the sentence was adjudged until the EoJ. The accused should specify whether the deferment requested is for adjudged forfeitures, automatic forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused is paid a sum equal to entitled pay and allowances, minus any amounts not deferred. The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time.
- The convening authority may waive available automatic forfeitures with or without a request from the accused. The convening authority may waive automatic forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above).
- Automatic forfeitures may be waived until the earlier of: (1) a period not to exceed six months; (2) the accused's release from confinement; or (3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above).
- The convening authority may waive all or a portion of the available automatic forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to enable the convening authority to waive any amount of automatic forfeitures. See *U.S. v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002).

**20.35. Service of Legal Review on the Accused.** There is no requirement to prepare written legal advice to a convening authority pertaining to a request for deferment or waiver. However, if written legal advice is prepared the legal office must understand the distinction between advice that must be served on the accused and advice where service is not required. Written legal advice

pertaining to deferment requests need not be served on the accused. Written legal advice pertaining to waiver requests must be served on the accused. **(T-0)**

20.35.1. Article 57(b), UCMJ, Deferral of Forfeiture Requests. In *United States v. Key*, 55 M.J. 537 (AFCCA 2001), the Court held that an SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority, where the SJA's review does not contain a "new matter." The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any decision by the convening authority on the request is included in the ROT.

20.35.2. Article 58b, UCMJ, Waiver of Forfeiture Requests. In *United States v. Spears*, 48 M.J. 768 (AFCCA 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. The SJA or designee is required to serve any written legal review on the accused and defense counsel before submission to the convening authority and must include it as an attachment to the completed ROT.

### ***Section 20G—Contingent Confinement***

**20.36. Contingent Confinement.** Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See R.C.M. 1003(b)(3). A fine-enforcement provision may be ordered executed in accordance with the procedures below.

20.36.1. Authority to Execute Contingent Confinement. A fine does not become effective, and the accused is not required to pay, until EoJ. See Article 57(a), UCMJ. The convening authority may not order an accused to serve contingent confinement until the EoJ is complete and the requirements of [paragraph 20.37](#) are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in [paragraph 20.37](#).

20.36.2. Enforcement. Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction. *Carter v. McClaughry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (C.M.A. 1973).

**20.37. Procedures for Executing Contingent Confinement.** Contingent confinement may be executed in accordance with the following procedures:

20.37.1. When the fine is ordered executed, the convening authority notifies the accused in writing the fine is due and payable. A specific due date must be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before

the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

20.37.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the SJA notifies the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a post-trial contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, a successor in command, or the officer exercising GCMCA over the command to which the accused is assigned. If the accused is no longer on active duty and is not a member of the ARC, AFDW/CC is the convening authority. The purpose of the hearing is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed. For offenses under OSTC authority, the servicing OSTC District Office shall be notified of an order for a post-trial contingent confinement hearing.

20.37.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing. This detailing is accomplished in the same manner as detailing a military judge to a court-martial.

20.37.4. The SJA or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. See DAFMAN 65-605V1, *Budget Guidance and Technical Procedures*, for appropriate funding authority. The notice informs the accused of the following:

20.37.4.1. The accused's alleged failure to pay the fine;

20.37.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

20.37.4.3. The accused's right to present witnesses and documentary evidence;

20.37.4.4. The accused's right to representation by military defense counsel; and

20.37.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

20.37.5. Unless the hearing is otherwise waived, the hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified in the approved sentence or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

20.37.6. Hearing Procedures.

20.37.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

20.37.6.2. The accused may testify and present witnesses and documentary evidence. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at government expense unless the request is made to the hearing officer, in writing, before the hearing and the hearing officer determines:

20.37.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

20.37.6.2.2. The witness is available to testify; and

20.37.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

20.37.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

20.37.6.4. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the government. The accused is also entitled to representation by either an ADC or military counsel of the accused's selection, if reasonably available. See [paragraph 15.6](#). The accused is not entitled to representation by more than one military counsel.

20.37.6.5. A court reporter records the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer.

20.37.6.6. The hearing officer submits a written report to the convening authority through the SJA, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

20.37.6.7. The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify, or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority specifies the evidence relied upon and the reasons for the decision.

20.37.6.8. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of contingent confinement executed. A sample memorandum executing contingent confinement is provided on the VMJD and AF/JAJM Teams page. If the convening authority determines the accused has made good faith efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed. If electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the ROT.

20.37.6.9. The convening authority's contingent confinement order should be forwarded through the SJA to the military judge for completion of a new EoJ, which must be attached to the ROT.

20.37.6.10. Forward to AF/JAJM a copy of the summarized record of the contingent confinement hearing, any order, and modified EOJ for each copy of the ROT required by DAFMAN 51-203.

### *Section 20H—Notification of Adjudged Sentence, EoJ*

**20.38. 14-Day Memorandum and 24-Hour Memorandum.** In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade, a 24-Hour Memorandum ([paragraph 20.38.2](#)) is required. In such cases, if the EoJ is not complete within 14 days, both a 14-Day Memorandum ([paragraph 20.38.1](#)), and a 24-Hour Memorandum ([paragraph 20.38.2](#)) must be accomplished and distributed. However, if the EoJ is completed within 14 days, a 14-Day Memorandum is not required.

20.38.1. 14-Day Memorandum. The SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the EoJ, whichever is earlier, via email to the recipients listed on the template memorandum located on the VMJD and AF/JAJM Teams page. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD and AF/JAJM Teams page.

20.38.2. 24-Hour Memorandum. If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD and AF/JAJM Teams page. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD and AF/JAJM Teams page.

### *Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ)*

**20.39. General Provision.** The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see [Section 23F](#). In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings (to include discharge in lieu of court-martial), an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111(e)(1) and R.C.M. 1105.

### **20.40. Preparing the EoJ.**

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0)** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance



with R.C.M. 1104(b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0)** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD and AF/JAJM Teams page.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer to [paragraph 20.8](#) to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

**20.41. First Indorsement to the EoJ.** After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. § 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See [Chapter 29](#) for further information on this requirement. Templates are located on the VMJD and AF/JAJM Teams page. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

**20.42. Distributing the EoJ.** The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page within five duty days of completion.

### *Section 20J—Post-Trial Confinement*

**20.43. Entry into Post-Trial Confinement.** Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

#### **20.44. Processing the DD Form 2707.**

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.



20.44.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

**20.45. Effect of Pretrial Confinement.** Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

20.45.3. Templates, instructions, and checklists are located on the VMJD and AF/JAJM Teams page.

**20.46. Confinement Facility (R.C.M. 1101, 1102(b)(2)(F)).**

20.46.1. AFSFC/FC, which oversees Air Force correctional facilities worldwide, selects the corrections facility for post-trial confinement and rehabilitation. Refer to DAFMAN 31-115, Vol 1, for confinement rules and practices.

20.46.2. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. AFSFC/FC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The GCMCA of an inmate transferred to such a facility exercises the same responsibilities as those assigned in this chapter to AFDW/CC, for inmates in the Air Force Corrections System.

20.46.3. If a military confinement facility is not reasonably available, then the installation commander may authorize confinees to be placed in civilian correctional facilities in accordance with guidelines prescribed in DAFMAN 31-115, Vol 1.

***Section 20K—Preparing and Certifying the ROT (R.C.M. 1104)***

**20.47. Transcription Requirements.** Transcription occurs simultaneous to the other post-trial phases (i.e., STR, CADAM, and EoJ). The transcript is not required before EoJ. Once the transcript is certified, it is attached to the ROT. For additional guidance, see DAFMAN 51-203.

20.47.1. Verbatim Transcripts. A certified verbatim transcript is required in all general and special courts-martial in which there is a finding of guilty.

20.47.2. Abbreviated Transcripts. For cases resulting in a full acquittal, mistrial, dismissal of all charges, or cases otherwise terminated without findings, an abbreviated transcript may be completed. See DAFMAN 51-203 for further details.

20.47.3. Certification. Prior to certification of the transcript by the court reporter, the court reporter must forward the transcript to the trial counsel, who examines it for accuracy and signs a memorandum verifying the examination was accomplished. **(T-1)** A sample memorandum is located in DAFMAN 51-203. The SJA must generally permit the defense counsel the reasonable opportunity to examine the transcript before certification. The transcript must be certified by the court reporter(s) who were detailed to the proceeding and included in the ROT prior to forwarding for appellate review. **(T-0)** For certification requirements, refer to DAFMAN 51-203.

20.47.4. Following certification of the transcript, the court reporter shall notify trial counsel and the case paralegal that the transcript is ready for inclusion in the ROT. The court reporter must ensure, and the case paralegal must verify, that sealed exhibits, classified information, and closed sessions are properly sealed in accordance with R.C.M. 1112(e)(3) and DAFMAN 51-203. If the court reporter is appearing virtually, the case paralegal must properly seal exhibits to be verified visually by the court reporter. **(T-0)**

**20.48. Preparing and Certifying the ROT in GCMs and SPCMs.** The court reporter certifies the ROT after the military judge completes the EoJ and enters it into the record. The case paralegal or trial counsel must promptly send a copy of the EoJ to the court reporter. **(T-0)** See R.C.M. 1112(c). Failure to promptly provide the EoJ to the court reporter will delay post-sentencing processing and the certification of the ROT. See DAFMAN 51-203. Certification of the ROT begins the 45-day timeline for compliance with Article 140a, UCMJ. See [paragraph 34.14](#). For SCMs, see [Chapter 23](#), DAFMAN 51-203, and R.C.M. 1305.

***Section 20L—Service and Forwarding of the ROT (R.C.M. 1104; 1112(e))***

**20.49. Service of the ROT Generally.**

20.49.1. Upon certification of the transcript and the ROT, the SJA shall cause a copy of the certified ROT to be served on the accused and any eligible victim(s) in accordance with the below guidance and R.C.M. 1112(e) and obtains proof of service or substitute service in accordance with DAFMAN 51-203. **(T-0)** Provide only the ROT items listed in R.C.M. 1112(b). Do not provide the ROT attachments listed in R.C.M. 1112(f) with the exception of the transcript, as noted in [paragraph 20.49.2](#).

20.49.2. Mandatory Substitution of Transcript for Recording. Do not provide the accused or victim(s) with a copy of the audio recording of open proceedings. Instead, replace the audio recording with a redacted copy of the certified transcript.

20.49.3. Where this section calls for redactions, those redactions shall be made to copies of the ROT provided to the accused and victim(s) only. Legal offices shall not redact an original ROT or any copies provided for appellate review.

**20.50. Serving the ROT on the Accused.**

20.50.1. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the accused. The accused's own personal information does not have to be redacted from the accused's copy.

20.50.2. The SJA must obtain proof of ROT service on the accused, or substitute service, and include it as an attachment to the ROT. **(T-0)** See R.C.M. 1112(e)(2) and DAFMAN 51-203.

20.50.3. Members Confined at the United States Disciplinary Barracks (USDB) at Fort Leavenworth. Forward a copy of the certified ROT to the USDB. If the ROT is not certified at the time of inmate transfer, contact the USDB's DAF Liaison at DSN: 585-3626, or COMM: (913) 758-3626. Once the ROT is certified, mail the ROT, via certified mail, to the USDB, ATTN: USAF Liaison, 1301 N. Warehouse Rd, Fort Leavenworth, KS 66027-2304. Notify the liaison upon shipment and provide them certified mail number.

#### **20.51. Serving the ROT on Eligible Victim(s).**

20.51.1. The following victim(s) are entitled to a copy of the ROT upon certification:

20.51.1.1. The victim of an offense of which the accused was charged if the victim testified during the proceedings, without regard to the verdict, automatically receives a copy of the ROT.

20.51.1.2. A victim named in a specification who did not testify at trial receives a copy of the ROT upon request, regardless of the verdict.

20.51.2. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the victim(s). The victim's own personal information does not have to be redacted from the victim's copy. However, the personal information of other witnesses and victims must be redacted. Additionally, information about the accused that would normally be protected by the Privacy Act must also be redacted. **(T-0)**

20.51.3. The SJA must ensure that eligible victims are notified of the opportunity to receive a copy of the ROT. **(T-0)** A template notification is located on the VMJD and AF/JAJM Teams page. If the victim waives receipt of the ROT, the SJA must document that waiver in writing and attach it to the ROT. The SJA must obtain proof of ROT service on the victim, or substitute service, and include it as an attachment to the ROT. See R.C.M. 1112(e)(2) and DAFMAN 51-203.

**20.52. Forwarding the ROT.** After the ROT is complete, the servicing SJA or convening authority's SJA forwards the original ROT and required copies for post-trial review. See DAFMAN 51-203 for in-depth instructions on forwarded ROTs.

20.52.1. SCMs requiring Article 64, UCMJ, review and GCM or SPCMs requiring Article 65(d), UCMJ, review are forwarded to the GCMCA's SJA using the most cost-effective method that provides for means of tracking. See **Section 24C** and **paragraph 24.16**.

20.52.2. All other cases are forwarded to AF/JAJM; this includes cases resulting in an acquittal or terminated without findings (e.g., mistrial or dismissal of all charges).

20.52.3. Incomplete ROTs (e.g., ROTs that are missing required documents) or ROTs missing the required attachments should not be forwarded to AF/JAJM. Incomplete ROTs, to include missing attachments, may be returned to the responsible legal office and will not be considered transferred to AF/JAJM for purposes of metrics and milestones.

#### ***Section 20M—Excess Leave***

#### **20.53. Involuntary (Required) and Excess Leave.**

20.53.1. The convening authority will place an accused who either had no confinement adjudged or already completed the period of confinement on involuntary excess leave while

awaiting appellate review of an unsuspended punitive discharge. (T-0) See Article 76a, UCMJ. For ARC-specific guidance, see [Chapter 3](#).

20.53.2. Members with an adjudged sentence that includes a punitive discharge may volunteer to be placed on excess leave pending the convening authority's review. If the convening authority does not reduce, commute or suspend the punitive discharge, the accused's voluntary excess leave status is terminated and the accused is placed on involuntary excess leave. If the convening authority reduces, commutes or suspends the punitive discharge, the accused is returned to duty; however, if the member faces involuntary separation, consult 10 U.S.C. § 1149.

20.53.3. When an approved sentence includes unsuspended confinement, the convening authority may not place the accused on either voluntary or involuntary excess leave unless the confinement has been served, remitted, or deferred.

20.53.4. An accused who has accrued leave when required to take excess leave may elect to either (1) receive pay and allowances during the period of accrued leave and then continue on unpaid excess leave, or (2) receive payment for the accrued leave as of the day excess leave begins and serve the entire period on unpaid excess leave.

20.53.5. If the accused's sentence to a punitive discharge is set aside or disapproved upon appellate review, the accused is entitled to pay and allowances for the period of required excess leave unless a rehearing or new trial is ordered and a punitive discharge results from the rehearing. The amount of pay and allowances is reduced by the amount of income, unemployment compensation, and public assistance benefits received by the accused from any government agency during the period of excess leave.

20.53.6. The convening authority must cause the member's status to be changed to excess leave upon completion of a sentence to confinement where the member's unsuspended punitive discharge is still pending appellate review. The procedures for doing so can be found in [paragraph 20.56](#). Such involuntary excess leave may continue until the date the discharge is executed, unless terminated at any earlier date. A template notification to the member is located on the VMJD and AF/JAJM Teams page.

20.53.6.1. USAFA cadets may request voluntary excess leave ("administrative turnback") pending investigation or military justice action. In the event that a cadet is already on voluntary excess leave following a court-martial, a subsequent notification of involuntary excess leave is not required. However, if a USAFA cadet requests to return from voluntary excess leave while pending appeal (following adjudication of punitive discharge), involuntary excess leave paperwork must be processed in accordance with this chapter. In addition, if the USAFA cadet was suspended and placed on involuntary excess leave in accordance with 10 U.S.C. § 702 prior to the court-martial, the USAFA cadet will return to involuntary excess leave status following a court-martial conviction.

**20.54. Excess Leave for Accused Assigned Outside the Continental United States.** When a convening authority directs excess leave for an accused serving in an overseas area at the time excess leave is directed, the convening authority will direct reassignment to the force support squadron at the base nearest the appellate leave address provided by the accused. The convening authority may issue this direction through the SJA if appellate leave is provided for in the CADAM.

20.54.1. An accused may go directly to a designated leave address without reporting into the gaining unit. Before departing the overseas location, the accused determines whether to physically report into the gaining unit.

20.54.2. The losing commander, consistent with the accused's election, directs the accused to travel from the overseas location to either the appellate leave address or the gaining unit as soon as possible after completion of out-processing. After arrival, the accused commences taking accrued leave, if so elected, and any required excess leave.

20.54.3. The accused will be considered assigned to the force support squadron at the gaining base on the date the member physically reports to the unit or, in cases where the accused does not physically report to the gaining unit, the date determined by the local force support squadron's personnel relocations element based upon the accused's departure date and travel time.

20.54.4. Overseas members may provide an ordinary or voluntary leave address in an OCONUS state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the force support squadron nearest such leave address. Overseas members assigned to units in foreign countries when placed on involuntary excess leave must provide an appellate leave address in a state or territory of the United States and will be reassigned to a force support squadron at the base nearest the appellate leave address. Overseas members in foreign countries at the time they are placed on involuntary excess leave will be required to depart the foreign country.

#### **20.55. Excess Leave Procedures.**

20.55.1. When the convening authority orders an accused to take excess leave, the convening authority (or the SJA, if the convening authority so directs in the CADAM) sends the accused a letter, directing the excess leave and informing the accused of entitlements, status and responsibilities while on excess leave. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the accused's receipt and any subsequent address changes, is sent to the servicing force support squadron. A copy of all excess leave letters must be sent to AFJAJM and AF/JAJA. In cases of an accused being reassigned from overseas, a copy of the letter must also be sent to the SJAs of the SPCMCA and GCMCA of the gaining unit and the gaining, or excess leave, FSS/CC. The format for the letter is available on the VMJD and AF/JAJM Teams page.

20.55.2. Action to place the accused on voluntary or involuntary excess leave must comply with *Joint Travel Regulations*; DAFI 36-3003, *Military Leave Program*; DAFI 36-2110; DAFMAN 36-2102, *Base-Level Relocation Procedures*; and DAFMAN 31-115, Vol 1. Ensure DCMS-AMJAMS is updated to reflect the accused's appellate leave address and the base nearest the address when the accused was reassigned.

**20.56. Travel of Personnel Awaiting Completion of Appellate Review.** An accused involuntarily placed on excess leave while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal may be provided travel or transportation in kind, according to the *Joint Travel Regulations*. Ensure a special travel order is published in the "A" series if the court-martial convening authority directs involuntary appellate (excess) leave according to DAFI 36-3003 and this instruction. If the accused's court-martial findings or sentence is disapproved or set aside, and the member is restored to duty, the member is authorized travel or

transportation in kind, according to the *Joint Travel Regulations*. In such cases, publish an “A” Series Travel Order in accordance with the publishing directive.

***Section 20N—Post-EoJ Action by the Convening Authority***

**20.57. General Provision.** In accordance with R.C.M. 1109, the convening authority may take action on the sentence in certain cases after the EoJ is complete.

**20.58. Requirement for Subsequent CADAM.** In any case where the convening authority takes action on the sentence subject to this section, the convening authority must issue a new CADAM. **(T-0)** See also R.C.M. 1109(g)(2).

**20.59. Procedures.** Once the subsequent CADAM is complete, the convening authority submits it to the servicing legal office who shall forward the CADAM to the Chief Judge, AF/JAT. **(T-0)**

**20.60. Service on Accused and Any Victims.** In accordance with R.C.M. 1109(h), the additional CADAM must be served on counsel for the accused, if represented, and counsel for the victim(s), if represented. If either the accused or victim(s) are not represented by counsel, the additional CADAM will be served directly on the accused and victim(s).

**20.61. Requirement for Additional EoJ.** The Chief, AF/JAT, or designated military judge must execute an additional EoJ after receipt of the CADAM. **(T-0)** See R.C.M. 1109(g)(2) and (h). The EoJ will then be forwarded to the servicing SJA for execution of a new first indorsement and distribution in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page. The servicing SJA will ensure the subsequent CADAM, additional EOJ, and new first indorsement are sent to AF/JAJM for inclusion in the original ROT.

## Chapter 21

### CORRECTING OR MODIFYING POST-TRIAL PAPERWORK AND THE RECORD OF TRIAL

#### *Section 21A—Correcting the STR and First Indorsement*

**21.1. Contents of the STR.** The prescribed STR form contains data required by R.C.M. 1101 and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

**21.2. Administrative Errors.** Errors to administrative data listed on the STR but not required under R.C.M. 1101 (e.g., the member's SSN, rank, date, etc.) may be corrected on the STR in the manner prescribed in [Section 21E](#) at any time.

**21.3. First Indorsement.** The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the STR and first indorsement in accordance with [Section 21D](#).

**21.4. Errors Identified Prior to EoJ.** Errors on the STR identified prior to the EoJ are corrected in accordance with R.C.M. 1101(e). (T-0)

#### *Section 21B—Correcting the Convening Authority's Decision on Action.*

**21.5. Contents of the Convening Authority's Decision on Action Memorandum.** The prescribed CADAM includes the convening authority's action (or decision to take no action) as well as other administrative matters. Such administrative matters include ordering the member on appellate leave. These matters are included in the memorandum in order to provide the accused notice of any administrative requirements (e.g., appellate leave) executed by the convening authority.

21.5.1. Errors in the Memorandum. Errors in the CADAM that do not relate to or affect the convening authority's action and thus do not affect the EoJ on the findings or sentence will be corrected in the manner described in [Section 21D](#) after the EoJ has been signed. An example of such an error is misstating that a victim submitted matters under R.C.M. 1106A when there was no victim in the case.

**21.6. Errors in the Action Language.** Errors in the convening authority's action may be corrected prior to the EoJ in accordance with R.C.M. 1104(b). If corrections must be made after the EoJ, follow the procedures in [Section 21C](#).

21.6.1. Any corrections made by the convening authority must be memorialized in a subsequent CADAM and attached to the original CADAM. In the event corrections are made by the military judge in accordance with R.C.M. 1104(b)(2)(B), the military judge memorializes those corrections on the EoJ.

21.6.2. Subsequent CADAM. If an error is identified in the original memorandum a subsequent CADAM must be accomplished in accordance with [Section 20E](#). Subsequent memorandums must be distributed in accordance with [paragraph 20.26](#), and both the original and subsequent memorandums must be included in the ROT.



*Section 21C—Correcting the EoJ*

**21.7. Contents of the EoJ.** The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

**21.8. Errors Identified in the EoJ.** Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). **(T-0)** If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the ROT defective.

21.8.1. The military judge who entered a judgment may issue a modified EoJ to correct any errors prior to certification of the record under R.C.M. 1112 in accordance with R.C.M. 1111(c).

**21.9. After Certification of the Record.**

21.9.1. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.2. TJAG, the Chief Trial Judge, the AFCCA, and the CAAF may also modify a judgment in the performance of their duties and responsibilities in accordance with R.C.M. 1111(c)(2).

**21.10. First Indorsement.** The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the EoJ and first indorsement in accordance with [Section 21D](#).

*Section 21D—Method for Making Corrections*

**21.11. General Provision.** If corrections are made to the first indorsement, STR, CADAM (as described in [paragraph 21.5.1](#)), or EoJ, the corrected copy must be inserted in place of the original document and included in the original, AF/JAJM copies 1 and 2, and office copies of the ROT. See the GCM/SPCM ROT Assembly Checklist on the VMJD and AF/JAJM Teams page. The original erroneous document and any prior corrected copies should be included in the ROT behind the corrected copies, before the audio recording. Corrected copies must be redistributed in accordance with the STR/EoJ Distribution list on the VMJD and AF/JAJM Teams page. If corrections are made to the first indorsement only, the STR, EoJ, and the first indorsement, must be redistributed in accordance with the STR/EoJ Distribution list on the VMJD and AF/JAJM Teams page.

**21.12. Header.** If changes are made to the first indorsement, STR, CADAM (as described in [paragraph 21.5.1](#)), or EoJ form, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**). If changes are only made to the first indorsement, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**) only on the first indorsement. If multiple corrected copies are required, the corrected copies must be numbered (e.g., **SECOND CORRECTED COPY, THIRD CORRECTED COPY, FOURTH CORRECTED COPY**, etc.)

**21.13. Making Corrections on the first indorsement, STR, CADAM (as described in paragraph 21.5.1), and EoJ.** Incorrect information should remain on the form but be struck



through. The correct information should follow and be underlined. For example, if the accused's SSN was incorrectly listed on the STR, it should be corrected as follows: 111-22-4444 111-22-3333. **Note:** The date listed in the "Date" block on the STR and EoJ must be updated for each corrected copy. The date does not need to be struck through or underlined when updated. The paragraph immediately preceding the military judge's signature should reflect the date judgment was originally entered. The date of the first indorsement should be updated to reflect the date the corrected first indorsement is signed. Corrected copies must be distributed in accordance with the STR/EoJ Distribution list on the VMJD and AF/JAJM Teams page.

**21.14. Signatures.** Corrected copies of the STR and EoJ must be signed by the same military judge or by the military judge directed by the Chief, Trial Judiciary and must indicate the date the judgment was initially entered into the record. Corrected copies of the first indorsement must be signed by the SJA or person Acting as the SJA.

### ***Section 21E—Correcting the ROT***

**21.15. Defective or Incomplete ROT.** A defective or incomplete ROT is corrected in accordance with R.C.M. 1112(d). A Certificate of Correction is prepared and certified by the military judge detailed to the case. After certification, provide a copy of the certificate to the trial counsel, defense counsel, and the accused. See DAFMAN 51-203, paragraph 3.9.2.

21.15.1. Defective or incomplete ROTs may be forwarded by the superior competent authority to the Chief Trial Judge for correction. The Chief Trial Judge may detail a subordinate trial judge to correct the ROT in accordance with R.C.M. 1112(d)(2).

21.15.2. TJAG has designated the Chief, AF/JAJM, a superior competent authority for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2). In the absence of the Chief, AF/JAJM, the Associate Chief, AF/JAJM, may exercise this authority.

21.15.3. Additionally, prior to the certification of a ROT and its submission to the Appellate Records section, SJAs for the convening authority who convened the court are superior competent authorities for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2).

## Chapter 22

### COURTS OF INQUIRY (ARTICLE 135, UCMJ; MCM, PART I, PARAGRAPH 2(B)(3))

**22.1. General.** A court of inquiry is one of several investigative methods available to ascertain the facts of a matter of importance to the DAF. Only a GCMCA may convene a court of inquiry. A sample convening order is located on the VMJD and AF/JAJM Teams page. A court of inquiry should not be used when statute or regulation otherwise provides specific investigative procedures for a matter. A court of inquiry should not be used in place of an Article 32, UCMJ, preliminary hearing unless deemed necessary to produce evidence not otherwise reasonably available. If, however, a court of inquiry previously investigated the subject matter of an offense and the requirements of R.C.M. 405(a) are met, an Article 32, UCMJ, preliminary hearing may not be necessary prior to referring charges related to the previously investigated offense(s).

#### **22.2. Personnel.**

22.2.1. Members of the Court of Inquiry. A court of inquiry consists of three or more commissioned officers. The senior member is the president. All members should be senior to any person whose conduct is the subject of the inquiry.

22.2.2. Counsel for the Court of Inquiry. The convening authority appoints a judge advocate certified under Article 27(b), UCMJ, as legal advisor for the court of inquiry. The counsel assists the court of inquiry in matters of law, presenting evidence, and keeping the record.

22.2.3. Party to the Court of Inquiry. The convening authority may designate any person subject to the UCMJ whose conduct is subject to inquiry as a party to the court of inquiry. Any person subject to the UCMJ or employed by the DoD may also be designated a party if they have a direct interest in the inquiry and request the convening authority or the Court designate them as a party. Any person designated as a party is given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

22.2.4. Counsel for Parties. Military members who are party to the court of inquiry are entitled to representation by a defense counsel certified under Article 27(b), UCMJ. A party may request IMDC, subject to the rules of reasonable availability applicable to trials by court-martial. Any party may retain a civilian counsel at no expense to the government. See Article 135(c)(3), UCMJ; M.R.E. 305(d); R.C.M. 502(d).

22.2.5. Reporter. A qualified court reporter, requested through AF/JAT, records the proceedings and testimony, and prepares a record of the proceedings for authentication by the president.

#### **22.3. Procedures.**

22.3.1. Convening Order. Use the sample format on the VMJD and AF/JAJM Teams page to convene a court of inquiry. The order appoints the members and counsel for the court of inquiry, states the subject of inquiry, designates known parties, and directs a report of findings of facts on the issues involved. If the convening authority desires conclusions and recommendations, include this in the order. The convening order should set the time and place of the court of inquiry. The convening order is provided to the parties and counsel.

22.3.2. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court. The president of the court, with advice from the legal advisor, rules

on challenges. In the event the president of the court is challenged, the challenge must be forwarded to the convening authority for a determination.

22.3.3. Oaths. The members, counsel, reporter, and interpreter take an oath or affirmation to faithfully perform their duties. Article 135(e), UCMJ. The president or counsel for the court of inquiry may administer oaths. Article 136, UCMJ.

22.3.4. Procedures and Rules of Evidence. The procedures and rules of evidence that apply to an Article 32, UCMJ, preliminary hearing apply to a court of inquiry.

22.3.5. Witnesses. The president of the court may issue subpoenas for civilian witnesses. R.C.M. 703(g)(3)(D). All witnesses testifying before a court of inquiry do so under oath or affirmation. Members of the court of inquiry, the counsel to the court of inquiry, the counsel to a party, or a party unrepresented by counsel may examine all witnesses. A party cannot be compelled to testify but may testify under oath subject to cross-examination or make an unsworn statement.

22.3.6. Written Report by the Court of Inquiry. The court of inquiry makes findings of fact, but may not make conclusions of law and recommendations, unless required to do so by the convening authority. Dissenting views are authorized.

22.3.7. Record of the Court of Inquiry. Each court keeps a record of its proceedings. The record is authenticated in accordance with Article 135(h), UCMJ. The president forwards the authenticated record to the convening authority, who obtains a legal review from the servicing SJA. The SJA's legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action. If the record of the proceedings is to be used as a substitute for an Article 32, UCMJ, preliminary hearing, it must comply with the requirements of R.C.M. 405(k).

22.3.8. Revision. The convening authority may reconvene the court of inquiry and direct it to take additional action as the convening authority deems necessary.

## Chapter 23

### SUMMARY COURTS-MARTIAL

#### *Section 23A—General Guidance for SCMs*

**23.1. Summary Court-Martial Guide.** For additional guidance on processing summary courts-martial, refer to Appendix 8 of the MCM.

**23.2. Non-Criminal Forum.** SCMs are not criminal forums. SCMs may be used to adjudicate minor offenses. See MCM, Part V.1(e). Convictions at SCMs do not constitute criminal convictions. **Note:** However, a finding of guilty at an SCM still has criminal indexing implications if it is for a qualifying offense under federal law or Air Force policy. See [paragraph 29.35.5](#). AFMAN 71-102; 18 U.S.C. § 922; and 27 C.F.R. § 478.11, *Meaning of terms*.

**23.3. Former Jeopardy Considerations.** An SCM triggers former jeopardy under Article 44, UCMJ in the same manner as an SPCM or GCM.

**23.4. Lack of Jurisdiction of SCM.** SCMs do not have jurisdiction over officers. Only enlisted members may be tried by SCM. SCMs do not have jurisdiction over capital offenses. SCMs do not have jurisdiction over any offense with a mandatory minimum sentence, to include penetrative sexual assault offenses or attempts or conspiracy to commit such offenses.

**23.5. Right to Object to Trial by SCM.** Before arraignment, an accused may object to being tried by an SCM even if they previously refused punishment under Article 15, UCMJ, and demanded trial by court-martial. If an accused objects to trial by SCM, the charges may be dealt with by any means listed in R.C.M. 401. See R.C.M. 1303.

**23.6. Punishment Limitations.** The maximum penalty that can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. In the case of enlisted members above the fourth enlisted pay grade, summary courts-martial may not adjudge confinement, hard labor without confinement, or reduction except to the next pay grade. R.C.M. 1301(d)(1) & (2).

**23.7. Victims' Rights.** "Victim" is defined as any person who has suffered a direct, physical, emotional, or pecuniary harm as a result of the commission of a UCMJ offense. For discussion of applicable rights at an SCM, see Article 6b, UCMJ, and AFMAN 71-102.

#### *Section 23B—Composition of an SCM*

**23.8. Summary Court-Martial Officer (SCMO).** An impartial, RegAF or Space Force commissioned officer presides over an SCM as the SCMO. A Reserve commissioned officer on active duty or an ANG commissioned officer on active duty in federal service may serve as an SCMO. The SCMO must be impartial. Before appointing an officer to serve as an SCMO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the SCMO's impartiality could be questioned based on the SCMO's relationship with the case, the parties, and the base legal office.

23.8.1. If the SCMO is not a certified judge advocate, an impartial legal advisor must be made available to the SCMO. This may be done telephonically. Whether a legal advisor is impartial should be considered in the context of the officer's normally assigned duties and relationship

with the case, the parties, and the base legal office. A SCMO may seek advice from a judge advocate or legal officer on questions of law, but may not seek advice from any person on factual conclusions that should be drawn from evidence or the sentence that should be imposed. The SCMO has the independent duty to make these determinations.

**23.9. Defense Counsel.** The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. Civilian counsel, qualified under R.C.M. 502(d)(2), may represent the accused at the accused's own expense if it will not cause unreasonable delay.

**23.10. Government Counsel.** A properly designated judge advocate may be detailed to represent the government. Paralegals and other non-judge advocates, e.g., legal interns, may serve as assistant government representatives. However, if a paralegal or non-judge advocate serve as assistant government representative, a judge advocate who is qualified and certified under Articles 27(b) and 42(a), UCMJ, must serve as the primary government representative and is responsible for supervising the non-judge advocate and their work.

### ***Section 23C—Convening an SCM***

#### **23.11. Convening Authority.**

23.11.1. A GCMCA or SPCMCA may convene an SCM. The commander of a detached squadron or other detachment may convene an SCM, but only with the express authorization of the superior DAF GCMCA. See R.C.M. 504(b)(2)(B).

23.11.2. Convening Authority as Accuser. If the convening authority is the accuser, the convening authority may forward the charge(s) to a superior authority with a recommendation to convene an SCM. This is not mandatory and jurisdiction is not affected if the case is not forwarded. See R.C.M. 1302(b). The convening authority may not, however, sit as the SCMO unless there are no other commissioned officers in the command or detachment. See R.C.M. 1301(a) and R.C.M. 1302(b).

23.11.3. SCMO as Accuser. An accuser is not impartial and should not be detailed as the SCMO. If, however, the accuser is the only commissioned officer in the command or detachment, the accuser may be detailed as the SCMO. See R.C.M. 1302(b).

**23.12. Detailing Summary Courts-Martial.** An SCM is detailed by a convening order. The convening order is a special order prepared in accordance with R.C.M. 504(d) signed by the convening authority. For composition of an SCM, refer to R.C.M. 1301(a). See the sample summary courts-martial convening order on the VMJD and AF/JAJM Teams page.

23.12.1. All SCMs are constituted by special orders that are numbered consecutively on a fiscal year basis, starting with the number 1, and using an AC series letter prefix. See [paragraph 14.5.2](#).

23.12.2. When generating the convening order, the following single paragraph is a model to be used for the convening authority's signature in an appropriately formatted AC series special order: "Pursuant to authority contained in Special Order G-20-001, Department of the Air Force, dated 5 December 2019, a summary court-martial is hereby convened. I reviewed the charge sheet and evidence in the case of *United States v. AIC John H. Doe*. It may proceed at

Beale AFB, California, to try such persons as may be properly brought before it. Lt Col Will I. Judge, 30 SW/DO, is detailed as the Summary Court-Martial Officer.”

23.12.3. The convening authority signs the convening order. The SJA may sign the DD Form 458 on the convening authority’s behalf, if the convening order is signed by the convening authority; otherwise, the convening authority signs the referral section on the DD Form 458.

### ***Section 23D—Preparing the DD Form 2329, Record of Trial by Summary Court-Martial***

**23.13. DD Form 2329.** The DD Form 2329, *Record of Trial by Summary Court-Martial*, is the key component to the record of trial (ROT) in a SCM. The SCMO must use the DD Form 2329 throughout the proceedings and must sign it immediately after trial.

**23.14. Completing the DD Form 2329.** The legal office should prepare Blocks 1-3c and Block 8 through the “Charge(s)” section prior to the court. The SCMO will complete all of the remaining blocks, except for Block 13 (convening authority action). The legal office must ensure the entirety of the DD Form 2329 is correct and accurately reflects the specifications from the charge sheet, pleas and findings for both the charge(s) and the specification(s), and sentence (as announced at the court-martial) prior to the SCMO’s certification. A sample DD Form 2329 is on the VMJD and AF/JAJM Teams page.

23.14.1. Block 1. Accused Information. List name of accused, current rank, current unit/organization, and DOD ID No.

23.14.2. Block 2. Convening Authority’s name, rank, “position” should be “commander,” and organization (unit, base, and state).

23.14.3. Block 3. SCMO’s name, rank, and unit/organization (unit, base, and state). Below the personal information of the SCMO, enter the UCMJ Articles the accused is being charged with. The accused must circle whether or not they refuse the SCM and must sign and date this portion.

23.14.4. Block 4. Add the date the SCMO held any preliminary proceedings at which the SCMO provided the charge sheet to the accused. If there were no preliminary proceedings, then add the date of the court and immediately provide a copy of the charge sheet to the accused. The SCMO will complete the block by marking in the “Yes” or “No” block.

23.14.5. Block 5. The SCMO will complete these blocks by marking in the “Yes” or “No” block.

23.14.6. Block 6. Add the date the court-martial proceeding (or preliminary proceeding) began. The SCMO must indicate whether or not the accused objected to trial by SCM and must have the accused initial the designated box.

23.14.7. Block 7. In Block 7a, the SCMO will add whether or not the accused was represented by counsel. If represented, the SCMO will add the name and rank of the defense counsel and their qualifications in Blocks 7b-d.

23.14.8. Block 8.

23.14.8.1. In the “Charges and Specifications” column, include the charge and article number, skip a line and then add the specification. The text of the specification can be copied directly from the charge sheet, or you may omit personal data (e.g., name, rank,

unit, etc.) but the rest of the specification should match the charge sheet. For example: “Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use phencyclidine, a Schedule II controlled substance.” If more room is needed for Charges and Specifications, use a continuation sheet.

23.14.8.2. In the “Pleas” column the SCMO indicates how the accused pled to each charge and specification. In the “Findings” column the SCMO indicates the findings of the SCMO as to each charge and specification. [guilty (“G”); not guilty (“NG”); not guilty, but guilty of a lesser included offense (“NG, but guilty of the LIO of Art. X”); guilty by exceptions (“G, except the word(s) “\_\_\_\_,” of the excepted word(s), NG”); or guilty by exceptions and substitutions (“G, except the word(s) “\_\_\_\_” and substituting therefor the word(s) “\_\_\_\_,” of the excepted word(s), NG, of the substituted word(s), G”)]

23.14.8.2.1. There must be a plea and finding annotated for each charge and specification.

23.14.9. Block 9. The SCMO annotates the sentence as adjudged.

23.14.9.1. Any forfeitures must be announced and annotated in a whole dollar amount.

23.14.9.2. Annotate any pretrial confinement credit and/or illegal pretrial confinement credit in this block.

23.14.10. Blocks 10-11. The SCMO must mark “Yes” or “No.”

23.14.11. Block 12. The SCMO must sign and date this block. Before certifying, the SCMO must coordinate with the base legal office to ensure the DD Form 2329 is prepared correctly and that all exhibits are accounted for.

### ***Section 23E—Conducting the SCM (R.C.M. 1304)***

**23.15. Procedures.** See R.C.M. 1304 and the SCM Guide for detailed procedures to be followed when conducting an SCM. The SCM Guide, found in Appendix 8 of the MCM, also includes the script to be used for such a proceeding.

### ***Section 23F—Post-Trial Procedure (R.C.M. 1306)***

**23.16. Required SJA first indorsement to DD Form 2329.** After trial, upon certification of the DD Form 2329, the SJA must complete the first indorsement to the DD Form 2329. A sample is located on the VMJD and AF/JAJM Teams page. The purpose of the indorsement is to identify any criminal indexing requirements as a result of the offenses and notify the appropriate agencies.

**23.17. Distribution of the DD Form 2329 following trial.** Immediately following trial, provide a copy of the SCMO certified DD Form 2329 to the accused and obtain a receipt. Provide a redacted copy to any victim upon request. Additionally, distribute the DD Form 2329 and first indorsement, regardless of verdict, in accordance with the SCM Distribution List on the VMJD and AF/JAJM Teams page.

**23.18. 14-Day Memorandum and 24-Hour Memorandum.** In all SCMs with adjudged forfeitures or reduction in grade, a 24-Hour Memorandum is required. See [paragraph 20.38.2](#). In such cases, if the convening authority’s action is not complete within 14 days, both a 14-Day Memorandum and a 24-Hour Memorandum ([paragraph 20.38.1](#)) must be accomplished and

distributed. However, if the convening authority's action is completed within 14 days, a 14-Day Memorandum is not required.

**23.19. Matters Submitted by the Accused.** The accused may submit clemency matters to the convening authority within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. Any matters submitted by a victim must be served on the accused, and the accused has five additional days to rebut those matters. See R.C.M. 1106(d). Templates are located on the VMJD and AF/JAJM Teams page.

**23.20. Matters Submitted by the Victim(s).** Any victim, as defined in this chapter, whose allegation resulted in a conviction may submit matters for the convening authority's consideration within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. The legal office must immediately serve the victim's matters on the accused. The SCMO shall inform eligible victims of their right to submit matters. See R.C.M. 1106A. A template notification letter is located on the VMJD and AF/JAJM Teams page.

**23.21. Rehearing.** The convening authority may order a rehearing as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only. See R.C.M. 1306(c) for further guidance.

**23.22. Convening Authority Action.** After the periods for submission of matters by the accused and victim expire (or are waived), the convening authority shall take action in accordance with R.C.M. 1306(b). Action by the convening authority will be annotated on Block 13 of DD Form 2329. The convening authority shall consider matters submitted by the accused and victim.

23.22.1. The convening authority may take action on the findings, but it is not required. See Article 60b(a), UCMJ, and R.C.M. 1306.

23.22.2. The convening authority shall approve the sentence or take other action detailed in Article 60b(a)(1), UCMJ. The action must state whether the adjudged sentence is approved. If only part of the sentence is approved, the action must state which parts are approved. See R.C.M. 1306(d). Sample SCM action language is located on the VMJD and AF/JAJM Teams page.

23.22.3. If the SCMO expresses forfeitures as a fraction, the convening authority may correct this error by expressing forfeitures in whole dollar amounts in the convening authority action.

23.22.4. There is no requirement for the SJA to provide written legal advice to the convening authority prior to action. Any written legal advice on action must be served on the accused and defense counsel.

**23.23. Annotating Convening Authority Action.** Annotate the convening authority's action in Block 13 of the DD Form 2329. The convening authority, not a party acting on behalf of the convening authority, must sign Block 13. If the entirety of the action will not fit into the block, then mark "See attached" in Block 13, and do not complete the rest of the block. Instead, put the entire action on a separate document, signed and dated by the convening authority. Electronic signatures are authorized on both the DD Form 2329 and separate document annotating the convening authority action. A sample is provided on the VMJD and AF/JAJM Teams page.

23.23.1. SJA Second Indorsement to the DD Form 2329. Upon the convening authority's action, the SJA must complete a Second Indorsement to the DD Form 2329.



**23.24. Distribution of the DD Form 2329 after Action.** Immediately following the convening authority's action, distribute DD Form 2329, any separate page action, first, and second indorsements in accordance with the SCM Distribution List on the VMJD and AF/JAJM Teams page.

**23.25. Serving Convening Authority Action on the Accused and Victim.** The SJA must serve the convening authority's action on the accused and victim. **(T-0)** If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0)** Service of the record of trial on the accused (which includes the action) will satisfy this requirement. If any subsequent action is required, it, along with the court-martial order, must be served on the accused and the victim.

**23.26. Correcting Convening Authority Action.** If errors are subsequently identified in the action after the convening authority completes Block 13, then correct the error by withdrawing the original action and substituting a new one. The convening authority (including successors) completes the new action on a separate page using the following language: "the action taken by me (or my predecessor) on (date) is withdrawn, and the following is substituted therefor: (insert new action)." After the convening authority signs the new action, the SJA must sign and publish a court-martial order, and distribute the order to the same individuals who received the DD Form 2329. Samples are provided on the VMJD and AF/JAJM Teams page.

***Section 23G—Preparing and Serving the ROT and Post-Trial Review***

**23.27. See DAFMAN 51-203.**

## Chapter 24

### APPEALS, REVIEWS, AND PETITIONS FOR NEW TRIAL

#### *Section 24A—Appellate Defense Counsel*

##### **24.1. Accused's Request for Appellate Defense Counsel (Article 70, UCMJ).**

24.1.1. Include an AF Form 304, *Request for Appellate Defense Counsel*, signed by the accused in every ROT forwarded to AFCCA, to include cases referred by TJAG.

24.1.2. The accused's trial defense counsel assists the accused in filling out the form, obtains the accused's signature, and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

24.1.3. The AF Form 304 provides the accused's preferred contact information (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An adequate mailing address must be included even if the accused waives appellate review or does not request appellate defense counsel. Adequate phone and e-mail contact information facilitates contact with appellate defense counsel. The accused must not use addresses for the ADC or civilian defense counsel office(s), base organization, or on-base residence. If they do, contact the accused's ADC to re-accomplish the form. Adequate contact information is where the accused can be directly contacted.

24.1.4. If an accused's death sentence has been approved by the President pursuant to Article 57, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in federal civilian court, the accused may request a military defense counsel from TJAG. Upon receipt of the accused's request, TJAG details military counsel under Article 70(f), UCMJ, to represent the accused in such proceedings and any appeals.

##### **24.2. Withdrawal of Request for or Declination of Appellate Defense Counsel.**

24.2.1. The accused may decline appellate representation by checking the appropriate box on the AF Form 304.

24.2.2. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation after the convening authority's decision on action is served upon the accused. **(T-0)** See *United States v. Xu*, 70 M.J. 140 (C.A.A.F. 2011) (Summary Disposition).

24.2.2.1. If the accused again declines appellate representation after receiving the action, include both versions of the AF Form 304 in the ROT (the one served on the accused immediately after trial and the other served on the accused after action).

24.2.2.2. In those instances where an accused's initial AF Form 304 indicates a declination of appellate counsel, but a second AF Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement.

##### **24.3. Waiver/Withdrawal of Appellate Review (Article 61, UCMJ; R.C.M. 1115).**

24.3.1. If an accused wishes to waive or withdraw from Article 66, UCMJ, appellate review, follow the procedures outlined in R.C.M. 1115. An accused may waive appellate review before the case is docketed at AFCCA. After a case is docketed at AFCCA, an accused may

withdraw from appellate review. The request to waive or withdraw must be filed after the EoJ. The waiver or withdrawal should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*. **Note:** Ensure use of the correct version of DD Form 2330, which is dictated by referral date.

24.3.2. Once properly submitted, a waiver or withdrawal may not be revoked. A valid waiver or withdrawal of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

24.3.3. In the event of waiver, the servicing legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.16](#).

24.3.4. In the event of withdrawal, appellate defense counsel must file a motion with the appropriate appellate court. Upon granting of the motion, the GCMCA SJA will be notified by AF/JAJM to complete an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201 and a Certification of Final Review (CFR) will need to be completed. See [paragraph 24.16](#) and [Chapter 27](#).

#### ***Section 24B—Appeals of Sentence by the United States (Art 56, UCMJ; R.C.M. 1117)***

**24.4. General Provision.** With the approval of TJAG, the Government may appeal a sentence to AFCCA on the grounds that the sentence violates the law, is a result of an incorrect application of sentencing parameters or criteria established under Article 56(c), or is plainly unreasonable. See Article 56(d), UCMJ, and R.C.M. 1117. The government may only file such an appeal if all specifications of which the accused was convicted allege offenses that were committed on or after 1 January 2019.

24.4.1. A Government appeal of the sentence must be filed within 60 days after the EoJ is complete. **(T-0)** Prior to filing a notice of appeal, the Government must receive convening authority concurrence, consult with AF/JAJG and the servicing OSTC District Office, if applicable, and receive TJAG approval through their functional chain. **(T-0)** The Government must reserve adequate time after coordination to allow AF/JAJG to prepare the required appellate briefs within the 60-day window. **(T-0)**

24.4.2. To seek TJAG approval, the requesting legal office must submit to AF/JAJG:

24.4.2.1. A statement of reasons that meets the requirements of R.C.M. 1117(c)(1)-(4) (**Note:** The statement of reasons may not include facts outside the record established at the time the sentence was announced.);

24.4.2.2. The EoJ;

24.4.2.3. The transcript of the proceedings or, if the transcript is not available at the time of the request, a summary of the evidence and facts established at the time the sentence was announced;

24.4.2.4. Convening authority concurrence, which may be established in the statement of reasons;

24.4.2.5. A block for AF/JAJG coordination, which may be established in the statement of reasons;

24.4.2.6. A block for STC coordination, if applicable, which may be established in the statement of reasons; and

24.4.2.7. Documentation showing concurrence and coordination with the functional chain of command. This coordination may also be established in the statement of reasons.

24.4.3. Prior to acting, TJAG forwards the request to the military judge who presided over the proceedings for the purpose of allowing the military judge, the parties, and the victim(s) to make a submission addressing the statement of reasons in the Government's request. See R.C.M. 1117(c)(4).

24.4.3.1. The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge, and for the military judge to forward all submissions to TJAG. The military judge shall ensure that the parties have not less than seven days to prepare, review, and transmit such submissions.

24.4.3.2. Submissions under this paragraph shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

24.4.4. Upon receiving TJAG approval, trial counsel may file a notice of appeal with the military judge consistent with R.C.M. 908(b).

24.4.5. After filing a notice of appeal, trial counsel requests AF/JAJG file the appeal with AFCCA. In the request, trial counsel will identify the sentence to be appealed and include the following:

24.4.5.1. The statement of approval from TJAG; **(T-0)**

24.4.5.2. The Government's request and statement of reasons; **(T-0)**

24.4.5.3. Any submissions made by the military judge, the defense, or the victim(s); **(T-0)**

24.4.5.4. Any other documentation required by AF/JAJG.

24.4.6. AF/JAJG decides whether to file the appeal with AFCCA, and notifies the requesting party AF/JAJM, and the OSTC District Office, if applicable.

***Section 24C—Judge Advocate Review of Summary Courts-Martial (Article 64, UCMJ; R.C.M. 1307)***

**24.5. Article 64, UCMJ, Overview.** Every SCM resulting in a guilty finding receives an Article 64, UCMJ, review by the GCMCA legal office. See R.C.M. 1307.

**24.6. Article 64, UCMJ, Review Requirements.** An Article 64, UCMJ, review by a judge advocate is required in each SCM where there is a finding of guilty. **(T-0)** No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of lack of mental responsibility.

24.6.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate who conducts the review.

## **24.7. Disqualification.**

24.7.1. A judge advocate who has acted in the same case as an accuser, PHO, SCMO, counsel, or who has otherwise acted on behalf of the prosecution or defense may not conduct the Article 64, UCMJ, review. **(T-0)**

24.7.2. If the GCMCA acted as the convening authority for the SCM, then the GCMCA may take action subject to the limitations. See R.C.M. 1307(c).

24.7.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 64, UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to act. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact AF/JAJM for assistance in identifying a GCMCA to act on the case.

## **24.8. Form and Content of Article 64, UCMJ, Reviews.**

24.8.1. Article 64, UCMJ, reviews should contain only those matters required in R.C.M. 1307(d). If no errors are alleged, the review will consist of a stamped or typed entry on the DD Form 490, cover of volume one of the original ROT, and on each copy of the DD Form 2329, or separate page action. The entry shall be entitled, "Article 64, UCMJ, Review," and shall consist of the conclusions required in Article 64, UCMJ, and R.C.M. 1307(d), the command unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.8.2. Corrective Action Not Required. If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0)** See R.C.M. 1307(d)(2). The review is prepared, dated and signed by the reviewer, covers the matters required by Article 64, UCMJ, and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the ROT. The DD Form 490 and the DD Form 2329 are annotated with a typed or stamped notation consisting of the items required in [paragraph 24.8.1](#).

24.8.3. Corrective Action Required.

24.8.3.1. If the judge advocate concludes that corrective action is required as a matter of law, the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in R.C.M. 1307(d), and include the options of the GCMCA can take under R.C.M. 1307(f).

24.8.3.2. The judge advocate will prepare a supplemental order for the GCMCA to sign to enact the GCMCA's action on the review.

24.8.3.3. The GCMCA takes further action in accordance with R.C.M. 1307€ and Article 64(c), UCMJ, and the review and action are included in the ROT. There will be no additional notation on the DD Form 490 and no additional notation on the DD Form 2329.

The judge advocate's written review serves as the notation required by Article 64, UCMJ, and R.C.M. 1307(d).

24.8.3.4. If the judge advocate concludes that corrective action is required as a matter of law, and the GCMCA does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the ROT, Article 64, UCMJ, review, and convening authority action are forwarded to AF/JAJM. AF/JAJM will forward the record to AF/JAJI for review under Article 69(a), UCMJ. See Article 64(c)(3), UCMJ, and R.C.M. 1307(g). **(T-0) Note:** In all other cases, the accused may petition TJAG for an Article 69, UCMJ, review after the Article 64, UCMJ, review is complete.

24.8.3.5. If the GCMCA taking action under Article 64, UCMJ, orders a rehearing, the ROT, Article 64, UCMJ, review, and Article 64, UCMJ, action, if applicable, will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. See [Section 26A](#). If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused. If the rehearing is found to be impracticable, the convening authority shall dismiss the charges. **(T-0)**

**24.9. Finality of SCM.** Except for cases requiring Article 69, UCMJ, review under R.C.M. 1307(g), SCMs are final under Article 76, UCMJ, upon completion of the judge advocate's Article 64 review and any required action by the GCMCA. However, even after the SCM is final, the accused may petition TJAG to conduct a review under Article 69, UCMJ, to modify or set aside the findings of a sentence in whole or in part. In order to qualify for such a review, the accused must submit an application to TJAG, through AF/JAJM, no later than one year after the completion of the Article 64, UCMJ, review. See R.C.M. 1201(h). **(T-0)** AF/JAJI conducts the review following the procedures in [Section 24E](#).

**24.10. Article 64, UCMJ, Review Distribution.** After completing the Article 64 review and, when applicable, any action by the GCMCA, forward the original ROT and any supplementary orders to AF/JAJM.

24.10.1. The GCMCA SJA will provide a copy of the Article 64, UCMJ, review and any action taken by the GCMCA to the accused in person or via certified mail. **(T-0)** See R.C.M. 1307(f). If the GCMCA acted upon the case, also provide a copy of the supplemental order to the accused in person or via certified mail. See R.C.M. 1307(f). If provided in person, obtain a receipt from the accused. If sent via certified mail, include a receipt and request the accused sign and return the receipt.

24.10.1.1. Attach the receipt or proof of mailing to the ROT.

24.10.2. The GCMCA SJA will provide one copy each of the DD Form 2329 indicating compliance with Article 64(a), UCMJ, to the same parties listed on the SCM Distribution List, available on the VMJD and AF/JAJM Teams page. Distribute any supplemental order(s) to the same parties listed on the SCM Distribution List, available on the VMJD and AF/JAJM Teams page.

*Section 24D—Review by AFCCA, CAAF, or the Supreme Court of the United States***24.11. AFCCA Review (Article 66, UCMJ; R.C.M. 1203).**

24.11.1. AFCCA reviews cases under Article 66, UCMJ, in the following scenarios:

24.11.1.1. Cases resulting in automatic review under Article 66(b)(3), UCMJ, (e.g., cases with a sentence which includes confinement for two years or more or a punitive discharge, or death).

24.11.1.2. Direct Appeals. Timely appeals submitted by an accused under Article 66(b)(1)(A), UCMJ. See Article 66(c)(1), UCMJ, for the timeliness requirements.

24.11.1.2.1. Installation/GCMCA Procedures for Direct Appeal Eligible Cases.

24.11.1.2.1.1. After the ROT is complete, the original and one additional copy of the ROT must immediately be forwarded to the GCMCA legal office.

24.11.1.2.1.2. The GCMCA legal office will send a notice to the accused pursuant to Article 65(c)(1), UCMJ, informing the accused of the right to file a direct appeal under Article 66(b)(1)(A), UCMJ and request a receipt of the notification from the accused. A copy of the notice to the accused and the proof of mailing or if in-person service, a copy of the receipt, must be added to the top of the first volume of the ROT. The GCMCA legal office will forward the copy of the ROT to AF/JAJM within seven days of the mailed notice to the accused and hold the original record of trial for 90 days.

24.11.1.2.1.3. No Article 65(d), UCMJ, review should be completed by the GCMCA legal office before forwarding the ROT in these cases. The GCMCA legal office will conduct the Article 65(d), UCMJ, review if the accused affirmatively waives appellate review or does not file a timely Article 66, UCMJ, appeal. See [paragraph 24.14](#).

24.11.1.2.2. AF/JAJM Procedure.

24.11.1.2.2.1. After receiving the copy of the ROT, AF/JAJM will provide it to AF/JAJA.

24.11.1.2.2.2. If an appeal is filed, AF/JAJM will notify the GCMCA legal office of the appeal and request the original ROT and one additional copy of the ROT. Upon receipt, AF/JAJM will distribute the original ROT to AFCCA and a copy of the ROT to AF/JAJG. AFCCA will review the appeal and submit a notice of docketing to the parties.

24.11.1.3. Cases referred to it by TJAG under R.C.M. 1201(k)(1)(A) following an Article 69, UCMJ, review.

24.11.1.4. Timely appeals by an accused under Article 66(b)(1)(D), UCMJ, in a case where an accused files for review under Article 69(d)(1)(B), UCMJ, and the application is granted by the appellate court.

24.11.2. AFCCA reviews government appeals under Articles 56(d) and 62(a), UCMJ.

24.11.3. Any petition the accused or government wishes to file with the AFCCA must be filed in accordance with their rules of practice.

24.11.4. Notification of AFCCA Decision. Upon return of the record of trial from AFCCA, AF/JAJM will prepare a notification memo transmitting AFCCA's decision to the accused via certified mail. The notification will inform the accused about the right to petition CAAF for further review, the timeliness and procedural requirements for any such petition under R.C.M. 1203(f)(2) and the contact information for AF/JAJA. **(T-0)** AF/JAJM will request a receipt of the notification from the accused. See R.C.M. 1203(f)(3).

24.11.4.1. AF/JAJM will provide a Notification of Mailing to AF/JAJA.

**24.12. CAAF Review (Article 67, UCMJ; R.C.M. 1204).** In accordance with The Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, CAAF reviews the record in the following situations:

24.12.1. Decisions by AFCCA appealed by the accused in which CAAF has granted a review.

24.12.2. Cases referred to the court by TJAG.

24.12.2.1. This includes appeals by the government under Article 62, UCMJ.

24.12.2.2. If TJAG refers a case to CAAF, AF/JAJM will cause a copy of the order forwarding the case to be served on the accused and on appellate counsel. **(T-0)**

24.12.3. Cases in which the death penalty was adjudged, approved, and affirmed by AFCCA;

24.12.4. Decisions by AFCCA on petitions for extraordinary relief in which writ-petitions have been filed and CAAF has granted a review.

24.12.5. Any petition the accused wishes to file with CAAF must be filed directly with the Court in accordance with their rules of practice.

24.12.6. A copy of any filings made with CAAF will be promptly sent to [AF.JA.JAJM.Appellate.Records@us.af.mil](mailto:AF.JA.JAJM.Appellate.Records@us.af.mil) for inclusion in the ROT.

**24.13. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ).** The accused or the United States may file petitions for Supreme Court review by writ of certiorari in those cases specified in Article 67a(a), UCMJ, and R.C.M. 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

24.13.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

24.13.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States.

24.13.3. A copy of any filings made with Supreme Court will be promptly sent to [AF.JA.JAJM.Appellate.Records@us.af.mil](mailto:AF.JA.JAJM.Appellate.Records@us.af.mil) for inclusion in the ROT.



***Section 24E—Review by TJAG of GCMs and SPCMs Not Appealed to the AFCCA (Article 65, UCMJ)***

**24.14. Overview.** An Article 65(d), UCMJ, review is required for any GCM or SPCM when the accused failed to timely file, waived, or withdrew an Article 66, UCMJ, appeal to AFCCA.

**24.15. Article 65(d), UCMJ, Review Requirements.** Article 65(d), UCMJ, reviews are conducted by attorneys as designated in this chapter by TJAG.

24.15.1. Judge advocates assigned to the GCMCA legal office are designated to conduct Article 65(d), UCMJ, reviews unless all of the judge advocates within that office are disqualified. See R.C.M. 1201(a)-(g). Although not assigned to the GCMCA legal office, qualified personnel attached to USAFA/DFL may conduct Article 65(d) reviews for cases at USAFA since they are subject to the command of the same GCMCA.

24.15.2. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 65(d), UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to conduct the review. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact AF/JAJM for assistance.

24.15.3. A judge advocate who has acted in the same case as an accuser, PHO, member of the court-martial, military judge, counsel, or has otherwise acted on behalf of the prosecution or defense may not conduct the Article 65(d), UCMJ, review.

**24.16. Form, Content, and Distribution of Article 65(d), UCMJ, Judge Advocate Reviews.**

24.16.1. Article 65(d) reviews will contain only those matters required by R.C.M. 1201(d) & (e). In those cases in which no corrective action is required by TJAG, the review will consist of a stamped or typed entry on the original DD Form 490, ROT cover of volume one of the original ROT, and on all copies of the EoJ for non-punitive discharge SPCMs and GCMs. The entry shall be entitled "Article 65(d), UCMJ, Review," and shall consist of the conclusions required in Article 65(d)(2), UCMJ, the unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.16.2. For cases in which appellate review has been waived or withdrawn, the Article 65(d), UCMJ, review will contain only those matters required by R.C.M. 1201(e) and will be annotated according to 24.15.1 except it will consist of the conclusions required in Article 65(d)(3), UCMJ. A CFR is required except in officer/cadet cases where a dismissal has been adjudged, the ROT and Article 65(d), UCMJ, review must be forwarded to AF/JAJM, who will route the record and review to AF/JAJI for Secretarial action on the dismissal.

24.16.3. Corrective Action Not Required. If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0)** The review is prepared, dated and signed by the reviewer, covers the matters required by Article 65(d)(2), UCMJ, and includes a

statement that the findings are correct in law and fact. The review is attached to the ROT. The Article 65(d), UCMJ, review will be annotated as required by [paragraph 24.15.1](#).

24.16.4. Corrective Action Required. When the review indicates that corrective action may be required, the GCMCA SJA forwards the review, the ROT and attachments to AF/JAJM for docketing. AF/JAJM will forward the ROT to AF/JAJI for action by TJAG, in accordance with Article 65(e), UCMJ, and R.C.M. 1201(f). Any action taken by TJAG in accordance with Article 65(e), UCMJ, must be included in the ROT and memorialized in the CFR.

#### **24.17. Distribution of Judge Advocate Reviews Performed at the GCMCA Legal Office.**

24.17.1. After completing the Article 65(d), UCMJ, review, forward the original ROT, to include four copies of the Article 65(d), UCMJ, stamped EoJ to AF/JAJM.

24.17.2. The GCMCA SJA will provide a copy of the Article 65(d), UCMJ, review and any action taken by TJAG to the accused. **(T-0)** Notification must be accomplished via certified mail to the address provided by the accused and request a receipt of the notification from the accused. **(T-0)** Proof of service must be attached to the ROT. **(T-0)** See R.C.M. 1201(g).

24.17.3. The GCMCA SJA will provide a copy of the Article 65(d), UCMJ, stamped EoJ to the same parties listed on the EoJ Distribution Checklist, available on the VMJD and AF/JAJM Teams page.

**24.18. Finality of SPCM or GCM under Article 65, UCMJ.** For cases that do not require corrective action, SPCMs and GCMs reviewed under Article 65, UCMJ, are final under Article 76, UCMJ, upon completion of the judge advocate's review. For cases that are otherwise eligible for Article 66, UCMJ, review but where that review is waived or withdrawn, those case are final upon completion of the CFR. For cases that require corrective action, those cases are final upon action of TJAG and completion of the CFR.

#### ***Section 24F—Review by The Judge Advocate General (Article 69, UCMJ)***

**24.19. Scope of Article 69, UCMJ, Review (R.C.M. 1201(h) & (k)).** The Judge Advocate General may review a case under Article 69, UCMJ, in the following scenarios:

24.19.1. Following completion of an Article 64 or Article 65(d), UCMJ, review, the accused may submit an application to TJAG for relief under Article 69, UCMJ. The accused must submit any application for Article 69, UCMJ, review within the deadlines established by R.C.M. 1201(h)(2) & (3). **(T-0)**

24.19.2. If a judge advocate conducting an Article 64, UCMJ, review of an SCM states that corrective action is required as a matter of law, and the GCMCA does not take such action, the matter shall be forwarded to TJAG to conduct an Article 69, UCMJ, review. **(T-0)** See R.C.M. 1307(g), R.C.M. 1201(j), and [paragraph 24.8.3.4](#).

24.19.3. The Judge Advocate General does not exercise Article 69, UCMJ, authority over cases reviewed by AFCCA.

**24.20. Prerequisite of Finality of Review.** An application may not be filed and will not be reviewed under Article 69, UCMJ, unless a judge advocate completed a review and any other action required by Article 64 or Article 65(d), UCMJ. **(T-0)**

**24.21. Contents of Article 69(a), UCMJ, Application.** In all cases, the application is written and signed by the accused or the applicant's legal representative under oath or affirmation. See the VMJD and the AF/JAJM Teams page for a sample format for applications or contact AF/JAJM. Defense counsel will not receive a copy of TJAG's action unless counsel's name is on the application. The application must contain the following:

- 24.21.1. The accused's name, SSN, and present mailing address;
- 24.21.2. The date and place of trial and type of court-martial;
- 24.21.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;
- 24.21.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged); and
- 24.21.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

**24.22. Article 69(a), UCMJ, Application Procedures.** The accused or the defense counsel must submit a hardcopy application to AF/JAJM by certified mail (AF/JAJM, Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or a completed electronic copy to AF/JAJM, Appellate Records section ([AF.JA.JAJM.Appellate.Records@us.af.mil](mailto:AF.JA.JAJM.Appellate.Records@us.af.mil)). For timing purposes articulated in Article 69(b), UCMJ, the application shall be considered to have been submitted to TJAG on the date the application is received by AF/JAJM. AF/JAJM forwards the application and the ROT to AF/JAJI for further processing.

**24.23. Review of Sealed Records when Considering Article 69(d), UCMJ, Review.** In any case where an appellant considers further review under Article 69(d), UCMJ and no notice of intent to appeal has been filed, if the appellant or their attorney request access to matters in the record that are sealed, TJAG authorizes the senior military attorney of the reviewing and appellate authority to review an appellate counsel request for examination of sealed materials in accordance with R.C.M. 1113(b)(3)(B). If the senior military attorney finds that the appellate counsel meets the criteria in R.C.M. 1113(b)(3)(B), appellate counsel may examine the sealed materials in accordance with the rule.

**24.24. Notification of Article 69, UCMJ, Review Results.**

24.24.1. If TJAG does not direct a rehearing or a review by AFCCA, AF/JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, AF/JAJI also mails a copy via certified mail to the defense counsel.

24.24.1.1. AF/JAJI will provide to AF/JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Article 69, UCMJ, application and will return the ROT to AF/JAJM.

24.24.2. If TJAG orders a rehearing, the procedures in [Section 26A](#) apply. AF/JAJI will prepare a memorandum to notify the accused of TJAG's action and attach a copy of the action, via certified mail. If the defense counsel's name and address is included on the Article 69, UCMJ, application, AF/JAJI also mails a copy, via certified mail, to the defense counsel. AF/JAJI will provide a copy to the GCMCA SJA.

24.24.2.1. AF/JAJI will provide to AF/JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to AF/JAJM.

24.24.2.2. AF/JAJM will mail the ROT, to include documents listed in [paragraph 24.24.2.1](#), via certified mail, to the GCMCA/SJA office for rehearing.

24.24.3. If TJAG forwards the case for review by AFCCA, AF/JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, AF/JAJI also mails a copy, via certified mail, to the defense counsel. AF/JAJI will provide a courtesy copy to the GCMCA SJA.

24.24.3.1. AF/JAJI will provide to AF/JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to AF/JAJM.

24.24.3.2. AF/JAJM will provide the ROT, to include the documents listed in 24.24.3.1, to AFCCA. The documents listed in [paragraph 24.24.3.1](#) will be provided to appellate counsel in AF/JAJG and AF/JAJA.

#### ***Section 24G—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210)***

**24.25. Petition for New Trial.** Petitions for a new trial are prepared and processed under R.C.M. 1210 and are filed with AF/JAJM on behalf of TJAG. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court, in any kind of court-martial, within three years after the EoJ.

24.25.1. The petition must be in writing and contain matters required by R.C.M. 1210(c). When practicable, the petition should be typewritten and double-spaced. The petition is signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The petitioner forwards the original and two copies of the petition and supporting documentation directly to AF/JAJM by certified mail (Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or by electronic copy to AF/JAJM, Appellate Records section ([AF.JA.JAJM.Appellate.Records@us.af.mil](mailto:AF.JA.JAJM.Appellate.Records@us.af.mil)). An accused may submit only one petition for new trial for the same reason within the three-year limitation period.

24.25.2. Forwarding the Petition.

24.25.2.1. If the petitioner's case is pending before AFCCA, AF/JAJM forwards the following documents to the Court: the signed petition and supporting documents, and the original ROT. AF/JAJM also forwards a copy of the petition and supporting documents to appellate defense and appellate government counsel. R.C.M 1210(e).

24.25.2.2. If the petitioner's case is pending before CAAF, AF/JAJM forwards the following documents to the Court: the original petition and supporting documents plus seven copies. AF/JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. R.C.M 1210(e).

24.25.2.3. If the petitioner's case is not pending before an appellate court, AF/JAJM forwards the petition to TJAG, through AF/JAJI. See [paragraph 24.26](#).

24.25.2.4. For offenses under OSTC authority, the servicing OSTC District Office must be notified of a petition for a new trial.

**24.26. TJAG Review of the Petition.** If the petitioner's case is not pending before a court, AF/JAJI, on behalf of TJAG or an officer designated by TJAG, shall review the petition. If counsel was not previously appointed, upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. AF/JAJM forwards one copy of the petition and supporting documents to each appointed appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

**24.26.1. Filing Briefs Requiring TJAG Review.**

24.26.1.1. Form and Number of Briefs. Briefs are to be typewritten and double-spaced. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permit(s).

24.26.1.2. Time for Filing. The brief on behalf of the petitioner shall be filed with AF/JAJI within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided to counsel. Appellate government counsel may file a brief within twenty days after petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within twenty days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request, the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

**24.26.2. Oral Arguments.** If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

24.26.2.1. Notice. The designated officer(s) shall give appellate counsel at least ten days' notice of the time and place of oral arguments.

24.26.2.2. Time Limits. No more than 30 minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

24.26.2.3. Number of Counsel; Opening and Closing. The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

24.26.2.4. Failure to Appear. Appellate counsel's failure to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

24.26.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

24.26.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for TJAG's consideration. After the action has been signed by TJAG, AF/JAJI shall cause a copy of the action to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action. AF/JAJI shall also forward a copy to AF/JAJM for inclusion in the ROT.

**24.27. Action on Petition.**

24.27.1. AFCCA and CAAF. The courts shall act on the petition in accordance with their respective rules.

24.27.2. If TJAG believes meritorious grounds for relief under Article 73, UCMJ, have been established, and that a new trial is appropriate, TJAG may order a new trial under Article 73, UCMJ.

24.27.3. If TJAG believes meritorious grounds for relief under Article 73, UCMJ, have been established but that a new trial is not appropriate, TJAG may act under Article 74, UCMJ, or transmit the petition and related papers to the SecAF with a recommendation. TJAG may also, in cases which have been finally reviewed but have not been reviewed by a Court of Criminal Appeals, act under Article 69, UCMJ.

**24.28. Miscellaneous Writs and Petitions.** For all other writs or petitions filed, whether pro se or through counsel, AF/JAJM shall receive said writs or petitions and forward to the appropriate office for action.

## Chapter 25

### REMISSION AND SUSPENSION (ARTICLE 74, UCMJ)

**25.1. General Information.** After the EoJ, SecAF has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President. If SecAF delegated such authority in accordance with Article 74, UCMJ, then the delegatee is bound to the same limitation. See DAFPD 51-2 for delegations under Article 74, UCMJ.

**25.2. Authority Over Confinees.** If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in DAFMAN 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, Article 74, UCMJ, authority delegated to commanders in DAFPD 51-2 is exercised by AFDW/CC or by the officer exercising GCMCA over DAF personnel in those institutions.

**25.3. Authority Reserved to the SecAF.** Only the SecAF may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under R.C.M. 1109-10; Article 60, UCMJ.

25.3.1. Any sentence of a person convicted by a military tribunal, under SecAF's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment;

25.3.2. Any sentence SecAF approved and ordered into execution;

25.3.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the Manual for Courts-Martial;

25.3.4. Those cases referred to SecAF for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the DAF policy level to AF/JAJI for SecAF decision.

**25.4. Authority of The Judge Advocate General.** TJAG may exercise SecAF authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in [paragraph 25.3](#). When delegated, the Director, AF/JAJ, may act for TJAG to remit or suspend up to 90 days of an approved sentence to confinement.

**25.5. Authority of the Accused's Commander.** Except in cases listed in [paragraph 25.3](#), and where TJAG has not acted, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence. Document any post-EOJ action on the sentence in a subsequent CADAM as provided in [paragraph 20.58](#).

25.5.1. A commander exercising only SPCMCA over the command to which the accused is assigned may not remit a bad conduct discharge but may suspend a bad conduct discharge only in the initial action.



25.5.2. A commander exercising GCMCA over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in paragraphs [25.3.1-25.3.4](#).

25.5.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in DAFMAN 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by AFDW/CC or the officer exercising GCMCA over DAF personnel in those institutions.

**25.6. Publication of SecAF Actions under Article 74, UCMJ.** Promulgate actions taken by SecAF in cases specified in [paragraph 25.3](#) in the CFR, which is prepared by AF/JAJI and distributed to the member and all other entities required in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page. The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by the SecAF in all other cases.



## Chapter 26

### REHEARINGS, NEW TRIALS, OTHER TRIALS, AND REMANDS (ARTICLES 63 AND 66(F), UCMJ)

#### 26.1. Terminology.

26.1.1. Rehearings. Proceedings ordered or authorized by an appellate or reviewing authority on the findings and the sentence or on the sentence only.

26.1.2. New Trials. Proceedings ordered pursuant to Article 73, UCMJ, because of newly discovered evidence or fraud committed on the court.

26.1.3. Other Trials. Proceedings ordered to consider new charges and specifications when the original proceedings are declared invalid because of a lack of jurisdiction or failure of a charge to state an offense.

26.1.4. Remands. Proceedings ordered during appellate review to determine issues raised on appeal which require additional inquiry. R.C.M. 810(f) reflects this practice also known as *DuBay* hearings. See *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

**26.2. Notification of the Accused and Counsel.** When an appellate court, post-trial review or action directs or authorizes further proceedings the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of documents requiring additional action. Ensure receipts are accomplished. Further proceedings in such a case need not be delayed solely to permit an accused to petition for a grant of review or otherwise appeal the matter.

26.2.1. Appellate Leave. Pursuant to Article 76a, UCMJ, an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. When an appellate court takes an action that has the effect of setting aside a punitive discharge, the responsible court-martial convening authority's SJA must notify the accused of the options available to ensure proper duty status is maintained. A template notification can be found on the VMJD and AF/JAJM Teams page.

**26.3. Notification of the Victim(s).** When an appellate court, post-trial review or action directs or authorizes further proceedings and the case involved a victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense under the UCMJ, the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide any victim and counsel (if applicable) with a copy of the document requiring additional action. See Article 6b(a)(2), UCMJ. Ensure receipts are accomplished. For additional information on required notifications, and other victims' issues on appeal, see DAFI 51-207.

**26.4. Notification to OSTC.** For offenses under OSTC authority, the responsible court-martial convening authority's SJA must notify the servicing OSTC District Office and provide a copy of document(s) requiring additional action.

**26.5. Procedures Generally.** AF/JAJM will return the ROT along with the opinion directing or authorizing the further proceedings to the responsible convening authority's legal office via certified mail. AF/JAJM sends a transmittal letter, and a copy of the pertinent decision, mandate, or order to the responsible convening authority's SJA. If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the convening

authority within the accused's current chain of command who would normally convene the type of court-martial involved. See R.C.M. 810(f). Any special instructions deemed necessary to carry out the mandate of the court are to be transmitted by AF/JAJM with the remanded ROT.

26.5.1. The original convening authority, or his or her successor in command, who made a decision whether or not to act on the accused's sentence or their predecessor is the responsible convening authority if the accused is still within that chain of command.

26.5.2. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

26.5.3. If the accused is no longer within the chain of command of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the convening authority in the accused's chain of command who would normally convene the type of court-martial involved.

26.5.3.1. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the convening authority in the accused's current chain of command who would normally convene the type of court-martial involved.

26.5.3.2. For offenses under OSTC authority, STC determines whether a rehearing is impracticable. The servicing OSTC District Office should be consulted immediately.

**26.6. Convening Authority Post-Trial Action Memorandum.** The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a post-trial action memorandum reflecting post-trial action in the case, which could include:

26.6.1. That a rehearing is ordered before another court-martial to be designated. See [paragraph 13.11.3](#) for sample language for rehearing on sentence; or

26.6.1.1. If a rehearing on sentence is impracticable, that the sentence as to the affected charges and specifications has been set-aside and (1) a new sentence is approved based only on the unaffected charges and specifications if segmented sentencing was employed at the original trial, or (2) a sentence of no punishment is approved; or

26.6.1.2. If a rehearing on findings is impracticable, that the findings of guilt and the sentence as to the affected charges and specifications have been set aside and the effected charges and specifications are dismissed. **Note:** The convening authority may not dismiss charges or specifications previously affirmed by an appellate court.

## **26.7. Composition of the Proceedings.**

26.7.1. Election of the Accused. The accused has the same right to make an election as to enlisted members, all-officer panel, or military judge alone, that the accused had at the original trial.

26.7.2. Military Judge. The military judge at a rehearing may be the same judge who presided over the previous trial.

26.7.3. Members. Members who previously heard the case may not sit as part of the court-martial.

26.7.4. Examination of Record of Former Proceedings. Examination of the prior record requires permission of the military judge after such matters have been received in evidence. R.C.M. 810(c).

**26.8. Sentence Limitations.** See R.C.M. 810(d) for guidance.

***Section 26A—Rehearings (Article 63, UCMJ; R.C.M. 810)***

**26.9. Receipt of Decision and Speedy Trial Clock.**

26.9.1. For offenses under command authority, the speedy trial clock begins on the date that the responsible convening authority receives the ROT and the opinion authorizing or directing a rehearing.

26.9.2. For offenses under OSTC authority, the speedy trial clock begins on the date that an STC receives the ROT and the opinion authorizing or directing a rehearing.

26.9.3. An accused is “brought to trial” at the time of arraignment. In a sentence-only rehearing, an accused is “brought to trial” at the first Article 39(a), UCMJ, session. *United States v. Becker*, 53 M.J. 229 (C.A.A.F. 2000); R.C.M. 707(b)(3)(D).

**26.10. Rehearings in Full.** The procedures applied shall be the same as in the original trial. (T-0) See R.C.M. 810.

**26.11. Rehearings on Sentence Only.** The procedures applied shall be the same as in the original trial, except that the portion of the procedure which ordinarily occurs after challenges and through findings is omitted. (T-0) See R.C.M. 810.

26.11.1. The contents of the record of the original trial, consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced, may be established by any party whether or not testimony so read is otherwise admissible under M.R.E. 804(b)(1) and whether or not it was given through an interpreter. See R.C.M. 810(a)(2)(A).

26.11.2. The accused at a rehearing on sentence only may not withdraw any plea of guilty upon which approved findings of guilt have been based. (T-0) See R.C.M. 810(a)(2)(B).

**26.12. Combined Rehearings.** A rehearing on sentence may be combined with trial on the merits of specifications referred to the court-martial. For additional guidance, see R.C.M. 810(a)(3). The presentencing procedure shall be the same as in the original trial. (T-0)

26.12.1. Additional Charges. Additional charges may be referred for trial together with charges as to which a rehearing has been directed. See R.C.M. 810(a)(4).

**26.13. Rehearings Ordered.** If a rehearing is ordered, a military judge shall be detailed and the matter will be forwarded to the military judge. (T-0)

*Section 26B—Other Trials.*

**26.14. Ordering Other Trials.** An authority ordering an “other trial” must state in the action the basis for declaring the proceedings invalid (i.e., lack of jurisdiction, failure of a charge to state an offense). (T-0) See R.C.M. 810.

**26.15. Procedures in Other Trials.** The procedures applied shall be the same as in the original trial. See R.C.M. 810.

*Section 26C—New Trials*

**26.16. Procedures in New Trials.** The procedures applied shall be the same as in the original trial. (T-0) See R.C.M. 810.

*Section 26D—Remand*

**26.17. Overview.** A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. See R.C.M. 810(f)(1) for additional information and limitations of remand.

**26.18. Remand Order.** An order for remand shall be directed by the Court of Criminal Appeals to the Chief, AF/JAT. (T-0)

26.18.1. Remand Impracticable. If the designated GCMCA or STC, as applicable, determines that the remand is impracticable due to military exigencies or other reasons, a Government appellate attorney must notify the ordering court. (T-0)

**26.19. Detailing of Military Judge.** When the court orders a remand, the Chief Trial Judge shall detail an appropriate military judge and notify the SJA to the GCMCA for the accused of the remand, who notifies the GCMCA of the detailing.

*Section 26E—ROT and Post-Remand Concerns.*

**26.20. Maintaining the ROT.** The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

26.20.1. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the original record with a copy of the document and an MFR explaining the reason for the removal, and the new location of the original document.

26.20.2. The charge sheet must be annotated to reflect the case is being sent for a rehearing. See [paragraph 13.11.3](#).

26.20.3. At the conclusion of the rehearing, a new STR and EoJ must be completed. If the accused served confinement resulting from the original trial, the new STR and EoJ must reflect that the accused will be credited for the time served.

26.20.4. The record of the rehearing is a separate ROT from the original ROT. Place the rehearing ROT on top of the original ROT. The original ROT volumes are renumbered as appropriate.

26.20.5. A verbatim transcript is required for a rehearing proceeding.

26.20.6. Forward the original and two copies of the rehearing ROT, along with the original ROT volumes, to AF/JAJM. Do not make two copies of the original ROT volumes.

26.20.7. In cases under [Section 26D](#), create a volume of the remand proceeding to include the audio recording, court reporter chronology, certification, index, verbatim transcript, and exhibits. The remand volume(s) are independent of the original ROT and should be placed on top of the original.

26.20.7.1. Forward the original and two copies of the remand ROT, along with the original ROT volumes, to AF/JAJM. Do not make two copies of the original ROT volumes.

## Chapter 27

### CERTIFICATION OF FINAL REVIEW

**27.1. General Provision.** When appellate review is complete, AF/JAJM notifies the SJA of the responsible GCMCA. The SJA for the responsible GCMCA completes the CFR in accordance with the checklist on the VMJD and AF/JAJM Teams page. If the accused is no longer within the command of the original convening authority, a courtesy copy of the notification is forwarded to the accused's previous convening authority.

27.1.1. In all courts-martial in which a member was sentenced to 6 months or more confinement and gained by the AFSFC, AFDW/JA is responsible for accomplishing the CFR.

27.1.2. In all courts-martial in which any portion of the sentence is subject to approval by SecAF or the President of the United States, AF/JAJI is responsible for accomplishing the CFR.

**27.2. Requirement for CFR.** A CFR is required in all cases when appellate review is complete, when the member has waived or withdrawn from appellate review, or TJAG takes corrective action in a case, except:

27.2.1. Cases receiving an Article 65(d), UCMJ, review, unless that review is completed because the member waived or withdrew from appellate review.

27.2.2. SCMs.

27.2.3. Cases resulting in a full acquittal, not guilty only by reason of lack of mental responsibility, mistrial, dismissal of all charges, or otherwise terminated without findings.

**27.3. Completion of CFR.** A template and checklist for the CFR is located on the VMJD and AF/JAJM Teams page. The GCMCA/SJA or judge advocate acting as the GCMCA SJA signs the CFR.

27.3.1. In all courts-martial in which any portion of the sentence subject to approval by SecAF or the President of the United States, once secretarial or presidential action is taken, the CFR is signed by DJAG. The action is attached to the CFR.

**27.4. Distribution of the CFR.** The CFR must be completed within 14 days of receipt of notification of completion of appellate review from AF/JAJM, unless an extension has been granted by AF/JAJM. Distribute to the accused and the recipients listed on the EOJ within 7 days of CFR being signed.

## Chapter 28

### MILITARY JUSTICE ORDER LOGS

#### *Section 28A—Convening Order Logs*

**28.1. Separate Logs Required.** Have a separate convening order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for supplemental and final court-martial orders.

**28.2. Content of Log.** The log must reflect the convening order number assigned to a particular case. Copies of the original convening orders must be stored with the convening order log. Digital copies are permitted. See [Section 14B](#) and [Section 23C](#) for instruction on preparing convening orders.

#### *Section 28B—Courts-Martial/Supplemental Order Logs*

**28.3. Separate Logs Required.** Have a separate courts-martial/supplemental order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for convening orders.

**28.4. Content of Log.** The log must reflect the courts-martial/supplemental order number assigned to a particular case. Copies of the original courts-martial/supplemental orders must be stored with the supplemental order log. Digital copies are permitted.

## Chapter 29

### SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

#### *Section 29A—Sex Offender Notification*

**29.1. General Provision.** If the member has been convicted of certain “qualifying offenses” that may require sex offender registration the DAF must notify federal, state, and local officials. **(T-0)** As noted in the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, [afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil), AFSFC/FCV, [afsfc.sfcv.1@us.af.mil](mailto:afsfc.sfcv.1@us.af.mil), and DAF-CJIC, [daf-cjic@us.af.mil](mailto:daf-cjic@us.af.mil).

**29.2. Qualifying Offenses.** See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ OSI/JA)

**29.3. Notification Requirement.** The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. **(T-0)**. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and DAFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

#### **29.4. Timing of Notification.**

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0) Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in DAFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0)**

29.4.2. In cases where the member will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, DAFMAN 31-115, Vol 1, and DoDI 5525.20.



**29.5. Legal Office Responsibilities.** SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished as required by federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See [paragraph 29.6](#) and [paragraph 29.7](#) and AFMAN 71-102, Chapter 3.

**29.6. STR and EoJ.** If a member is convicted of a qualifying offense referred to trial by GCM or SPCM on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD and AF/JAJM Teams page.

**29.7. Notification to the Installation Confinement Officer/NCO.** In cases where the member was convicted of a qualifying offense at a GCM or SPCM but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in DAFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

**29.8. Convictions by a Host Country.** Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with [Section 29A](#) is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with [paragraph 29.3](#) and [paragraph 29.4](#), and DoDI 1325.07.

*Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. § 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)*

**29.9. General Provision.** The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0)** See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. § 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's NCIC.

**29.10. Criminal History Record Information.** CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge).

**29.11. Identified Individuals.**

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in AFMAN 71-102 and DoDI 5505.11 when a probable cause determination has been made that the member, dependent, employee or contractor committed an equivalent offense.

**29.12. Disposition Data.** The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

**29.13. Qualifying Offenses.** Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 C.F.R 20.32, *Includable offenses*. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

**29.14. Military Protective Orders.** Issuance of an MPO also triggers a requirement for indexing in NCIC. See [paragraph 29.39](#) and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

**29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI).** If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. (T-0)

**29.16. Probable Cause Requirement.** Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

**29.17. SJA Coordination Requirement.** The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing.

**29.18. Process for Submission of Criminal History Data.** After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

**29.19. Legal Office Final Disposition Requirement.**

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a LIO, sentence data, NJP, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). See AFMAN 71-102, Table 1.1 for Disposition Documentation Requirements. If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD and AF/JAJM Teams page.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within three duty days of completion of the documents discussed in paragraphs [29.19.4-29.19.7](#).

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within three duty days of completion of the EoJ.

29.19.5. In cases where a CFR is created after completion of appellate review, the CFR must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion. See [Chapter 27](#).

29.19.6. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.7. In cases where the allegations involve offenses listed in paragraphs [10.5.1.1-10.5.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with [paragraph 10.6.2](#). **Note:** Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.8. For all other final dispositions which must be submitted in accordance with [Section 29E](#), AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

**29.20. Expungement of Criminal History Data and Fingerprints.** Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102. Expungement requests must be routed through the requestor's servicing SJA.

***Section 29C—DNA Collection (10 U.S.C. §***

***1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)***

**29.21. General Provision.** The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when fingerprints are collected pursuant to DoDI 5505.11. (T-0) See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. § 40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*; AFMAN 71-102.

**29.22. Qualifying Offenses.** DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

**29.23. Probable Cause Requirement.** DNA collection occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified committed it. The collection of DNA under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose DNA is being collected.

**29.24. SJA Coordination Requirement.** The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. (T-0)

**29.25. Timing of Collection and Forwarding.** OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with R.C.M. 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by R.C.M. 305(i)(2)(C) of the MCM; and convicted by general or special court-martial.

**29.26. STR and EoJ.** In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the first indorsement of the STR and EoJ by the SJA.

**29.27. Final Disposition Requirement.** As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR, EoJ, and/or CFR, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD and AF/JAJM Teams page.

29.27.3. In cases where the allegations involve offenses listed in paragraphs [10.5.1.1-10.5.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with [paragraph 29.19.7](#).

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within three duty days of completion of the final disposition. See [Section 29E](#) for further distribution guidance.

**29.28. Expungement of DNA.** DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

***Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. §§***

***921-922, Definitions; Unlawful acts; 27 C.F.R. § 478.11)***

**29.29. General Provision.** The National Instant Criminal Background Check System (NICS) is a nationwide database of persons who are prohibited from shipping, transporting, receiving, and possessing firearms, ammunition, and explosives, in or affecting interstate or foreign commerce, under 18 U.S.C. §922(g) and (n).

29.29.1. 18 U.S.C. §925(a)(1), *Exceptions: Relief from Disabilities*, allows persons prohibited under 18 U.S.C. §§922(g) and (n), except for those convicted of misdemeanor crimes of domestic violence who are subject to the prohibition of 18 U.S.C. §922(g)(9), to transport, ship, receive, and possess government-owned firearms, ammunition, and explosives for official government business.

29.29.2. In accordance with DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, Section 9, persons convicted of felony crimes of domestic violence (i.e., those crimes punishable by more than one year confinement, tried by a general or special court-martial, which otherwise meet the definition of a misdemeanor crime of domestic violence), are also prohibited from transporting, shipping, receiving, and possessing government-owned firearms, ammunition, and explosives for official government business.

29.29.3. In accordance with DoDI 6400.06, Section 9, personnel with a qualifying conviction for a crime of misdemeanor or felony domestic violence are not prohibited from working with: (1) major military weapons systems; or (2) crew-served military weapons and ammunition (e.g., tanks, missiles, and aircraft).

**29.30. Categories of Prohibition.** 18 U.S.C. §§922(g) and (n) detail ten categories that prohibit persons from shipping, transporting, receiving, or possessing firearms, ammunition, and explosives, in or affecting interstate or foreign commerce. See 18 U.S.C. §§922(g) and (n), 27 C.F.R. §478.11, and AFMAN 71-102, Chapter 4. The categories and their criteria are set forth below.

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year. See 18 U.S.C. §922(g)(1).

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(2).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the armed forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 U.S.C. § 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the armed forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD and



AF/JAJM Teams page. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See [paragraph 29.33.2](#). The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the CFR or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim. **Note:** Exceptions to this definition can be located at 18 U.S.C. § 921(a)(33). See also 27 C.F.R. 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562, *Database on domestic violence incidents*; DoDI 6400.07, *Standards for Victim Assistance Services in the Military Community*.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a GCM. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under [Section 29B](#).

**29.31. Notification to the Accused of Firearms Prohibition.** When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. Form of Notice. A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. SJA Responsibility to Notify. In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA should be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is directly responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 must be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 must be provided to the accused for completion as part of the referral paperwork.

29.31.3. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.4. Any notification made to the accused may be made through the accused's counsel in order to secure the accused's signature on required documentation.

29.31.5. If the accused declines to sign, this should be annotated on the form.

29.31.6. After completion of the form, the SJA must provide the completed AF Form 177 to DAF-CJIC within 24 hours of completion, in accordance with the provisions of AFMAN 71-



102. SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement.

**29.32. STR and EoJ.** In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in **paragraph 29.30.7.1** and 18 U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

**29.33. Final Disposition Requirement.** As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §922 is appropriately handled.

29.33.1. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion of the EoJ. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.33.2. In cases where a CFR is created after completion of appellate review, the CFR must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion. See [Chapter 27](#).

**29.34. SJA Coordination with Commanders.** The SJA or designee must inform commanders of the impact of a conviction on the accused's ability to handle firearms or ammunition as part of their official duties in accordance with 18 U.S.C. §925(a)(1) and DoDI 6400.06, Section 9; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of a felony or misdemeanor crime of domestic violence in accordance with 18 U.S.C. §922(g)(1) and (g)(9) (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

### ***Section 29E—Distribution of Court-Martial Data for Indexing Purposes***

**29.35. General Provision.** In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

29.35.1. Charge sheets in all cases where charges are preferred;

29.35.2. Charge sheets in all cases referred to court-martial;

29.35.3. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.4. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

- 29.35.5. In all SCMs, the final completed DD Form 2329 and first indorsement;
- 29.35.6. CFR in any case where any offense qualifies for any type of indexing discussed in this chapter;
- 29.35.7. Notification of outcome of any cases as to qualifying offenses litigated before or disposed of via military magistrate;
- 29.35.8. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.9. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and
- 29.35.10. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under **Sections 29B-D** of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with **paragraph 10.2.**; NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for discharge, resignation, or retirement in lieu of trial by court-martial, administrative paperwork for drug use or possession).

**29.36. Additional Notification Requirements.** SJAs should be aware of other notification requirements as discussed in AFMAN 71-102 and support commander notification requirements, as needed. SJAs should consider partnering with local DAF law enforcement to conduct necessary commander training on notification requirements, particularly as it relates to firearms prohibitors and indexing concerns implicated by CDIs.

**29.37. General Courts-Martial Continuances, Delays and Abatements.** Any continuance, delay or abatement that results in the announcement of a sentence or acquittal in a GCM occurring more than six months after referral may require modification of disposition information in NICS. Government counsel must notify the investigating agency (e.g., local OSI detachment or Security Forces) and DAF-CJIC in the event a continuance or delay is granted or abatement ordered in a GCM.

**29.38. Electronic Submission Preferred.** These complete and unredacted documents should be submitted to the DAF-CJIC electronically to ensure prompt processing. Documents should be submitted to [daf.cjic@us.af.mil](mailto:daf.cjic@us.af.mil) and may be submitted as attachments or via other secure electronic method.

### ***Section 29F—Protective Order Submissions***

**29.39. National Crime Information Center (NCIC) Submission.** When a commander issues an MPO, the commander must forward the MPO to their installation's primary law enforcement control center (BDOC or equivalent) within 24 hours of each issuance, extension, modification, or termination of an MPO. See **Section 4C. (T-0)** The installation's primary law enforcement control center will notify AFOSI Watch within 24 hours for entry of MPO information into the NCIC. See AFMAN 71-102, para. 2.5.7. The commander also notifies installation law enforcement when any terms are modified or the MPO is terminated. **(T-0)** SJAs must be cognizant of these requirements and appropriately advise commanders of their responsibilities and the collateral effects of issuing, modifying or terminating MPOs.

## Chapter 30

### METRICS AND MILESTONES

#### *Section 30A—Case Processing Overview*

##### **30.1. Case Processing Time.**

30.1.1. The DAF must account for resource investments, system and program effectiveness, and personnel impacts of military justice in an enterprise environment. An increase in processing time stands in contrast to the decrease in number of cases tried in recent years. Our separate system of military justice provides different or diminished constitutional rights to account for military requirements, including efficiency and effectiveness of the military justice system. It follows that an even greater emphasis on diligence and timeliness should be pursued under the UCMJ than in the civilian system. *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). This is not to say that fairness, due process, or accused or victim considerations are forfeited in the name of promptness, but it does recognize that diligence and timeliness are entirely consistent with good order and discipline and necessary for fairness and justice.

30.1.2. Coordination with Investigators. Consistent with CIP and IPST constructs discussed in [Chapter 4](#), SJAs must work with local OSI detachment commander and Security Forces Investigations to coordinate with agents and detectives as early as possible in the investigative stage of a case.

30.1.3. Time Management. SJAs and chiefs and NCOs in charge of military justice, at all levels of command, should regularly analyze available DCMS-AMJAMS data relating to each stage of court processing over which they have significant control to determine specific areas for improvement to maximize effectiveness and efficiency. The expeditious processing of courts-martial is essential to minimize disruptions in the DAF mission, the lives of victims, witnesses, and accused members, and to minimize DAF costs. Metrics and milestones provide a framework by which we can maintain healthy military justice processes while also remaining faithful to legal requirements of diligence and timeliness. Decisions on how to address disciplinary matters should not be made solely to produce seemingly quick results, but decision-makers and practitioners must be cognizant of the negative impacts generated by unnecessary delays. Metrics and milestones are offered to help calibrate military justice processes; the goals are derived from historical data and from legal requirements. They are intended to maintain fidelity with *Moreno* and *United States v. Livak*, 80 M.J. 631 (AFCCA 2020). Members are cautioned against dismissing military justice goals as a career field-driven interest item; good order and discipline, and the health of the processes and protections that accompany it, are a common pursuit for all who swear to support and defend the Constitution.

#### *Section 30B—Metrics*

**30.2. General Provision.** Metrics are standards of measurement by which certain requirements can be assessed. Metrics for courts-martial assess compliance with time-based, legal requirements. Compliance with the legal requirement is presented as a percentage of times actions were in compliance with the targeted measurement standard. The law and practicality recognize there can be valid exceptions to compliance; therefore, explanations for such exceptions must be captured

and documented to demonstrate applicability of an exception. The below metrics ensure focus is appropriately dedicated to time requirements established by law.

30.2.1. Speedy Trial. Bring an accused to trial within 120 days of preferral, imposition of pretrial restraint, or entry onto active duty. R.C.M. 707. Arraignment will toll the speedy trial clock. *United States v. Doty*, 51 M.J. 464 (C.A.A.F. 1999). Practitioners who seek to stop the speedy trial clock through arraignment should first attempt to meet all relevant discovery obligations and charge sheet modifications. **Note:** Separate from the metric, practitioners should also consider speedy trial considerations under the 6th Amendment and Article 10, UCMJ, whenever pretrial restraint is imposed, as these standards are different from R.C.M. 707.

30.2.2. ROT Completion Defined. For DCMS-AMJAMS and computation of metrics, ROT completion is defined as the completion and compilation of the ROT, including all attachments and allied papers as prescribed by R.C.M. 1112(f), DAFMAN 51-203, and the ROT Assembly Checklist on the VMJD and AF/JAJM Teams page.

30.2.3. ROT Completion to ROT Forwarding. A complete and accurate ROT, as defined in [paragraph 30.2.2](#), must be sent to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments. For cases wherein the accused is entitled to Article 66, UCMJ, review, the ROT must be docketed with the AFCCA within 150 days of announcement of the sentence. See *United States v. Livak*, 80 M.J. 631 (AFCCA 2020)

30.2.4. Processing Cases for Appeal. The appropriate office for processing cases wherein the accused has an opportunity for Article 66, UCMJ, review is AF/JAJM. The appropriate processing office for cases wherein the accused has an opportunity for Article 64, UCMJ, review or Article 65(d), UCMJ review is the GCMCA SJA. While not an enumerated metric, healthy military justice processes should ensure a complete and accurate ROT in all cases subject to Article 65(d), UCMJ, review is sent to AF/JAJM within seven days of completion of the review.

### ***Section 30C—Milestones***

**30.3. Milestones Generally.** Milestones are time-based goals to assist in expediting the administration of justice. The goals are displayed as benchmarks for certain stages of the trial process and the process in its entirety. The goals are established through an analysis of past case processing times and they reflect analysis of the historical median of the number of calendar days it has previously taken to complete phases of the court-martial process. Milestones provide a destination marker and a piece of an entire collective processing effort.

30.3.1. Using Milestones. Milestones provide practitioners with the ability to manage near-term and long-term processing issues and to orient them to lessons-learned, positive and negative, in their military justice program, thereby maintaining a healthy military justice program that balances protections, effectiveness, and efficiencies. The intent is to encourage legal offices to focus on strengths, weaknesses, and improvements to their entire process; milestones offer a way to better understand each part of the whole process.

### **30.4. GCM Milestones.**

30.4.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of

the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and Reports of Investigation (ROIs).

30.4.2. Prefer charge(s) within 40 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

30.4.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the publication of the ROI, DCMS-AMJAMS will reflect “0” days between publication of the ROI and preferral.

30.4.4. Complete the Article 32, UCMJ, hearing and report within 36 days of the date of preferral of charge(s).

30.4.5. Refer charge(s) within 21 days of the date of the completion of the Article 32, UCMJ, hearing and report.

30.4.6. Complete the trial (sentence/acquittal) within 75 days of the date of referral.

30.4.7. Sentence/Acquittal to ROT Completion. Compile the ROT, including all attachments and allied papers as defined in [paragraph 30.2.2](#), within 64 days of announcement of the sentence or acquittal.

30.4.8. Forward the ROT to the appropriate office for post-trial review within 250 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

### **30.5. Special Court Martial Milestones.**

30.5.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations.

30.5.2. Prefer charge(s) within 24 days of the date the OSI, Security Forces or Commander-Directed Investigation (CDI) ROI is published.

30.5.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, DCMS-AMJAMS will reflect “0” days between publication of the report of investigation and preferral.

30.5.4. Refer charge(s) within four days of the date of preferral of charge(s).

30.5.5. Complete the trial (sentence/acquittal) within 40 days of the date of referral.

30.5.6. Sentence/Acquittal to ROT Complete. Compile the ROT, including all attachments and allied papers as defined in [paragraph 30.2.2](#), within 38 days of announcement of the sentence or acquittal.

**30.6. Transcription Milestones.** Every effort should be made to complete the court-martial transcript prior to completion of the EoJ. However, in no case should transcription exceed the following milestones:

30.6.1. In a GCM, complete transcription within 64 days following the completion of trial. Any delays and reasons for such delays must be annotated in DCMS-AMJAMS.

30.6.2. In a SPCM, complete transcription within 38 days following the completion of trial. Any delays and reasons for such delays must be annotated in DCMS-AMJAMS.

### ***Section 30D—Summary Court-Martial Measures***

**30.7. Summary Court-Martial Processing.** SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate investigative assistance to agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results.

30.7.1. Prefer charge(s) within 40 days of the date of discovery.

30.7.2. Complete action within 21 days of preferral of charge(s).

30.7.3. Forward a complete and accurate ROT to the appropriate office for processing post-trial review within 14 days of action.

### ***Section 30E—Milestones Common to All Courts-Martial***

**30.8. Date of Discovery.** The date of discovery of the offense is defined as the date when the legal office first becomes aware of an allegation and a subject has been identified. Allegations may be made initially to an investigative agency (e.g., OSI, Security Forces, Inspector General), commander, supervisor, or first sergeant, and legal offices are strongly encouraged to maintain close relationships with all of these entities to ensure minimal delay between the initial report and legal office notification. In all cases where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses (e.g., allegation one is reported to the legal office on 1 January and allegation two is reported to the legal office on 1 March, the date of discovery is 1 January).

## Chapter 31

### DISCIPLINARY CASE MANAGEMENT SYSTEM (DCMS) – AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEM (AMJAMS) MODULE

#### *Section 31A—General Information*

**31.1. Purpose.** The purpose of DCMS-AMJAMS is to collect data pertaining to investigations, NJP imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. Use of DCMS-AMJAMS is required for legal offices to manage their cases. The use of any other case management system (e.g., excel spreadsheets, digital whiteboards) is not authorized. As the DAF eventually transitions to DCMS as a successor to AMJAMS, this chapter, and all its paragraphs, will apply equally to DCMS. The information collected is required for the following reasons:

- 31.1.1. To conduct statistical studies that measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the personnel needs of the service;
- 31.1.2. To provide various management reports to judge advocate personnel at all levels;
- 31.1.3. To provide statistical data to the DoD concerning military justice;
- 31.1.4. To provide raw data to Defense Incident-Based Reporting System (DIBRS); and
- 31.1.5. To reply to inquiries concerning military justice.

**31.2. Uses.** Based on user inputs, DCMS-AMJAMS contains detailed information on offenses and processing timelines as well as demographic information on subjects and victims. The information in DCMS-AMJAMS provides effective management tools for use by Headquarters, MAJCOMs/FLDCOMs, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through completion of the appellate process. DCMS-AMJAMS data is controlled unclassified information and may only be accessed by personnel for an official purpose while scrupulously recognizing the need for confidentiality and attorney work product.

**31.3. Release.** While transparency and access to military justice records offer the public an opportunity to maintain confidence in the fairness of the military justice system, the release of certain information must be balanced by key limitations. In particular, practitioners must maintain an awareness that access to certain data found within AF/JA's legal management systems—including records of legal assistance visits, civil litigation, and UCMJ action (including victim-centric information)—is not just subject to the Privacy Act. Access is also limited by both case law and Executive Order. Such limitations protect the United States and its service members' interests by shielding delicate information from an unauthorized release. The shield exists so long as it is not waived (explicitly or through practice); as such, the data is scrupulously managed. The shield is referred to as the attorney work product privilege, which was established by the Supreme Court of the United States in *Hickman v. Taylor*, 329 U.S. 495 (1947). The privilege was subsequently written into the Federal Rules of Civil Procedure, Rule 26(b)(3). The protection was explicitly extended to the work product—case preparation and thought processes—of military



justice practitioners in *United States v. Romano*, 46 M.J. 269 (C.A.A.F. 1997). In *United States v. Bowser*, 73 M.J. 889 (AFCCA 2014), AFCCA noted the work product privilege encompasses an attorney's thought processes and is specifically addressed by EO 13825, *2018 Amendments to the Manual for Courts-Martial, United States*, in R.C.M. 701(f). The case law and EO complement each other to ensure Air Force legal practitioners comply with both their own licensing requirements and ABA Model Rule 1.6, *Confidentiality of Information*, in representing their clients.

31.3.1. AF/JA is the release authority for data collected and stored in DCMS-AMJAMS and the products they may generate.

31.3.2. Requests for release of DCMS-AMJAMS data and products will be considered in light of applicable limitations.

31.3.3. AF/JA is the release authority when a request for derogatory data on an individual is presented to the installation legal office. AF/JA delegates the release authority to the installation SJA consistent with the limitations established under the Privacy Act, DAFI 51-201, and other applicable policy. The delegation does not include the release of reports that are generated by or from DCMS-AMJAMS. Any release must shield attorney work product to the maximum extent possible.

31.3.4. Installation legal offices are sometimes asked to use DCMS-AMJAMS to determine whether or not derogatory data exists for a particular individual (e.g., to vet candidates for professional opportunities). SJAs should remind the requestor AF/JAJM frequently vets those same candidates on collective lists to meet headquarters requirements. More importantly, SJAs should limit the release of any derogatory data to matters that fall within the JA portfolio as the OPR. The SJA can confirm, in response to an official request, if an individual was court-martialed because AF/JAJM is the custodian of court-martial records. SJAs should not confirm if a candidate received non-judicial punishment or was investigated because the JA community is not OPR for those records and it does not comprehensively track corrections or expungements to such records. SJAs should refer requestors to AFPC for release of non-court-martial records.

**31.4. Policy.** DCMS-AMJAMS inputs must be timely, complete, and accurate. Timely collecting, reporting, and processing of military justice information is essential to SJAs at all levels. Timely inputs keep senior leadership apprised of and prepared to answer questions about developing investigations that may generate high-level attention. Inputs are ordinarily completed within one duty day of a military justice "event" in a case, beginning with the Investigation module. "Events" include but are not limited to stages common to all courts such as investigation, preferral, referral, but also include any significant changes to the facts or processing of a case. If the data field is applicable to a case, an input must be made as soon as the data is available and updated as the need arises.

### **31.5. Responsibilities.**

31.5.1. SPCMCA and GCMCA legal office personnel have primary responsibility for DCMS-AMJAMS data entry except appellate information. DCMS-AMJAMS data should be complete, accurate, and timely.

31.5.2. GCMCA legal office personnel have primary responsibility for reviewing DCMS-AMJAMS inputs with regard to cases in the command. The GCMCA legal office must validate



all court-martial verdicts and sentences within seven calendar days of completion of the STR and must complete the Article 64 and 65 folders.

31.5.3. AF/JAJM, AF/JAJG, AF/JAJA, AFCCA, and AF/JAJI have primary responsibility for DCMS-AMJAMS data entry of appellate and other TJAG review information.

31.5.4. Legal Information Services (AF/JAS) has primary responsibility for granting legal practitioners access to DCMS-AMJAMS.

### ***Section 31B—Case Processing***

**31.6. Investigation.** New cases must be opened in DCMS-AMJAMS as investigations within one duty day of any personnel in the legal office becoming aware of a potential Article 15, UCMJ, court-martial, or circumstances reportable as a special interest case. See [Section 31D](#). When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to AF/JAJM and document the rationale for the delayed entry in DCMS-AMJAMS case notes.

**31.7. DCMS-AMJAMS Data Completion.** DCMS-AMJAMS data must be filled out in accordance with guidance promulgated by AF/JAJM. DCMS-AMJAMS guidance is found within this regulation and on the VMJD and AF/JAJM Teams page.

### ***Section 31C—Reports and Queries***

**31.8. Reports.** Reports generated by DCMS-AMJAMS can be accessed through the Management System itself, or from FLITE. Legal offices at all levels of command should review their DCMS-AMJAMS reports on a weekly basis for accuracy.

31.8.1. In DCMS-AMJAMS, go to the “Reports” menu and select the desired report. DCMS-AMJAMS reports are located under the “REPORTS” tab.

31.8.2. In FLITE, go to the “Reports” drop-down menu and select “Automated Military Justice Analysis and Management System.”

**31.9. Queries.** Generate queries via AMJAMS by going to the “Reports” drop-down menu and selecting “Reports” or “Query.” Then select the type of query and its parameters.

### ***Section 31D—SIRs***

**31.10. Reporting Special Interest Cases.** Certain cases involving DAF members generate interest within Headquarters DAF because of the nature of the offense, the subject’s grade, or some other reason. SJAs must be sensitive to SIR requirements.

**31.11. Responsibilities.** Reporting special interest cases in DCMS is a base-level responsibility. Reports must be prepared and forwarded to AF/JAJM within one duty day of learning of the incident by the base legal office responsible for the case or supporting the subject’s unit of assignment. If a base legal office learns of a SIR case but another office is responsible for it, the base legal office with knowledge of the case should inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority.

**31.12. Requirements.** SIRs must be created in the following circumstances:

31.12.1. Officer, E-8 and E-9 Subjects. Regardless of offense, report all allegations resulting in an investigation involving officers, and enlisted personnel in the grades of E-8 and E-9.

31.12.2. Serious Crimes. Regardless of the subject's grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

31.12.2.1. Offenses resulting in death, including violations of Articles 118 (Murder), 119 (Manslaughter); 119a (Death or injury of an unborn child), and 134 (Negligent Homicide), UCMJ;

31.12.2.2. For offenses occurring prior to 1 January 2019, violations of Articles 120, 120a, 120b, 120c, 125 (Forcible Sodomy), or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.3. For offenses occurring on or after 1 January 2019, violations of Articles 117a, 120, 120b, 120c, 130, or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.4. Domestic violence allegations involving substantial or grievous bodily harm, committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, guardian, or other directly related family member; or by a person similarly situated to a spouse, parent or guardian of the victim.

31.12.2.5. Retaliation, in violation of Article 132, UCMJ, and attempts thereof;

31.12.2.6. Espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States;

31.12.2.7. Environmental crimes, including civilian felony prosecution;

31.12.2.8. Prohibited activities with military recruit or trainee by person in position of special trust in violation of Article 93a, UCMJ;

31.12.2.9. Other circumstances if required by the relevant NAF, MAJCOM or FLDCOM.

31.12.3. Cases Involving Command or Media Interest.

31.12.3.1. Any case where the chain of command is required or likely to report the case via Operational Event/Incident Report (OPREP3) per AFMAN 10-206, *Operational Reporting (OPREP)*.

31.12.3.2. Any case with potential or actual community or local concerns or potential or actual media interest.

**31.13. What to Report.** Use DCMS-AMJAMS to generate the SIR, which must include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. Identify missing information and follow up as soon as possible.

31.13.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to AF/JAJM via email.

31.13.2. Ensure law enforcement sensitive investigative information is not included in the SIR without concurrence of the OSI Detachment Commander/Special Agent-in-Charge or investigating agency.

31.13.3. For matters investigated by CDI, IG, or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

31.13.4. For cases disposed of by NJP or administrative action, identify the wrongdoing or offenses alleged (e.g., “On (date), Subject received NJP/letter of reprimand (LOR) for...”).

31.13.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities, court, jurisdiction, and a summary of the charges, pleas, findings and sentence.

31.13.6. If a case was closed without action, explain why.

### **31.14. When to Submit a SIR.**

31.14.1. Initial SIR. Within one duty day of learning of an incident that requires a SIR. If an initial report does not provide sufficient information to determine whether a SIR is required, the installation legal office should work with investigators to gather additional information and submit a SIR within one duty day of receiving sufficient information to determine a SIR is required. If DCMS-AMJAMS cannot be accessed within one duty day, submit case information using the most expeditious means possible (likely email), and input the case into DCMS-AMJAMS as soon as possible. SIR reporting responsibilities do not preclude or preempt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority.

31.14.2. Final SIR. Submit a final SIR upon completion of the court-martial, NJP or administrative action, including the decision whether to file NJP action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed upon case closure.

### **31.15. How to Report.**

31.15.1. Use DCMS-AMJAMS to generate the SIR. Complete the SIR and Special Identifier tabs in DCMS-AMJAMS.

31.15.2. Transmitting SIRs to AF/JAJM. Generate a PDF copy of the SIR in DCMS-AMJAMS and send it via encrypted email to [AF.JAJM.SIR.Workflow@us.af.mil](mailto:AF.JAJM.SIR.Workflow@us.af.mil). Further instructions are available on the VMJD and AF/JAJM Teams page.

31.15.3. Initial. When submitting an initial SIR, use the following subject line/title: Controlled Unclassified Information (CUI) NEW SIR: CASE ID # - RANK SURNAME – BASE.

31.15.4. Final. When submitting a final SIR, use the following subject line/title: Controlled Unclassified Information (CUI) FINAL SIR: CASE ID # - RANK SURNAME – BASE.

*Section 31E—Requesting Access to DCMS-AMJAMS*

**31.16. Overview.** DCMS-AMJAMS access is not automatic and all users must be approved for access by the office where they will be performing military justice actions. To ensure that DCMS-AMJAMS is being used for official purposes, all requests must be submitted, via email, to JAS. DCMS-AMJAMS access is requested by a Leadership User via the ‘Add Office Access’ link under the User Management Module. DCMS-AMJAMS access is approved by AF/JAJM.

31.16.1. Office of Assignment. Before a person can be given DCMS-AMJAMS access, the individual must be assigned to the requesting office in Roster. Only offices with a military justice mission (i.e., the mission includes prosecuting courts-martial or the legal office supports a convening authority empowered to convene courts-martial) are authorized access to DCMS-AMJAMS.

31.16.2. Contents of the Request. All requests must be submitted via email to [afloa.helpdesk@us.af.mil](mailto:afloa.helpdesk@us.af.mil). The email must originate from one of the following personnel within the office: SJA, DSJA, Law Office Superintendent (or Legal Office noncommissioned officer in charge (NCOIC)), Chief of Military Justice, or NCOIC of Military Justice. The email must include the name/rank of the person being granted access, but should not include SSNs.

31.16.3. Temporary Access to DCMS-AMJAMS. When a member is deployed or TDY to an office and needs DCMS-AMJAMS access, the same requirements for requesting an account shall apply. Additionally, the individual will need to create a temporary role in Roster and that temporary role will need to be gained into the requesting office before the request can be processed. Temporarily assigned individuals will have their DCMS-AMJAMS access removed automatically at the end of the temporary tour.

## Chapter 32

### ARTICLE 137, UCMJ, REQUIRED COMMANDER BRIEFINGS, AND STATUS OF DISCIPLINE

#### *Section 32A—Article 137, UCMJ, Briefings for Enlisted Personnel and Officers*

##### **32.1. Responsibilities.**

32.1.1. The FSS/CC identifies enlisted and officer personnel on the installation required to complete an Article 137, UCMJ, briefing.

32.1.2. The SJA, in coordination with the FSS/CC, must ensure base personnel are briefed on the UCMJ as required by Article 137, UCMJ, and this chapter. **(T-0)**

**32.2. Content.** The Article 137, UCMJ, briefings for enlisted personnel and officers must cover, at a minimum, the following topics:

32.2.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139, UCMJ; **(T-0)**

32.2.2. Types of punitive and administrative discharges;

32.2.3. Bases for characterizing service;

32.2.4. The benefits, disadvantages, and possible future effects of each type of service characterization;

32.2.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (38 U.S.C. § 5303A, *Minimum active-duty service requirement*); and

32.2.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.

**32.3. Article 137, UCMJ, Delivery Methods.** The following delivery methods apply to Article 137 briefings.

32.3.1. Online. The preferred method for accomplishing Article 137, UCMJ, briefings is online. The myLearning online training meets the content requirements in [paragraph 32.2](#) for the enlisted and officer briefings. **Note:** Commanders must accomplish the additional required Article 137, UCMJ, briefings discussed in [Section 32B](#).

32.3.2. In-person. Article 137, UCMJ, briefings may also be conducted in-person by a judge advocate, a DAF civilian attorney, a 5-level or higher paralegal, or a 3-level paralegal under the supervision of a qualified briefer, to personnel within the command who require training. For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who:

32.3.2.1. Carries a 5-level paralegal certification as a Reservist, or

32.3.2.2. Prior to entering civilian service, served as a Regular Air Force or Space Force paralegal with a 5-level or higher paralegal certification.

32.3.3. If it is not practicable for a member to receive the briefing through myLearning or in-person, the member may be briefed by a qualified briefer via telephone, video teleconference or other remote means.

#### 32.3.4. Documenting the training.

32.3.4.1. The servicing legal office will coordinate with the FSS to ensure all personnel have completed the myLearning training as required in this instruction.

32.3.4.2. If the legal office conducts an in-person myLearning briefing, the legal office must record all in-person attendance for enlisted, officers, and commanders through documentation provided to the member (e.g., memorandum, sign-in sheets, or other means) to allow for verification by the member's UTM that the specific individual received the mandatory training.

32.3.4.3. For all other methods of completion ensure documentation of the member's completion.

32.3.5. Frequency, Content and Duration. The SJA determines the frequency, content, and duration of training sessions, provided they meet the requirements of this chapter.

### 32.4. Enlisted Completion Requirements.

32.4.1. Complete the initial explanation within 14 calendar days of the entry of enlisted personnel on active duty; **(T-0)**

32.4.2. Complete the six-month explanation for enlisted personnel within 30 calendar days of the last day of the month in which the individual completed six months of active duty; **(T-0)** and

32.4.3. Complete the reenlistment explanation within 30 calendar days of an individual's reenlistment.

32.4.4. Enlisted members of the Reserve or Air National Guard receive the initial explanation within 14 calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

### 32.5. Officer Completion Requirements.

32.5.1. Complete officer training within six months of commissioning, regardless of whether initial commissioning is in a reserve component or RegAF or Space Force. **(T-0)**

32.5.2. The SJA for the Holm Center, Maxwell Air Force Base, ensures trainees in Officer Training School receive the required briefing prior to graduation.

32.5.3. The SJA at each Training Wing (or Space Force equivalent) ensures officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

32.5.4. The SJA for USAFA ensures cadets receive the required briefing from instructors at USAFA within 14 calendar days of entry on active duty.

### *Section 32B—Required Commander Training*

**32.6. Overview.** In addition to the training in [Section 32A](#), commanders must accomplish two additional trainings: training on the role of a commander in all stages of military justice in connection with sexual assault and military justice-specific training covering, at a minimum, search authorizations, no contact and protective orders; and commander-specific indexing and firearm prohibition requirements.

32.6.1. Timing. Installation SJAs ensure commanders receive all three trainings (Article 137, UCMJ, and the two additional required commander trainings) prior to conducting the legal sufficiency reviews of their G-series orders, when practicable. **(T-0)** In the event an officer is not able to complete all the required trainings prior to being placed on G-series orders, the trainings must be accomplished within 30 days of appointment to or assumption of command. This includes commanders placed on temporary orders periodically, for whom training is good for 365 days. Even if an officer has previously served as a commander, repeat training is required within 30 days of appointment to or assumption of a subsequent command.

32.6.2. Content.

32.6.2.1. The VMJD and AF/JAJM Teams page contain templates for the additional commander-specific trainings.

32.6.2.2. Part two of the training consist of training required by FY 2020 NDAA, Section 540B.

32.6.2.2.1. At a minimum, this training must cover the following topics: **(T-0)**

32.6.2.2.1.1. The role of commanders in each stage of the military justice process in connection with allegations of sexual assault committed by a service member;

32.6.2.2.1.2. The role of commanders in assuring victims of sexual assault are informed of, and have the opportunity to obtain, assistance available for victims;

32.6.2.2.1.3. The role of commanders in assuring victims of sexual assault are afforded the rights and protections available for victims;

32.6.2.2.1.4. The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their complaints, statements, testimony, and status in connection with allegations sexual assault, including the role of commanders in ensuring subordinates in the command are aware of their responsibilities in preventing such retaliation;

32.6.2.2.1.5. The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault, and in the response of the commander, subordinates in the command, and other personnel in the command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault; and

32.6.2.2.1.6. Any other matter on the role of commanders in connection with sexual assault that the Secretary of Defense deems appropriate.

32.6.2.2.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#). A template for the required training is located on the VMJD and AF/JAJM Teams page.

32.6.2.3. Part three of the training is intended to provide education and training on remaining matters within the military justice system that involve a command responsibility but may not be covered in part two. This training ensures that commanders throughout the Air Force and Space Force are best equipped to handle instances that may arise in their units which impact good order and discipline.



32.6.2.3.1. This training covers, at a minimum, search authorization under M.R.E. 315; “no-contact” orders, MPOs, and CPOs; and commander-specific indexing and firearm prohibition requirements. Additional topics may be covered at the discretion of the SJA and installation commander.

32.6.2.3.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#).

### *Section 32C—Status of Discipline Briefings*

**32.7. Overview.** A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the installation commander or equivalent installation authority on at least a quarterly basis. The intent of the briefing is to facilitate discussion across the installation regarding trends in military justice and discipline, as well as identifying areas of concern among the base’s population.

32.7.1. The SJA supporting the installation commander facilitates the SOD briefing. Installation commanders and their servicing SJAs are encouraged to invite host and tenant commanders and first sergeants. Pursuant to the direction of the installation commander, the SJA may invite additional personnel to all or specific SOD briefings. For example, vice and deputy commanders, superintendents, and OSI and Security Forces senior investigators may be invited to all SOD briefings while the SARC, VC, or ADC may be invited to participate in a portion of a specific SOD briefing.

32.7.2. The content of the SOD briefing may vary based on the installation. The SJA and legal office staff will create the briefing materials and coordinate as necessary and appropriate. DCMS-AMJAMS and Web-Based Administrative Separation Program (WASP) (and any future replacement systems) are used to generate the briefing slides. For briefings involving Air Force personnel, data will include the squadron (where required in [Table 32.1](#)) wing, NAF, MAJCOM, and Air Force numbers, as applicable. For briefings involving Space Force personnel, data will include the data for all equivalent organizations (e.g., garrison, delta, FLDCOM, and Space Force).

**32.8. Minimum Requirements.** The information in [Table 32.1](#) will be provided to SOD attendees either before or during the SOD briefing. SJAs may provide the information beforehand to facilitate discussion during the SOD briefing.

**Table 32.1. SOD Minimum Requirements.**

FREQUENCY	JUSTICE PROCESS	INFORMATION REQUIRED	APPLICABLE TIME PERIOD
Quarterly (every SOD).	Courts-Martial.	Results of trial for closed cases at the wing or garrison. See Note 1.	Within the quarter.
		Processing times for courts-martial completed through Record of Trial forwarding at the wing or garrison.	Within the quarter.
		Processing times for courts-martial completed through Record of Trial forwarding at the wing or garrison, NAF or delta, MAJCOM/FLDCOM, and DAF. See <a href="#">paragraph 32.7.2</a> .	Year-to-date.



FREQUENCY	JUSTICE PROCESS	INFORMATION REQUIRED	APPLICABLE TIME PERIOD
	Nonjudicial punishment (NJP).	Information on NJP completed through SJA review, including supplemental actions (suspension, mitigation, remission, set aside). See Note 2.	Within the quarter.
		NJP processing times for NJP actions completed through SJA review by squadron or equivalent, wing or garrison, NAF or delta, MAJCOM/FLDCOM, and DAF. See <b>paragraph 32.7.2</b> .	Year-to-date.
	Involuntary discharge.	Information on involuntary discharge cases completed through discharge or retention. See Notes 2, 3, 4.	Within the quarter.
		Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron or equivalent, wing or garrison, NAF or delta, MAJCOM/FLDCOM, and DAF. See <b>paragraph 32.7.2</b> .	Year-to-date.
Once per calendar year.	Rates per thousand.	Rates per thousand for courts-martial and NJP listed by the applicable levels of command described in <b>paragraph 32.7.2</b> for: overall and by officer/enlisted, gender, and race. See Note 5.	
<b>Notes:</b> 1. This requirement does not apply to traditional reserve units; however, traditional reserve units will discuss closed cases where recall was initiated, and a judicial proceeding resulted. 2. SJA are encouraged to have the responsible commanders brief their squadron's NJP actions and involuntary discharge cases. 3. Involuntary discharge cases include board waivers and cases involving Probation and Rehabilitation (P&R) and the status of those P&R cases. 4. Briefing of individual discharge cases is not required for entry-level status discharges. 5. The requirement for discussion of courts-martial does not apply to traditional reserve units.			

32.8.1. SOD provides a venue to discuss special interest items identified by the wing or garrison commander, or the SJA, such as alcohol-related incidents, drug offenses, and unlawful command influence. Examples of topics are available on the VMJD and AF/JAJM Teams page.

32.8.2. Legal offices should use SOD as an opportunity to conduct training specific to the installation military justice issues. Templates and topic ideas are available on the VMJD and AF/JAJM Teams page.

### ***Section 32D—Publish the Nature and Results of all Sexual Misconduct Disciplinary Actions***

**32.9. Overview.** In accordance with Recommendation 3.8 from the report of the Independent Review Commission on Sexual Assault in the Military, in order to promote greater transparency and accountability, commanders at the installation level are responsible for publishing the nature and results of all disciplinary actions taken against military members related to sexual harassment

and sexual assault without identifying the accused, victim, or unit. Installation commanders will work with their servicing SJA to accomplish publication.

32.9.1. Disciplinary actions taken for the following offenses must be reported: sexual assault (including violations of Article 120 and 120b, UCMJ) and sexual harassment.

32.9.2. The information will be published in a narrative format and must include:

32.9.2.1. A brief summary of the nature of the allegation(s);

32.9.2.2. The investigative findings; and

32.9.2.3. The judicial, nonjudicial, and/or administrative actions taken against the accused(s).

32.9.3. The results of the disciplinary actions must be published on the installation's public facing website. A template publication is located on the VMJD and AF/JAJM Teams page.

32.9.4. The results of the disciplinary actions must be published bimonthly, no later than the first day of the following months: December, February, April, June, August, and October.

32.9.4.1. For judicial actions, publish the results of the action after the military judge signs the EOJ.

32.9.4.2. For NJP, publish the results of the action after SJA legal review.

32.9.4.3. For administrative actions, publish the results of the action after the issuing authority's decision on the final disposition of the action in accordance with DAFI 36-2907.

32.9.4.4. For involuntary discharges for which the underlying misconduct involves sexual assault or sexual harassment, publish the results of the action after the separation authority takes final action in accordance with DAFI 36-3211.

32.9.5. Application to ARC.

32.9.5.1. This requirement applies to disciplinary actions taken against AFRC members for sexual assault or sexual harassment that occurred while the AFRC member was in active-duty status. This requirement also applies to disciplinary actions taken against ANG members for sexual assault or sexual harassment that occurred while the ANG member was in Title 10 status. There is no requirement to publish the results of disciplinary actions taken for sexual assault or sexual harassment committed by an ARC member in civilian status.

32.9.5.2. ARC units located on a RegAF installation should work with their host installation SJA to accomplish publication. ARC units on a standalone installation should work with the SJA of the RegAF installation legal office who handles their military justice functions.

## Chapter 33

### STAFF JUDGE ADVOCATE SUPPORT TO EXTERNAL PROGRAMS

#### *Section 33A—Staff Judge Advocate’s Responsibilities to Defense Counsel*

**33.1. The ADC Program.** The ADC Program is one of the great strengths of the military justice system and will continue to be so as long as the defense function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions and to treat the ADC as equal with the prosecution function at the bar of justice.

#### **33.2. Staff Judge Advocate Responsibilities.**

33.2.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the ADC function. SJAs are charged with providing commanders candid and objective advice on all legal matters, especially in regard to military justice. An SJA is responsible for ensuring the government is well represented and its personnel are properly trained to execute their various military justice responsibilities. In executing their duties, SJAs are expected to execute multiple roles and responsibilities in safeguarding the justice process and in enhancing good order and discipline, to include properly preparing counsel and effectively providing command with an unbiased perspective and legal advice on the full range of military justice options, which take into account the needs of all the parties involved, the mission, and the DAF.

33.2.2. The SJA’s position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with defense counsel, promoting civility in practice, and maintaining a productive relationship within the legal community. The SJA must never make denigrating, demeaning, or hostile comments about the ADC nor condone such comments by others. Instead, when the SJA considers it necessary to question or criticize the actions of the ADC, the SJA will raise such matters through the ADC’s supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the defense bar, vigorous promotion of defense independence, and appropriate recognition of the ADC’s achievements.

33.2.3. The quality of the ADC’s facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit ADC offices will not perceive the system is operating on a level playing field unless defense facilities and equipment achieve this standard. SJAs are responsible for assisting ADCs in obtaining and maintaining suitable facilities and equipment.

#### *Section 33B—Staff Judge Advocate’s Responsibilities to Victims’ Counsel*

**33.3. The Victims’ Counsel Program.** The VC Program is one of the great strengths of the military justice system and will continue to be so as long as the VC function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions.

### 33.4. Staff Judge Advocate Responsibilities.

33.4.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the VC Program.

33.4.2. The SJA's position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with the VC, promoting civility in practice, and maintaining a productive relationship within the legal community. If the SJA considers it necessary to question or criticize the actions of the VC, the SJA will raise such matters through the VC's supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the members of the VC program, vigorous promotion of the VC Program's independence, and appropriate recognition of the VC's achievements.

33.4.3. The quality of the VC's facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit VC offices will not perceive the system is operating on a level playing field unless the facilities and equipment achieve this standard. SJAs are responsible for assisting VCs in obtaining and maintaining suitable facilities and equipment.

33.4.4. The VC program is separate and distinct from VWAP. The SJA must ensure legal office personnel understand the distinction between the two programs. VWAP responsibilities are not abrogated by a victim's representation by counsel.

### *Section 33C—Support of Defense Sexual Assault Incident Database (DSAID)*

**33.5. Defense Sexual Assault Incident Database.** The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01, *Sexual Assault Prevention and Response (SAPR) Program*, and DoDI 6495.02, Volume 1, *Sexual Assault Prevention and Response: Program Procedures*. The DSAID captures available information, not limited by restricted reporting or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. The DSAID is used to implement annual Congressional reporting requirements. The DSAID is maintained at base level by the installation SARC and requires information, as necessary, from appropriate base agencies to complete designated data fields.

33.5.1. The installation SJA ensures the legal office provides the SARC with disposition data on DSAID cases resulting from unrestricted reports of sexual assault and independent investigations (see [paragraph 8.7](#)) with servicemember subjects by assisting the SARC in completing a DD Form 3114, *Department of Defense Uniform Command Disposition Report*. In accordance with DoDI 6495.02, Volume 1, Enclosure 12, the data called for on the DD Form 3114 is submitted to the DoD SAPR Office and, in turn, to Congress.

33.5.2. The SARC initiates the DD Form 3114 once a case has been disposed of by command action (e.g., court-martial, NJP, administrative discharge, etc.) or a decision not to take action. The legal office will complete the remainder of the form, to the extent the information called for is known or can be reasonably ascertained. Legal offices are responsible for drafting a case synopsis for inclusion on the DD Form 3114. This synopsis is a brief summary of the case and

its disposition and is to be drafted in accordance with guidance published in the AF/JAJM DSAID Guide on VMJD and the AF/JAJM Teams page.

33.5.3. The SJA will ensure the information provided on the DD Form 3114 is accurate and complete and returned to the SARC as soon as possible. The SARC will then input the data from the DD Form 3114 into DSAID and forward the DD Form 3114 to AF/JAJM.

33.5.4. If the legal office does not have access to the requested information—such as when command action was taken at another installation—the SJA will ensure the legal office assists the SARC in contacting the legal office which does maintain the information.

## Chapter 34

### REQUESTS FOR AND RELEASE OF INFORMATION

#### *Section 34A—Extrajudicial Statements and Release of Information*

**34.1. General Provision.** Information may not be disseminated if it could reasonably be expected to interfere with law enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudication in a criminal proceeding. The determination of whether a release of information is permissible includes an assessment of the type and details of information to be released and its source, the type of proceeding, and the stage of the proceeding. The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, implementing directives, security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, FOIA, and the Victim and Witness Protection Act. **Paragraph 34.2.1** discusses FOIA's required balancing test concerning the privacy rights of an accused. **Paragraph 31.3** discusses the release of DCMS-AMJAMS information.

34.1.1. DAF representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

34.1.2. This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. Military defense counsel must comply with the requirements and restrictions of FOIA and the Privacy Act with respect to the release of DAF records. **(T-0)**

**34.2. Extrajudicial Statements.** Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. There are valid reasons for making certain information available to the public in the form of extrajudicial statements when such release otherwise complies with applicable rules and regulations as described in **paragraph 34.1**. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions. The question of whether a statement is extrajudicial will depend upon the circumstances.

34.2.1. Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a judge advocate office about an individual, may not be released to the public without the individual's consent unless release is required by FOIA. **(T-0)** FOIA requires release except when specified circumstances exist, one of which is when release would constitute an unwarranted invasion of an individual's personal privacy. See 5 U.S.C. § 552a(b) and 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C).

34.2.1.1. An unwarranted invasion of personal privacy exists when an individual's privacy interests outweigh the public's interest in disclosure of the information. See *Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35 (D.D.C. 2004). The public's interest is defined by the degree to which disclosure sheds light on the performance of an agency's statutory function. *Dep't of Justice v. Reporters Comm.*, 489 U.S. 749 (1989). This can include

information about how the government holds its employees accountable. See *Schmidt v. Dep't of the Air Force*, 2007 U.S. Dist. LEXIS 69584 (C.D. Ill. 2007).

34.2.1.2. Whether disclosure of data regarding the accused and the alleged offenses constitutes an unwarranted invasion of privacy depends upon the assessment of whether the accused has a reasonable expectation of privacy as measured by various factors, including, but not limited to, the accused's rank, duties, alleged offense(s), existing publicity about the allegation(s), and stage of the proceedings. Considering the fact that anyone subject to the UCMJ can act as an accuser under the UCMJ, the accused normally retains a reasonable expectation of privacy upon preferral of charges. When the convening authority directs the charges toward a public forum, such as an Article 32, UCMJ, hearing or referral to trial, the accused's reasonable expectation of privacy begins to decline.

34.2.2. Extrajudicial Statements After Disposition. Employing the FOIA balancing test described above, the information release authority may normally release the following information after the convening authority has disposed of preferred charges by directing an Article 32, UCMJ, preliminary hearing or has referred the charges to a court-martial:

34.2.2.1. The accused's name, unit and assignment;

34.2.2.2. The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications (such as the names of all victims, signature of the accuser, and SSN of the accused).

34.2.2.3. The scheduling or result of any stage in the judicial process;

34.2.2.4. Date and place of trial and other proceedings, or anticipated dates, if known;

34.2.2.5. Identity and qualifications of appointed counsel;

34.2.2.6. Identities of convening and reviewing authorities; and

34.2.2.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges.

34.2.3. Generally, do not release the names of victims of sex offenses, the names of children, or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim. Otherwise, the identity of the victim may be disclosed where the release of that information is not otherwise prohibited by law.

34.2.4. Exceptional cases may warrant earlier release of information but, prior to any earlier release, the relevant authority should apply a public interest balancing test, assess the reasonable expectation of privacy factors, and exercise due caution. Coordination with AF/JAJM is required regarding the release of any such information.

34.2.5. Disclosing the Identities of Court Members and the Military Judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may normally be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding, and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

34.2.6. A written or oral request for information from the media or public is not required prior to release, nor does a media request indicate that information is automatically releasable.

34.2.7. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings. The following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

34.2.7.1. General information to educate or inform the public concerning military law and the military justice system;

34.2.7.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

34.2.7.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

34.2.7.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension, if requested or otherwise in the best interest of the DAF and after applying FOIA exemption principles, as appropriate;

34.2.7.5. The identities of investigating and apprehending agencies, and the length of the investigation, only if release of this information will not impede an ongoing or future investigation, and the release is coordinated with the affected agencies;

34.2.7.6. Information contained in a public record, without further comment; and

34.2.7.7. Information that protects the military justice system from matters that have a substantial likelihood of materially prejudicing the proceedings. Information in the form of extrajudicial statements shall be subject to [paragraph 34.2](#) and limited to that which is necessary to correct misinformation or to mitigate the substantial undue prejudicial effect of information or publicity already available to the public. This can include, but is not limited to, information that would have been available to a spectator at an open Article 32, UCMJ preliminary hearing or an open session of a court-martial.

34.2.7.7.1. Unless TJAG has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM or FLDCOM SJA (or equivalent) coordinates on release of this information by the appropriate command authority.

34.2.7.7.2. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination must be forwarded through the MAJCOM or FLDCOM SJA to AF/JAJM by the most expeditious means appropriate to the sensitivity of the information.

34.2.8. Impermissible Extrajudicial Statements. Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and should not be made:

34.2.8.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

34.2.8.2. Observations about the accused's character and reputation;

34.2.8.3. Opinions regarding the accused's guilt or innocence;



34.2.8.4. Opinions regarding the merits of the case or the merits of the evidence;

34.2.8.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations, and ballistics or laboratory tests), the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

34.2.8.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

34.2.8.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

34.2.8.8. Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial; and

34.2.8.9. Before sentencing, facts regarding the accused's disciplinary or criminal record, including NJPs, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Generally, do not release information or statements about NJPs or administrative actions, or related documents even after sentencing unless admitted into evidence. This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.

34.2.9. Responsibility for Extrajudicial Statements. The release of extrajudicial statements is a command responsibility. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding, though coordination with MAJCOM or FLDCOM SJAs is encouraged. MAJCOM or FLDCOM (or equivalent) commanders may withhold release authority from subordinate commanders.

34.2.9.1. The installation SJA and the installation Public Affairs officer must work closely together to provide informed advice to the commander. SJAs should consult with their MAJCOM or FLDCOM SJAs when there is a question about the nature of a statement proposed for release. If the extrajudicial statement is based on information contained in agency records, the office of primary responsibility for the record should also coordinate on the extrajudicial statement prior to release. In high interest cases, the SJA and the public affairs officer should consult with their MAJCOM or FLDCOM representatives, and AF/JAJM as necessary.

34.2.9.2. The SJA, trial counsel and defense counsel ensure investigators, law enforcement personnel, employees and other persons assisting or associated with the respective counsel do not make extrajudicial statements that counsel are prohibited from making.

**34.3. Release of Information from Records of Trial or Related Records.** Once a completed ROT is forwarded to AF/JAJM, AF/JAJM is the disclosure authority for all records and associated documents. This subsection is not intended to delay compliance with Article 140a, UCMJ. See [Section 34D](#). This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., OSI reports). The disclosure authority for such documents and records is the office of primary responsibility (OPR) for those records under the provisions of AFI 33-332, *Air Force Privacy and Civil Liberties Program*, and/or DoDM 5400.7 *AFMAN 33-302, Freedom of Information Act Program*.

34.3.1. Release of Record of Trial. R.C.M. 1112(b) defines a court-martial ROT. A ROT is subject to release determination under FOIA and the Privacy Act. Information marked as classified, controlled, or sealed by judicial order should not be released unless authorized by proper authority (e.g., military judge). When releasing ROTs under this paragraph, redact Privacy Act protected data and other sensitive information, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity. **(T-0)**

34.3.2. Attachments to the ROT. R.C.M. 1112(f) and DAFMAN 51-203 list the attachments to a ROT (e.g., transcript). Attachments are not considered part of the ROT, so they would not be included in a release seeking the “record of trial.” However, if the attachments are specifically requested for release, then they are subject to a release determination under FOIA and the Privacy Act, as described in the previous paragraph. A transcript of oral proceedings is not a record until certification.

34.3.3. Release of Other Military Justice Documents or Records. All other documents or records that are not made part of the ROT or attached to the ROT are also subject to release determination under the Privacy Act and FOIA. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. **(T-0)** Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity. **(T-0)**

34.3.4. Cases Disposed of by Acquittal or Action Other Than Court-Martial. When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. See *ACLU v. Dep’t of Justice*, 750 F.3d 927 (D.C. Cir. 2014). Less serious misconduct, which is handled administratively rather than judicially, is usually not considered of sufficient public interest to outweigh the privacy interest of the individual.

34.3.5. Requests for Information from Law Enforcement Agencies. Disclose data about the accused, the charges, and the evidence in accordance with Blanket Routine Uses and SORN Routine Uses concerning military justice records. See <http://dpcl.o.defense.gov/privacy/Privacy/DODComponentArticleList/tabid/6799/Category/277/departments-of-the-armed-forces.aspx>.

### ***Section 34B—Direct Communications and Reports***

#### **34.4. AF/JAJM and AF/JAJI Requests for Information.**

34.4.1. AF/JAJM and AF/JAJI routinely receive inquiries concerning military justice cases and rely on information from installation-level legal offices to answer the inquiries. Complete, accurate and timely responses to requests for information are critical. To that end, AF/JAJM

and AF/JAJI may communicate directly with any legal office at any level of command. It is incumbent on the contacted SJA or designee to coordinate with intermediate levels of command. Contact or requests from AF/JAJM or AF/JAJI to a legal office should not be construed as criticism of case handling or as a mandate for any particular action in a case.

34.4.2. Responses. Generally, the SJA or designee should respond to AF/JAJM or AF/JAJI via e-mail directly to the requestor or to [AF.JAJM.SIR.Workflow@us.af.mil](mailto:AF.JAJM.SIR.Workflow@us.af.mil) or [AF.JAJIWorkflow@us.af.mil](mailto:AF.JAJIWorkflow@us.af.mil) as appropriate. All responses should include:

- 34.4.2.1. Detailed answers to any specific questions asked;
- 34.4.2.2. Case information, including details about the subject or accused and any relevant incidents and allegations;
- 34.4.2.3. Case background and any unique or significant aspects of the case; and
- 34.4.2.4. As necessary and appropriate, mark and protect information as Privacy Act-protected or CUI.

34.4.3. Responses Involving Courts-Martial. In addition to the information described in [paragraph 34.4.2](#), include the following information for courts-martial to the extent that such information is not otherwise captured in DCMS-AMJAMS:

- 34.4.3.1. Dates and nature of pretrial restraint or confinement and associated proceedings;
- 34.4.3.2. Type of court-martial and summary of charges and specifications;
- 34.4.3.3. Dates of preferral, referral and trial;
- 34.4.3.4. Information about the Article 32, UCMJ, preliminary hearing, including who directed it, identity of accused's counsel and victim's counsel, if any, names of government and defense witnesses, summary of witness testimony and evidence presented, and the PHO's findings and recommendations;
- 34.4.3.5. Summary of witness testimony and evidence;
- 34.4.3.6. Pleas, findings, sentence, and court composition;
- 34.4.3.7. Any history of misconduct of the accused;
- 34.4.3.8. Date and action of the convening authority;
- 34.4.3.9. Date and outcome of Article 64, UCMJ, review, if a SCM;
- 34.4.3.10. Date ROT forwarded to AF/JAJM; and
- 34.4.3.11. Information concerning post-trial confinement, excess leave, and other post-trial matters.

34.4.4. Responses Involving NJP. In addition to the information described in [paragraph 34.4.2](#), include the following information for NJP: names, dates, and elections for the NJP action; summary of charged misconduct; imposing commander's findings; imposed NJP; appeal outcome; and information on related matters, such as Unfavorable Information File (UIF), Officer Selection Record (OSR), and discharge.

34.4.5. Responses Involving Civilian Jurisdiction. In addition to the information described in [paragraph 34.4.2](#), include the following information for cases involving civilian jurisdiction:

- 34.4.5.1. Jurisdiction involved and status of waiver request;
- 34.4.5.2. Charges;
- 34.4.5.3. Detention or confinement;
- 34.4.5.4. Place and dates of civilian proceedings;
- 34.4.5.5. Name of defense counsel, if any;
- 34.4.5.6. Summary of the evidence;
- 34.4.5.7. Maximum authorized punishment;
- 34.4.5.8. Pleas, findings, and sentence;
- 34.4.5.9. Appeal;
- 34.4.5.10. Administrative or disciplinary action taken or contemplated by military authorities.

**34.5. Field Response to High-Level Inquiry.** When a legal office receives and responds directly to a high-level inquiry, such as a congressional inquiry, concerning a military justice case or matter, retain a copy of the inquiry and response. DAFI 90-401, *Air Force Relations with Congress*, Chapter 3, provides additional guidance.

***Section 34C—Reporting Cases Involving Foreign National DAF Members***

**34.6. Foreign National DAF Member Defined.** A DAF member who is a national of a foreign country and who is not a citizen or national of the United States. For purposes of this section, any DAF member who claims to be a foreign national shall be considered so.

**34.7. When to Report.** Notify AF/JAO when a foreign national DAF member is:

- 34.7.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that they are a foreign national;
- 34.7.2. Ordered into arrest or confinement;
- 34.7.3. Held for trial with or without any form of restraint; or
- 34.7.4. Pending court-martial charges that have been referred for trial.

**34.8. What to Report.** Include in the notification the following:

- 34.8.1. The name, grade, SSN, organization and station of the member;
- 34.8.2. Any evidence, including information from the member's military record, that is inconsistent with a claim of foreign nationality;
- 34.8.3. A thorough description of the offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case;
- 34.8.4. The name of defense counsel, if any; and

34.8.5. The exact and current location of the member (e.g., Joint Base Andrews confinement facility).

**34.9. Examination of Member's Records.** Whenever charges against a foreign national DAF member are referred for trial, the SPCMCA's SJA has the member's military records examined to ascertain the member's nationality, even if the member has not entered a claim of foreign nationality.

**34.10. Notification Not Required.** Notification is not required:

34.10.1. For issues resulting in NJP or administrative action, or

34.10.2. If the foreign national DAF member is apprehended or confined in anticipation that only NJP or administrative action is contemplated.

34.10.3. When a foreign national is charged with a crime, arrested, confined or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government.

#### *Section 34D—Article 140a, UCMJ, Guidance*

**34.11. General Provision.** In accordance with Article 140a, UCMJ, the DAF must post certain court-martial filings, pleadings and records on a public facing website. Such postings must be in compliance with the Privacy Act. All redactions should be completed in black. This applies to all redactions required by this Instruction, including but not limited to discovery, releases, and Article 140a, UCMJ, postings.

**34.12. Applicability.** This requirement applies only to GCMs and SPCMs in which charges were preferred on or after 23 December 2020. It applies to such records at both the trial and appellate level. Court records and filings in cases disposed of by full acquittal or action other than court-martial are generally not made publicly accessible, unless released by AF/JAJM.

**34.13. AF/JAJM Article 140a, UCMJ, Redaction Guide.** Practitioners shall comply with the requirements of the AF/JAJM Article 140a, UCMJ, Redaction Guide, which provides standards, references, and training for individuals responsible for redacting and reviewing these documents to ensure compliance with the Privacy Act. **(T-0)** The Article 140a, UCMJ, Redaction Guide is located on the VMJD and AF/JAJM Teams page.

**34.14. Timing and Process.** No later than 45 calendar days after certification of the record of trial in cases resulting in a guilty finding for at least one charge and specification, post court-martial filings and records to the designated public-facing website in accordance with the AF/JAJM Article 140a, UCMJ, Redaction Guide.

**34.15. Compliance Review.** MAJCOM/FLDCOM Legal offices will review their compliance with Article 140a, UCMJ, every 6 months using the checklist provided on the VMJD and AF/JAJM Teams page. Results of the compliance review will reported to AF/JAJM no later than 1 January and 1 July of each calendar year.

**34.16. The Judge Advocate General's Corps DAF Court-Martial Docket.** The DAF Court-Martial Docket is the designated public facing website through which the public may view the dates of upcoming courts-martial, the results of past courts-martial, and access redacted filings and court records posted pursuant to Article 140a, UCMJ.

34.16.1. In order to facilitate public access to the docket, all installation legal offices are required to coordinate with their servicing Public Affairs office to ensure the hyperlink to the DAF Court-Martial Docket is posted on each installation-specific, publicly accessible website. The link to the docket should be displayed in the footer of the installation website along with other required links such as IG, SARC, and FOIA.

34.16.2. The hyperlink to the Department of the Air Force Court-Martial Docket is:  
<https://legalassistance.law.af.mil/AMJAMS/PublicDocket/docket.html>

CHARLES L. PLUMMER  
Lieutenant General, USAF  
The Judge Advocate General

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Uniform Code of Military Justice (10 U.S.C. § 801, *et seq*)

Manual for Courts-Martial, United States, 2019 Edition (2019 MCM)

Manual for Courts-Martial, United States, 2023 Edition

Privacy Act (5 U.S.C. § 552a)

10 U.S.C. § 9013, *Secretary of the Air Force*

10 U.S.C. § 1044, *Legal assistance*

10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*

10 U.S.C. § 1562, *Database on domestic violence incidents*

10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*

10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*

10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirement*

10 U.S.C. § 12301, *Reserve components generally*

10 U.S.C. § 12302, *Ready Reserve*

10 U.S.C. § 12304, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency*

10 U.S.C. § 12310, *Reserves: for organizing administering, etc., reserve components*

10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*

12 U.S.C. § 3401, *et seq*, *Right to Financial Privacy Act*

12 U.S.C. § 3409, *Delayed Notice*

18 U.S.C. § 921, *Definitions*

18 U.S.C. § 922, *Unlawful acts*

18 U.S.C. § 2258A, *Reporting requirements of providers*

18 U.S.C. § 2510, *Definitions*

18 U.S.C. § 2523, *Executive agreements on access to data by foreign governments*

18 U.S.C. § 2701, *et seq*, *Unlawful access to stored communications*

18 U.S.C. § 2703, *Required disclosure of customer communications of records*

18 U.S.C. § 2705, *Delayed notice*

18 U.S.C. § 2711, *Definitions for chapter*

18 U.S.C. § 2713, *Required preservation and disclosure of communications and records*

18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*

18 U.S.C. § 3261, et seq, *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act of 2000)*

18 U.S.C. § 3509, *Child victims' and child witnesses' rights*

18 U.S.C. § 6004, *Certain administrative proceedings*

21 U.S.C. § 802, *Definitions*

28 U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*

32 U.S.C. § 325(a), *Relief from National Guard duty when ordered to active duty*

34 U.S.C. § 20911, et seq, *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*

34 U.S.C. § 40702, *Collection and use of DNA identification information from certain Federal offenders*

37 U.S.C. § 303a, *Special Pay: general provisions*

37 U.S.C. § 401, *Definitions*

38 U.S.C. § 5303A, *Minimum active-duty service requirement*

42 U.S.C. § 290dd-2, *Confidentiality of records*

Pub. L. 116-92, Section 548, *Legal counsel for victims of alleged domestic violence offenses*

22 C.F.R. § 92.49 - § 92.71, *Depositions and Letters Rogatory*

27 C.F.R. § 478.11, *Meaning of terms*

28 C.F.R. §§ 20.30, et seq., *Federal Systems and Exchange of Criminal History Record Information*

28 C.F.R. § 28.12, *Collection of DNA samples*

42 C.F.R. § 2.1, *Statutory authority for confidentiality of substance use disorder patient records*

EO 14103, *2023 Amendments to the Manual for Courts-Martial, United States*, 28 July 2023

*Joint Travel Regulations*, 1 September 2023

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DoDI 1332.18, *Disability Evaluation System*, 10 November 2022

DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*, 11 March 2013



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DoDI 5525.20, *Registered Sex Offender (RSO) Management in DoD*, 14 November 2016, Incorporating Change 2, 30 October 2020

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DoDI 6400.07, *Standards for Victim Assistance Services in the Military Community*, 25 November 2023, Incorporating Change 2, 6 July 2018

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DAFI 36-2907, *Adverse Administrative Actions*, 14 October 2022

DAFI 36-3003\_DAFGM2023-04, *Military Leave Program*, 31 August 2023

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DAFI 36-3012, *Military Entitlements*, 6 April 2023

DAFI 36-3211, *Military Separations*, 24 June 2022

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DAFI 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations, Accessions, and Professional Development*, 20 June 2023

DAFI 51-202\_DAFGM2023-01, *Nonjudicial Punishment*, 21 August 2023

DAFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, 19 January 2023

DAFI 51-207\_DAFGM2023-01 *Victim and Witness Rights and Procedures*, 1 February 2023

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AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, 20 September 2019

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Systems of Records Notice F051 AFJA I, *Military Justice and Magistrate Court Records*, 22 July 2010

*The Military Commander and the Law*

### ***Prescribed Forms***

AF Form 304, *Request for Appellate Defense Counsel*

AF Form 1176, *Authority to Search and Seize*

### ***Adopted Forms***

DD Form 453, *Subpoena*

DD Form 456, *Interrogatories and Depositions*

DD Form 457, *Preliminary Hearing Officer's Report*

DD Form 458, *Charge Sheet*

DD Form 493, *Extract of Military Records of Previous Convictions*

DD Form 1722, *Request for Trial Before Military Judge Alone*

DD Form 2329, *Record of Trial by Summary Court-Martial*

DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts- Martial Subject to Review by a Court of Military Review*

DD Form 2707, *Confinement Order*

DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*

DD Form 2873, *Military Protective Order*

DD Form 2910, *Victim Reporting Preference Statement*

DD Form 3056, *Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*

DD Form 3057, *Application for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703*

DD Form 3114, *Department of Defense Uniform Command Disposition Report*

AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*

DAF Form 847, *Recommendation for Change of Publication*

### ***Abbreviations and Acronyms***

**ADC**—Area Defense Counsel

**ADT**—Active Duty for Training

**ADOT**—Active Duty Other than Training

**AFCCA**—Air Force Court of Criminal Appeals

**AFI**—Air Force Instruction

**AFMAN**—Air Force Manual

**AFJAGS**—Air Force Judge Advocate General's School

**AFPC**—Air Force Personnel Center

**AFPD**—Air Force Policy Directive

**AFSFC**—Air Force Security Forces Center

**AFRC**—Air Force Reserve Command

**AMJAMS**—Automated Military Justice Analysis Management System

**ANG**—Air National Guard

**ARC**—Air Reserve Component

**CAAF**—United States Court of Appeals for the Armed Forces

**CADAM**—Convening Authority's Decision on Action Memorandum

**CDDC**—Chief District Defense Counsel

**CDVC**—Chief District Victims' Counsel

**CDI**—Commander Directed Investigation

**CFR**—Certification of Final Review

**C.F.R.**—Code of Federal Regulations

**CHRI**—Criminal History Record Information

**CODIS**—Combined DNA Index System  
**CSA**—Competent Search Authority  
**CSLI**—Cell Site Location Information  
**CUI**—Controlled Unclassified Information  
**DAF**—Department of the Air Force  
**DAFI**—Department of the Air Force Instruction  
**DAFMAN**—Department of the Air Force Manual  
**DAFPD**—Department of the Air Force Policy Directive  
**DCMS**—Disciplinary Case Management System  
**DFAS**—Defense Finance & Accounting Services  
**DIBRS**—Defense Incident-Based Reporting System  
**DJAG**—Deputy Judge Advocate General  
**DNA**—Deoxyribonucleic Acid  
**DTC**—District Trial Counsel  
**DoD**—Department of Defense  
**DoDD**—Department of Defense Directive  
**DoDI**—Department of Defense Instruction  
**DP**—Defense Paralegal  
**DPM**—Defense Paralegal Manager  
**DSAID**—Defense Sexual Assault Incident Database  
**DSJA**—Deputy Staff Judge Advocate  
**DTC**—District Trial Counsel  
**EoJ**—Entry of Judgment  
**ETS**—Expiration of Term of Service  
**FAP**—Family Advocacy Program  
**FLDCOM**—Field Command  
**FOIA**—Freedom of Information Act  
**FLITE**—Federal Legal Information Through Electronics  
**FY**—Fiscal Year  
**GCM**—General Court-Martial  
**GCMCA**—General Court-Martial Convening Authority  
**GPS**—Global Positioning Satellite  
**IDA**—Initial Disposition Authority

**IG**—Inspector General  
**IPST**—Investigation Prosecution Support Team  
**IMDC**—Individual Military Defense Counsel  
**LIO**—Lesser Included Offense  
**LOC**—Letter of Counseling  
**LOR**—Letter of Reprimand  
**LRO**—Local Responsible Official  
**LSTC**—Lead Special Trial Counsel  
**MAJCOM**—Major Command  
**MCIO**—Military Criminal Investigative Organization  
**MCM**—Manual for Courts-Martial  
**MEJA**—Military Extraterritorial Jurisdiction Act  
**MEO**—Military Equal Opportunity  
**MPO**—Military Protective Order  
**M.R.E.**—Military Rule of Evidence  
**NAF**—Numbered Air Force  
**NCIC**—National Crime Information Center  
**NCO**—Non-commissioned Officer  
**NDAA**—National Defense Authorization Act  
**NICS**—National Instant Background Check System  
**NJP**—Nonjudicial Punishment  
**OPREP**—Operational Event/Incident Report  
**OSI**—Office of Special Investigations  
**OSR**—Officer Selection Record  
**OSTC**—Office of Special Trial Counsel  
**PCRO**—Pretrial Confinement Review Officer  
**PHO**—Preliminary Hearing Officer  
**PII**—Personally Identifiable Information  
**R.C.M.**—Rules for Courts-Martial  
**RILO**—Resignation in Lieu of Trial by Court-Martial  
**ROI**—Report of Investigation  
**ROT**—Record of Trial

**ROTC**—Reserve Officers’ Training Corps  
**SAPR**—Sexual Assault Prevention and Response  
**SARC**—Sexual Assault Response Coordinator  
**SCM**—Summary Court-Martial  
**SIR**—Special Interest Report  
**SJA**—Staff Judge Advocate  
**SOD**—Status of Discipline  
**SORN**—System of Records Notice  
**SPCM**—Special Court-Martial  
**SPCMCA**—Special Court-Martial Convening Authority  
**SSN**—Social Security Number  
**STC**—Special Trial Counsel  
**STR**—Statement of Trial Results  
**TAG**—Adjutant General  
**TJAG**—The Judge Advocate General  
**UCMJ**—Uniform Code of Military Justice  
**UIF**—Unfavorable Information File  
**USAFA**—United States Air Force Academy  
**USACIL**—United States Army Criminal Investigations Laboratory  
**U.S.C.**—United States Code  
**VA**—Victim Advocate  
**VC**—Victims’ Counsel  
**VMJD**—Virtual Military Justice Deskbook  
**VWAP**—Victim and Witness Assistance Program  
**WASP**—Web-Based Administrative Separation Program

*Office Symbols*

**201 MSS/CC**—Commander, 201st Mission Support Squadron  
**22 AF/CC**—Commander, 22nd Air Force  
**AF/A1M**—Directorate of Manpower, Organization & Resources  
**AF/JAC**—Civil Law and Litigation Directorate  
**AF/JAH**—United States Air Force Court of Criminal Appeals  
**AF/IAJ**—Military Justice and Discipline Directorate Judiciary Directorate

**AF/JAJA**—Appellate Defense Division

**AF/JAJD**—Trial Defense Division

**AF/JAJG**—Government Trial and Appellate Operations Division

**AF/JAJI**—Investigations, Inquiries & Relief Division

**AF/JAJM**—Military Justice Division

**AF/JAJO**—Office of Disability Counsel

**AF/JAJS**—Victims' Counsel Division

**AF/JAO**—Operations and International Law Domain

**AF/JAS**—Legal Information Services

**AF/JAT**—Air Force Trial Judiciary

**AF/JA**—The Office of the Judge Advocate General

**AFDW/CC**—Commander, Air Force District of Washington

**AFPC/DPMSSR**—Air Force Personnel Center Military Transition Operations Branch (Retirements and Separations)

**AFRC/CC**—Commander, Air Force Reserve Command

**AFRC/JA**—Air Force Reserve Command Judge Advocate

**ARPC/JA**—Air Reserve Personnel Center Judge Advocate

**FSS/CC**—Force Support Squadron Commander

**SAF/IGQ**—Secretary of the Air Force, Complaints Resolution Directorate

**SAF/IGS**—Secretary of the Air Force, Senior Officials Inquiries

**SpOC/CC**—Commander, Space Operations Command

### *Terms*

**Adjudged Forfeitures**—Forfeitures of pay and/or allowances announced as part of a sentence in a court-martial. See Article 57, UCMJ.

**Collateral Misconduct**—Misconduct that is punishable under the UCMJ and is directly related to the incident that was the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc.

**Court-Martial Convening Authority**—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

**Crime of Domestic Violence**—An offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The



alleged offender must be: (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; (5) a person similarly situated to a spouse, parent or guardian of the victim; or (6) a person who has a current or recent former dating relationship with the victim. 18 U.S.C. § 921(a)(33).

**Child Victim**—The definition of child victim varies based on the offense. Practitioners must consult the MCM to determine which definition of child victim applies.

**Contingent Confinement**—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

**Dating Relationship**—A relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature, based on the length of the relationship, the nature of the relationship, and the frequency and type of interaction between the individuals involved in the relationship. 18 U.S.C. § 921(a)(37).

**Defense Sexual Assault Incident Database**—The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01 and DoDI 6495.02.

**Deferral of Forfeitures**—Delaying the effective date of the beginning of forfeitures of pay and/or allowances. See Article 57, UCMJ.

**Department of the Air Force**—Service component of the Department of Defense which consists of the United States Air Force and United States Space Force, overseen by the SecAF.

**Dependent**—Generally, the spouse, unmarried child, or parent of the member, or person in the member's legal custody, if those persons meet certain criteria. For further information, see 37 U.S.C. § 401.

**DuBay Hearing**—A post-trial hearing ordered by an appellate court or convening authority for the limited purpose of obtaining further evidence on a matter under consideration by the court. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

**Entry of Judgment**—Document which reflects the results of the court-martial after all post-trial actions, rulings or orders. See R.C.M. 1111 and Article 60c, UCMJ.

**Expurgated**—A document that has been redacted of certain information.

**Extrajudicial statement**—Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

**General Court-Martial Convening Authority**—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

**Local Responsible Official**—The individual responsible for identifying victims and witnesses of crimes and providing the services required by VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO.

**Mandatory Forfeitures**—Forfeitures that apply under operation of law. See Article 58b, UCMJ.

**Mandatory Minimum Sentence**—A portion of a sentence (e.g., confinement, punitive discharge) which is prescribed by law as the lowest possible sentence that can be adjudged if an individual is found guilty of an offense. See FY 2014 NDAA § 1702(b)(4)(B).

**Metrics**—Standards of measurement by which certain requirements can be assessed.

**Milestone**—Time-based goals to assist in expediting the administration of justice.

**Military Protective Order**—Formal protective orders issued by commanders on DD Form 2873. Such orders are used to limit communications; prohibit a subject from being within a certain physical distance of a protected person or protected person's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person.

**No-Contact Order**—Order given by a military member to have no-contact with another person for a period of time.

**Offense**—Crime punishable under the UCMJ that is committed by a person subject to the UCMJ.

**Original Court-Martial Convening Authority**—Court-martial convening authority that convened the court-martial at issue.

**Probable Cause**—A determination that there are reasonable grounds to believe that an offense has been committed and that the person to be identified as the offender committed it.

**Remand**—Return a case to a lower court for reconsideration.

**Special Court-Martial Convening Authority**—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

**Special Interest Report**—AMJAMS reports submitted by base legal offices in certain cases that generate interest within Headquarters Air Force.

**Special Victim Investigation and Prosecution Capability**—Team of specially trained prosecutors, paralegals, and victim witness assistance personnel who work with specially trained investigators, often from investigative agencies such as OSI, to provide advice, guidance, and support during the investigative and military justice process.

**Statement of Trial Results**—Document which is prepared after the announcement of sentence or acquittal and is inserted into the Record of Trial. See R.C.M. 1101 for further information.

**Straddling Cases**—Refers to a single court-martial that alleges offenses occurring both before 1 January 2019 and on or after 1 January 2019.

**Unexpurgated**—A document which has not been redacted.

**Verbatim Transcript**—A transcript of a proceeding which includes word-for-word reduction of audio to writing. See DAFMAN 51-203 for additional information.

**Victim**—The definition of victim varies throughout the military justice process. The definition governs what rights are afforded the victims, as defined. Practitioners must consult the MCM to determine which definition of victim applies at each stage to determine which definition applies. See also DAFI 51-207.

**Virtual Military Justice Deskbook**—Knowledge management website with military justice resources available to Air Force judge advocates.

**Victim and Witness Assistance Program Coordinator**—The individual selected by the SJA to implement and manage VWAP.

**Victim Liaison**—An individual appointed by the LRO or delegate to assist a victim during the military justice process.

**Waiver of Forfeitures**—Act of a convening authority to direct forfeitures not be collected but that they be directed to the accused's dependents, for use of the accused's dependents, for no more than six months. See Article 58b, UCMJ.

**Witness**—A person who has information or evidence of a crime and provides that information or evidence to a DAF official.