

JUSTICE CHRONICLES

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Military Naturalization Ceremony Onboard USS Midway Museum

U.S. Passport Fair

2012 Article 120 Offenses (the New "New 120")

MILITARY NATURALIZATION CEREMONY ONBOARD USS MIDWAY MUSEUM

Region Legal Service Office Southwest is pleased to announce a military naturalization ceremony scheduled for Tuesday, November 6, 2012 at 0900, onboard USS MIDWAY Museum. This is a perfect time to schedule naturalization interviews for service members whose naturalization applications are pending with U.S. Citizenship and Immigration Services. Service members who pass their interviews may be eligible for inclusion in this very special naturalization ceremony in celebration of Veterans Day.

For further information, please call the RLSO SW Naturalization Team at (619) 556-6322.

U.S. PASSPORT FAIR

The San Diego Passport Agency will conduct a U.S. passport fair at the Main Navy Exchange/Naval Base San Diego, Saturday, November 17, 2012. This event is open to all U.S. citizen service members, their U.S. citizen dependents and DOD personnel with access to the base, and will enable our community to apply for or renew U.S. Passports. In addition, U.S. citizens can also apply for the new U.S. Passport Card at this event.

2012 ARTICLE 120 OFFENSES (THE NEW "NEW 120")

In the FY12 National Defense Authorization Act (NDAA), Congress amended Article 120. The statute was completely overhauled and divided into three Uniform Code of Military Justice (UCMJ) offenses: Article 120, Article 120b and Article 120c. The newest iteration of Article 120 was enacted on 28 June 2012. As of that date, there are three possible versions of Article 120 that practitioners can now charge. For offenses that occurred before 1 October 2007, charges should be drafted utilizing the Article 120 that can be found in Appendix 27 of the 2012 Manual for Courts- Martial (MCM).

For offenses that occurred between 1 October 2007 and 27 June 2012, charges should be drafted using the Article 120 that can be found in Appendix 28 of the 2012 MCM. For offenses that occurred on or after 28 June 2012, charges should be drafted using the Articles 120, 120b, and 120c that can be found in Part IV of the 2012 MCM.

The newest version of Article 120 divides the statute into three parts based on the type of offense committed. Rape and sexual assault offenses against adults are included in Article 120. All rape and sexual assault offenses against children are included in Article 120b. All other sexual misconduct is included in Article 120c. The amendments to Article 120 remove constitutional infirmities and clarify the statute by separating penetration offenses from non-penetration offenses. Specifically, the unconstitutional burden-shift to an accused that occurred when an accused asserted certain defenses under the former statute was removed; the definition of sexual act was made gender neutral to include oral and anal penetration; the definition of consent was further defined; the statute now states that a sleeping person cannot consent; the definition of bodily harm now includes nonconsensual sexual acts or contact; and the offense of indecent acts was removed from Article 120 and will be moved back to Article 134 with the next Executive Order.

Although the new articles 120, 120b, and 120c can be found in the 2012 MCM, the MCM does not include conforming changes (i.e., elements, explanations, lesser included offenses, maximum punishments, and sample specifications). These conforming changes will be included in the next Executive Order. Those conforming changes have been approved by the Joint Service Committee (JSC), and will soon be published in the Federal Register.

If you have any questions regarding the new Articles 120, 120b, and 120c, please contact the Command Services Department at (619)556-5977 or cmdservices.rlsosw.fct@navy.mil.

EXPEDITED TRANSFERS

In the FY12 National Defense Authorization Act (NDAA), Congress provided that alleged victims of sexual assault are allowed to request “expedited transfers.” This provision of the NDAA provides that individuals who make an unrestricted credible sexual assault allegation must be notified that they may request a change of station or unit transfer. Once a request is made it must be acted upon by the commanding officer within 72 hours of submission. Although the chain of command has 72 hours in which to respond to the request, this does not mean that the transfer will happen within that timeframe. Under Navy policy, as set out in MILPERSMAN 1300-1200, if the request is disapproved, the request must be reviewed by the first flag officer in the chain of command. The flag officer review must be completed within 72 hours of submission. For circumstances that require an alleged victim to be transferred out of concerns for safety, commands should consult the section in MILPERSMAN 1300-1200 that refers to Safety Transfers.

Department of Defense policy provides that there is a presumption in favor of transferring the victim following a credible report of sexual assault. There are no established time limits such that a victim may request an expedited transfer even though the sexual assault occurred at a separate command or years earlier.

Although the victim may request transfer to a particular location or command, PERS will make the final determination as to what command the service member will be transferred. If you have any questions regarding expedited transfer please contact the Command Services Department at (619)556-5977 or cmdservices.rlsosw.fct@navy.mil.

SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY

On 20 April 2012, the Secretary of Defense (SecDef) withheld the initial disposition authority (IDA) for certain sexual assault offenses to Special Court-Martial Convening Authorities (SPCMCAs) in the grade of O-6 and above. Commanders who are not Sexual Assault Initial Disposition Authorities (SA-IDAs) by rank and office may **not** make an initial disposition determination in cases involving these specified alleged sexual offenses, but instead must forward the matter to the appropriate SA-IDA. This policy became effective 28 June 2012, and was implemented by NAVADMIN 195/12.

This withholding policy applies to the offenses of: rape, sexual assault, forcible sodomy, and attempts to commit these offenses, **but does not apply to sexual contact offenses**. The withholding policy also applies to collateral misconduct, which includes all other offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim.

Commanders who are not SA-IDAs must forward the report of sexual assault to the SA-IDA. The report of allegation should be forwarded within 30 days of receipt of the allegation. However, if it proves impossible to complete the investigation within 30 days, forwarding may be delayed until it is complete.

The commander may provide the SA-IDA a recommendation as to disposition. When a case is forwarded to an SA-IDA, the SA-IDA must make an initial disposition decision. Initial disposition options under Rule for Court-martial 306 include no action, administrative action, non-judicial punishment, referral of charges and forwarding for disposition by a superior authority. The disposition decision must be documented. The SA-IDA may also return the matter to the subordinate commander for action deemed appropriate by the subordinate commander. The subordinate commander is not bound by the initial recommendation to the SA-IDA.

If you have any questions regarding this policy, please contact Command Services Department at (619)556-5977 or cmdservices.rlsosw.fct@navy.mil.

NEW COMMAND SERVICES HELP DESK

In order to provide more timely service to all commands we have established a Command Services Helpdesk that will be manned from 0730-1630, Monday-Friday. The Command Services Helpdesk may be reached at (619)556-5977, or by email at cmdservices.rlsosw.fct@navy.mil. When contacting the Command Services Helpdesk by phone, one of our staff members will ask you for your name, command, a phone number or email address where you can be reached, and a brief description of the issue you are calling about.

If emailing the helpdesk, please include this same information in your email. Our staff will collect your information on an intake form that will be assigned immediately to a Command Services Department JAG or Legalman that will respond to your request. If you have an emergency requiring Command Services outside of normal business hours, contact the RLSO SW Command Duty Officer, (619)851-5129.

Please provide us with feedback on whether our Command Services Helpdesk is providing you with efficient service, because that is our primary mission.

RESULTS OF TRIAL 3RD QUARTER 2012

Navy E-5 with 9 years and 11 months of service was sentenced to confinement for 60 days and reduction in rank to E-1 for violating a lawful general order and possession of marijuana. This court-martial was held on 10 July 2012.

Navy E-1 with 11 months of service was sentenced to Bad Conduct Discharge, forfeiture of \$950 pay for one month, and reduction to E-1 for violating a lawful general order and wrongful possession and wrongful use of a schedule A controlled substance. This court-martial was held on 11 July 2012.

Navy E-5 with 5 years and 7 months of service was sentenced to confinement for 60 days, forfeiture of \$1000 pay per month for 2 months, and reduction to E-3 for assault consummated by a battery and drunk and disorderly conduct. This court-martial was held on 12 July 2012.

Navy E-2 with 5 years of service was sentenced to confinement for 235 days, a Bad Conduct Discharge, and reduction in rank to E-1 for conspiracy, violating a lawful general order, and wrongful introduction and distribution of a synthetic cannabinoid compound. This court-martial was held on 24 July 2012.

Navy E-3 with 6 years and 5 months of service was acquitted of sexual assault charges. This court-martial was held on 20 July 2012.

Navy E-5 with 9 years and 7 months of service was acquitted of sexual assault charges. This court-martial was held on 26 July 2012.

Navy E-6 with 9 years and 6 months of service was sentenced to a Dishonorable Discharge and confinement for 10 years for knowingly possessing and receiving images and video files of child pornography. This court-martial was held on 23 August 2012.

Navy E-7 with 11 years and 5 months of service was sentenced to a Bad Conduct Discharge and confinement for 60 months for knowingly possessing and receiving images and video files of child pornography. This court-martial was held on 10 September 2012.

Navy E-3 with 4 years and 1 month of service was sentenced to confinement for 120 days and reduction in rank to E-1 for conspiracy, false official statements, and larceny. This court-martial was held on 14 September 2012.

Navy E-3 with 1 year and 6 months of service was sentenced to a Bad Conduct Discharge, confinement for 5 months, and reduction in rank to E-1 for larceny. This court-martial was held on 25 September 2012.

OFFICER BOARD OF INQUIRY RESULTS 3RD QUARTER 2012

Navy O-4 was ordered to show cause for retention due to substandard performance of duty: failure to conform to prescribed standards of military dress, weight, personal appearance or military deportment. Board members found substandard performance but, recommended retention. The Board of Inquiry was held on September 24, 2012.

Navy O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty: false official statements and failure to conform to prescribed standards of military deportment. Board members found misconduct but, recommended retention. The Board of Inquiry was held on September 11, 2012.

Navy O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty: failure to obey order or regulation, false official statements, disorderly conduct and failure to conform to prescribed standards of military deportment. Board members found misconduct but, recommended retention. The Board of Inquiry was held on September 6 and 7, 2012.

Navy O-6 was ordered to show cause for retention due to substandard performance of duty: failure to conform to prescribed standards of military dress, weight, personal appearance or military deportment. Board members found substandard performance and recommended separation with an Honorable characterization of service. The Board of Inquiry was held on July 9, 2012.

ENLISTED ADMINISTRATIVE BOARD RESULTS 3RD QUARTER 2012

Navy E-3 was awarded an Other Than Honorable Discharge for Misconduct – Drug Abuse and Misconduct – Commission of a Serious Offense. This administrative board was held on 26 July 2012.

Navy E-6 went to an administrative board for Misconduct – Commission of a Serious Offense and Family Advocacy Program Rehabilitation Failure. The board found that misconduct did occur, but recommended retention. This administrative board was held on 2 August 2012.

Navy E-5 went to an administrative board for Misconduct - Commission of a Serious Offense. The board found that misconduct did occur, but recommended retention. This administrative board was held on 29 August 2012.

Navy E-1 was awarded an Other Than Honorable Discharge for Misconduct - Drug Abuse and Misconduct - Pattern of Misconduct. This administrative board was held on 29 August 2012.

Enlisted Administrative Board Results 3rd Quarter 2012

Navy E-6 went to an administrative board for Physical Fitness Assessment Failure. The board found that misconduct did occur, but recommended retention. This administrative board was held on 30 August 2012.

Navy E-1 went to an administrative board for Misconduct - Commission of a Serious Offense, no misconduct found. This administrative board was held on 10 September 2012.

Navy E-6 went to an administrative board for Misconduct - Drug Abuse, no misconduct found. This administrative board was held on 26 September 2012.

VICTIM AND WITNESS ASSISTANCE PROGRAM

The Victim and Witness Assistance Program is designed to ensure victims and witnesses of crime are afforded their rights throughout the criminal justice process – from initial contact by investigators through any period of confinement adjudged. The Department of Defense requires their services to establish comprehensive Victim and Witness Assistance Programs in order to enhance and protect the rights of victims of crimes committed within the military setting.

OPNAVINST 5800.7A requires every command to appoint a Victim Witness Assistance Coordinator (VWAC) in writing and ensure command personnel are educated on the rights of crime victims and witnesses. Please note that the VWAP program is a separate program from SAPR and FAP, with distinct requirements. RLSO SW provides quarterly training for new VWACs.

Victim and Witness Assistance Program

Upcoming trainings:

Monday, 28 January 2013

Monday, 29 April 2013

Monday, 29 July 2013

Time: 1300

Location: Fleet and Family Support Center, NBSD, Bldg 259, Classroom 1

RSVP and/or Questions: Nya Ayala, (619) 556-0237, nya.ayala@navy.mil

WATERFRONT OUTREACH TRAINING

Come join us at our Monthly Legal Officer Brown Bag Lunch/Discussion!
Hosted by COMNAVSURFPAC Legal and RLSO SW Command Services

When: Thursday, 15 November 2012
Thursday, 13 December 2012
Thursday, 17 January 2013

Time: 1200-1300

Where: Naval Base San Diego (wet side), Waterfront Recreation Center (near Pier 2, across the street from the Base Theater). Blue and Gold Room.

What: The HOTTEST legal topics of the day!

Plus JAGS will be available to answer any and all legal questions. Tell us what issues you are facing so we can train on your specific topic. RSVP is appreciated but not required. Thank you for your support.

RSVP to LT Emilee Baldini at emilee.k.baldini@navy.mil.

SOUTHWEST REGION STAFF JUDGE ADVOCATE DIRECTORY

Command Services DH: (619) 556-2789
Command Services LCPO: (619) 556-0839
Trial Department: (619) 556-9293
NB San Diego SJA: (619) 556-5533 – DSN 526
NB Coronado SJA: (619) 545-8143 – DSN 735
NB Point Loma SJA: (619) 553-7190 – DSN 553
CNRSW SJA: (619) 532-1418 – DSN 522
NAS Lemoore SJA: (559) 998-3889/3352 – DSN 949
NB Ventura SJA: (805) 989-7309/1706 – DSN 351
NAS Fallon SJA: (775) 426-2854 – DSN 890
NAWS China Lake SJA: (760) 939-6065 – DSN 437
NSA Monterey SJA: (831) 656-2506 – DSN 756

TOPICS FOR FUTURE ISSUES

If you have a topic you'd like to see discussed in the next newsletter, please forward your request to Nya Ayala at nya.ayala@navy.mil.

*Waterfront
Outreach Training*

Mailing Address:

3395 Sturtevant St.,
Suite 9, San Diego,
CA 92136

**Phone Numbers:
Commercial:**

(619) 556-0049
DSN: 526-0049
Fax: (619) 556-1674

Hours:
0730 – 1630
Monday – Friday