

**USN/USMC Commander's Quick Reference
Legal Handbook
(QUICKMAN)**

MJA16 CHANGE PAGES

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CRIME REPORTING REQUIREMENTS (QUICKMAN pages 3-4)

REFERENCES:

- (a) DoDI 5505.11
- (b) 18 U.S.C. § 922(g)
- (c) DoDI 6400.06
- (d) NAVADMIN 076/18
- (e) NAVADMIN 131/18

NOTIFICATION REQUIREMENT: Per reference (a), commanders must notify NCIS (or other applicable military law enforcement organization) when:

- A military justice proceeding is initiated, or
- Command action is taken at NJP

against a military member for one or more offenses listed in enclosure (2) to reference (a) **or** if an other than honorable (OTH) discharge is based on an investigation conducted by DoD law enforcement for one or more of the offenses listed in enclosure (2) to reference (a). In such cases, per reference (d), commanders must report certain information to NCIS using a spreadsheet containing the following information: service member's full name, sex, race, height, weight, eye color, hair color, place of birth, date of birth, social security number; the incident number; submitter contact information; and reason for service member entry into the National Instant Criminal Background Check System (NICS). The spreadsheet shall be sent via e-mail to NCIS using nicssubmissions@ncis.navy.mil, and NCIS will then be responsible for forwarding the information to the FBI.

- Following notification, NCIS makes an independent determination on whether to initiate an investigation.
- If an offense is investigated by DoD law enforcement, that organization reports the offender's criminal data through collection of fingerprints and forwarding reports of disposition. Commands should ensure fingerprint cards are completed by the responsible law enforcement agency and forwarded for entry when charges are preferred, in accordance with reference (e). Upon resolution of such case, commanders shall provide final case disposition information to the same law enforcement agency within 5 days.

FEDERAL RESTRICTIONS ON FIREARMS AND AMMUNITION: Under reference (b), it is unlawful for a person to receive, possess, ship, or transport firearms or ammunition if that person is:

- Convicted of any offense punishable by more than one year of confinement, regardless of the amount of confinement actually awarded or imposed (this does not include Summary Court-Martial);
- Discharged under dishonorable conditions (after appellate review is complete);
- Convicted in any court of a misdemeanor crime of domestic violence (this does not include Summary Court-Martial);
- Under indictment for a crime punishable by more than one year of confinement. For military courts, charges must be *referred* to a General Court-Martial to trigger this restriction;
- Subject to a civilian restraining order;
- An unlawful user of or addicted to any controlled substance. The Navy interprets this provision to apply at the earliest stage at which a commander has identified unlawful use of a controlled substance. This does not apply to tests administered incident to self-referral for treatment; or

- A fugitive from justice. This includes Service Members who know that charges have been preferred or are otherwise pending before a civilian or military court and leave without proper authority.

Per reference (c), the Department of Defense does not construe the restrictions of reference (b) to apply to major military weapons systems or “crew served” military weapons and ammunition (e.g. tanks, missiles, aircraft).

[See Section XIV: Legal Readiness for additional Domestic Violence Reporting information]

SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY (SA-IDA) (QUICKMAN pages 8-10)

REFERENCES:

- (a) DoDI 6495.02
- (b) SECDEF Memo 20 Apr 12
- (c) SECNAVINST 1752.4B
- (d) OPNAVINST 1752.1C
- (e) MCO 1752.5B
- (f) RCM 306
- (g) MILPERSMAN 1300-1200
- (h) Commander's 30-Day Checklist (www.sapr.mil)
- (i) DD Form 2701
- (j) MILPERSMAN 1910-704
- (k) DoDI 1332.14

POLICY: Per Secretary of Defense (SECDEF) policy, any reported offenses under Article 120 (rape, forcible sodomy, and sexual assault of an adult), or Article 80 (attempts of rape, sexual assaults, or forcible sodomy) of the UCMJ shall be referred to the O-6 Special Court-Martial Convening Authority (SPCMCA) or higher court-martial convening authority in the chain of command for initial disposition of the allegation(s). This person is referred to as the SA-IDA [see references (a) through (e)].

USMC POLICY: While the USN follows the SECDEF policy, the USMC policy is broader and requires all crimes under Article 120, to include sexual-contact crimes as well as all crimes under Article 120b (all sexual crimes against children), to be elevated to the higher convening authority [see reference (e)].

SA-IDA RESPONSIBILITIES: If you are an SA-IDA, you direct or dispose of a case pursuant to reference (f). [For the USMC, see below and reference (e)]. Prior to making any disposition decision, the SA-IDA must consult with a staff judge advocate, trial counsel, or both. The following options are available to the SA-IDA:

- **Take no action:** The case will be dismissed, and the SA-IDA will work with the local Sexual Assault Response Coordinator to complete reporting requirements.
- **Court-martial:** If the SA-IDA believes that the case may warrant a court-martial, the SA-IDA may convene an Article 32 investigation. Following the Article 32 investigation, the SA-IDA may forward the matter to a General Court-Martial Convening Authority (GCMCA), who will determine whether to refer charges to a court-martial. An SA-IDA may convene a special court-martial for charges other than the following: rape or sexual assault of an adult, rape or sexual assault of a child, forcible sodomy, or attempts thereof.
- **Administrative action:** In the USMC, the SA-IDA must decide whether to initiate administrative separation proceedings, if appropriate. The SA-IDA in the USMC can also direct the accused's immediate superior to initiate administrative separation processing. If the accused's immediate superior is also a SPCMCA, the SA-IDA can direct the SPCMCA to convene the administrative separation board [see reference (e)]. In the USN, the SA-IDA will return the matter to the immediate CO of the accused to initiate administrative separation proceedings.
- **Forward for disposition:** In the USN, the SA-IDA may determine that the matter should be forwarded to a senior or subordinate authority for disposition, to include any disposition action available to that authority under reference (f). In the USMC, the SA-IDA cannot forward a case to a subordinate command for disposition [see reference (e)].

SUPPORT TO THE SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM:

Commands must be prepared to prevent and respond to allegations of sexual assault, and to establish an atmosphere of zero tolerance for sexual assault and rape [see reference (a)].

RESPONSIBILITIES OF THE CO: No matter whether the CO is the SA-IDA, if the CO is the immediate commander of the accused or victim, the CO must be familiar with and follow the requirements of reference (h).

- Military Protective Orders (MPOs): Issuance of an MPO is the responsibility of the victim's CO or the accused's CO, respectively. COs are encouraged to consult with a staff judge advocate and NCIS prior to issuing a MPO if feasible.
- Victim/Witness Assistance Program (VWAP): Ensure that the victim has been advised of his/her VWAP rights under Department of Defense policy and as enumerated in reference (i).
- Investigations: Ensure that NCIS is immediately notified upon receipt of an unrestricted report of sexual assault. The command should not initiate a command investigation.
- Responsibility to the victim: Ensure the victim's safety, as well as access to SAPR, legal, and medical resources.
- Responsibility to the accused: Ensure that the accused's due process rights are not violated, and that the accused has access to appropriate legal and medical resources.
- Participate in the monthly sexual assault Case Management Group (CMG) meeting chaired by the installation CO. This responsibility may not be delegated [see references (a), (c) through (e)]. Within 72 hours of the last CMG, provide victims monthly updates regarding the current status of any ongoing investigative, medical, legal, or expedited transfer request, or any other request made by the victim until the final disposition. This duty is non-delegable [see reference (a)].
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain a customized brief and CO's toolkit from the local SARC.
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain training from a judge advocate on the Military Rules of Evidence 514 privilege, retaliation, sexual-assault initial disposition authority, and case disposition reporting requirements.
- Review official military personnel files with the designated field code (i.e., 91) or NAVPERS 1070/887 Sex Offense Accountability Record within 30 days of permanent assignment of a Service Member.

EXPEDITED TRANSFER: If a victim who has made an unrestricted report of sexual assault requests an expedited transfer, the victim's CO has 72 hours to determine whether the mission can support the request. For the USN, factors to consider when making this decision can be found in reference (g).

- **USN:** Per reference (g), if the CO denies a request for expedited transfer, there will be an automatic review by the GCMCA in the chain of command.
- **USMC:** Per reference (e), if the CO denies a request for expedited transfer, the victim may appeal the decision to the first general or flag officer in the chain of command, or a Senior Executive Service (SES) equivalent, if applicable. There is no automatic review of the denial.

NOTE: Upon receipt of an expedited transfer request, always consult with a staff judge advocate, USN Region Legal Service Office, or a USMC Legal Services Support Section as soon as possible.

OTHER CONSIDERATIONS:

- All convictions for sex-related offenses will result in a mandatory dismissal for officers and a dishonorable discharge for enlisted personnel. Further, if an eligible sex-related offense goes to court-martial, it must be tried in a general court-martial and may not be disposed of at any lesser court-martial forum. An eligible sex-related offense is defined as rape, sexual assault, rape of a child, sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.
- Per references (j) and (k), the involuntary separation of a Service Member within 1 year of final disposition of a reported sexual assault requires flag or general officer review of the circumstances and grounds of the proposed separation, and concurrence to separate.
- The law prohibits a commander and the SA-IDA from considering the character and military service record of the accused when making an initial disposition decision for a sex-related offense. NAVPERS 1070/887 will be used to annotate the official military personnel file of any Service Member who is convicted at court-martial or awarded NJP for sex-related offense(s), regardless of recommendation for retention or separation from the naval service. NAVPERS 1070/887 will remain in the official military personnel file of Service Members for the duration of the applicable member's career [see reference (d)].

CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) AND THE MILITARY JUSTICE ACT OF 2016:

- Action on court-martial findings (guilty/not guilty):
 - The convening authority (CA) CANNOT modify court-martial findings if:
 - The offense involves rape, sexual assault, or a sexual offense against a child; or
 - The offense's maximum allowable punishment exceeds two years; or
 - The adjudged sentence includes a punitive discharge or confinement exceeding six months.
 - In all other cases, the CA must provide a written explanation for modifying a court-martial finding.
- Action on a court-martial sentence:
 - The CA can modify a sentence for an offense unless the adjudged sentence includes a punitive discharge or confinement exceeding six months. If the adjudged sentence includes a punitive discharge or confinement exceeding six months, the CA can only modify the sentence pursuant to a written recommendation from the trial counsel indicating that the accused provided substantial assistance in another trial, or if the sentence modification is pursuant to a pretrial agreement. As of 1 January 2019, the CA may not retain the latter authority to modify a sentence, concerning a punitive discharge or confinement exceeding six months, pursuant to a plea agreement. Consult a judge advocate prior to taking action on the sentence of a court-martial that includes offenses committed on or after 1 January 2019.
 - As of 1 January 2019, the CA may suspend portions of a sentence pursuant to a recommendation from the military judge who presided over the court-martial. Consult a judge advocate prior to taking on the sentence of a court-martial that includes offenses committed on or after 1 January 2019.
 - The above-listed mandatory minimum sentence of dishonorable discharge may be commuted to a bad conduct discharge pursuant to a pretrial agreement.

SEARCH AND SEIZURE (QUICKMAN pages 13-14)

REFERENCES:

- (a) MRE 311-316
- (b) RCM 309, 703
- (b) MILPERSMAN 1620-010
- (c) SECNAVINST 5430.107 (series)
- (d) JAGMAN Appendix A-1-w
- (e) JAGMAN Appendix A-1-x

THE CO OR OFFICER IN CHARGE (OIC) AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED: If the CO or OIC over the suspected Service Member was the victim of the alleged offense, he/she must refer any search authorization request to a superior in the chain of command.

ALWAYS ASK FOR CONSENT: Before conducting or authorizing a search, the owner of the property should be asked for consent to search. If the owner consents to the search, document the consent in writing [see reference (e)]. Consent **must be voluntarily obtained to be valid**, meaning the owner must be informed of the right to refuse. Consent can be limited or withdrawn at any time, and cannot then serve as a basis for probable cause.

NON-DELEGABLE AUTHORITY: Only the CO or OIC can issue a search authorization, unless prohibited as detailed above. The CO or OIC must personally make the probable cause determination. No one else in the chain of command can act for the CO or OIC unless they are acting as the CO or OIC in the absence of the CO or OIC.

MAJOR CRIMINAL OFFENSES: **DO NOT** conduct a search before referring the case to NCIS, unless the search is necessary to protect life or property, or to prevent the destruction of evidence prior to NCIS involvement.

SEARCH AUTHORIZATIONS MUST BE BASED UPON PROBABLE CAUSE: Probable cause is defined as [*See Appendix A – Commanding Officer Search and Seizure Checklist*]:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched or in the documents requested via investigative subpoena. The reasonable belief must be supported by facts and information must be reliable and credible.

INVESTIGATIVE SUBPOENAS: With the Military Justice Act of 2016, General Court-Martial Convening Authorities are permitted to issue, upon application by the trial counsel or law enforcement agency, pre-referral investigative subpoenas for documents only [see reference (b)].

JURISDICTION:

- **PERSON (ON/OFF BASE):** With probable cause, a CO or OIC can authorize the search of persons under his/her command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a Service Member of the same gender.
- **ON-BASE PROPERTY:** With probable cause, a CO or OIC can authorize the search or seizure of any property under his/her immediate control. For areas not under the immediate control of the CO or OIC, contact the installation staff judge advocate as the installation commander may have jurisdiction.

- **OFF-BASE PROPERTY IN THE U.S.:** The CO or OIC may not authorize a search of off-base property in the United States. The CO or OIC must work with NCIS to obtain civilian authority to conduct an off-base search. (Note: a CO or OIC may not have jurisdiction to authorize a search in Public/Private Venture Housing; consult with the installation or region staff judge advocate)
- **OFF-BASE PROPERTY OUTSIDE THE U.S.:** The CO or OIC may authorize searches of a Service Member's property outside of the United States. (Note: some Status of Forces Agreements limit or prohibit such off-base search authorizations. Consult with a staff judge advocate for overseas search authorization issues.)

QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct an inspection (e.g., health and comfort, wellness, readiness, etc.) in the area where the evidence may be located.

- The primary purpose of the inspection must be a valid military purpose, to include: (1) security; (2) military fitness; (3) good order and discipline; or (4) readiness.
- Courts may throw out evidence seized in a search disguised as an inspection. Factors the courts will consider in evaluating whether an inspection is really an illegal search are: (1) if the inspection was not previously scheduled, and it followed the report of an offense; (2) if it targeted specific individuals; and (3) if it subjected specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: Common areas may be searched at any time without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. A drug dog alert from within a common area may establish the probable cause required to search private property (but the CO/OIC must still decide whether probable cause exists and whether to issue an authorization).

USE OF FORMS: Search authorization forms are found at JAGMAN A-1-w [see reference (d)]. Anyone providing information to support the request to search should be sworn and under oath.

SPECIFICITY ON THE FORMS: When authorizing a search, the CO or OIC must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found and should include "any parts, pieces, or components thereof."

SEARCH AND SEIZURE BEST PRACTICES:

- Have a command instruction in place for random inspections. Consult your SJA before drafting this instruction.
- Do not order a surprise inspection following the report of a specific offense.
- Always ask for consent to search first.
- Consult your SJA prior to authorizing a search.
- Create a written record of the evidence you relied upon when forming your probable cause determination.

COURTS-MARTIAL: TYPES AND CONVENING AUTHORITY (QUICKMAN pages 15-17)

REFERENCES:

- (a) RCM 201-504, 704, 1003, 1107, 1301-1306
- (b) UCMJ, Articles 16, 19, 22-25
- (c) JAGMAN, Chapter I

TYPES OF COURTS-MARTIAL

SUMMARY COURT-MARTIAL (SCM):

- COs and OICs have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers, only enlisted personnel.
- All enlisted personnel (sea and shore duty) have an absolute right to refuse SCM.
- The CA appoints one officer to be the SCM officer. The SCM officer functions as the military judge (MJ), trial counsel (TC), and the defense counsel (DC).
- The accused has no right to military counsel at a SCM. The accused may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at the accused's expense, if civilian representation will not unreasonably delay the proceedings.
- Punishments at a SCM are limited. [See Appendix 12 of the Manual for Courts Martial (MCM) and reference (a)]
- The CA takes final action on the findings and punishment awarded within seven days.
- The Military Rules of Evidence apply at a SCM.

SPECIAL COURT-MARTIAL (SPCM):

- COs may convene SPCMs.
- Full criminal trial for officers and enlisted personnel.
- Consists of a MJ, at least three members (jurors), a TC, a DC (DC may include detailed military counsel, individual military counsel (IMC), and/or civilian counsel. Civilian counsel is at the expense of the accused).
- Maximum punishments available at a SPCM are listed in Appendix 12 of the MCM and limited by reference (a).
- The CA may approve plea agreements.
- The CA takes action on the findings and sentence after the clemency period has expired.

GENERAL COURT-MARTIAL (GCM):

- A Uniform Code of Military Justice (UCMJ) Article 32 preliminary hearing is required before any charges are referred to a GCM. A CA may order an Article 32 preliminary hearing.
- A victim, whether civilian or military, may not be required to testify at the hearing. The Article 32 preliminary hearing officer must be senior in rank to the TC and DC and must be a judge advocate, except in extraordinary circumstances.
- Only flag or general officers (and a very few specifically designated non-flag/general officers who are COs) may convene a GCM [see section 0120 of reference (c)].
- GCMs involve a MJ, at least 5 members for noncapital offenses (12 for capital offenses), TC, and DC (military and/or civilian).
- GCMs have the authority to issue the maximum punishment listed for any UCMJ offense.
- GCMCAs may issue investigative subpoenas (for documents only) upon application by trial counsel or a law enforcement agent.
- GCMCAs may approve plea agreements.

- GCMCAs take action on findings and sentences after the clemency period has expired.
- If the GCMCA's staff judge advocate recommends referring a case to a GCM after the Article 32 preliminary hearing and the GCMCA does not concur, this decision must be reviewed by SECNAV. However, if the SJA recommends not referring the case to a GCM and the GCMCA concurs, this decision must be reviewed by the next GCMCA in the chain of command.

MECHANICS OF CONVENING A COURT-MARTIAL: A court-martial is created anew for each individual case. A CA creates a court-martial by signing a court-martial convening order. The convening order creating the court-martial must be signed and dated before the CA signs the charge sheet referring the charges to the court-martial. The court-martial must exist before any charges can be referred to it. A convening order contains the following content:

- Convening order number and the date it is signed, which then creates the court-martial and allows the CA to refer a particular case or charges to it.
- The type of court convened (SCM, SPCM, GCM) and the names of the members (jurors) assigned to that court-martial, and whether alternate members are authorized to be impaneled.
- The personal signature of the CA.

SELECTION OF MEMBERS:

- Members shall be persons who, in the opinion of the CA, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament.
- Members must be senior to the accused, unless unavoidable.
- The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified.
- Do not attempt to "stack" or influence the members directly or indirectly.
- Enlisted members are detailed on the convening order upon the request of enlisted accused to have 1/3 enlisted representation on the court-martial panel (jury).

NOTE: Ensure both the convening order and the preferral block on the charge sheet (block 11) have been signed and dated prior to referring charges to the court-martial.

CHANGES TO COURTS-MARTIAL AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:

- For cases referred to SCM 1 January 2019 or later, a finding of guilty of SCM is no longer considered a federal criminal conviction regardless of whether the accused is represented by counsel at the SCM.
- For offenses committed on 1 January 2019 or later, the CA may convene a judge-alone SPCM with additional offense and punishment limitations noted in RCM 201(f)(2)(B)(ii) and RCM 201(f)(2)(E). The punishment limitations are 6 months confinement, 6 months forfeitures (of two-thirds pay), and no punitive discharge. All other SPCM punishment limitations as listed in Appendix 12 of the MCM and reference (a) apply. To refer a case to this new MJ-alone SPCM, the CA should note that the offenses are referred to this new type of court-martial on the convening order (in block V of the charge sheet).
- For cases referred on 1 January 2019 or later, the number of members in a SPCM or GCM will be fixed. In a SPCM with members, there must be 5 members that are impaneled from the convening order. In a GCM with members, there must be 8 members (for non-capital offenses) or 12 members (for capital offenses).
- For cases referred on 1 January 2019 or later, the CA can list enlisted Service Members on the convening order. Typically, a CA must wait until an enlisted accused requests

enlisted Service Members serve on the court-martial panel to modify the convening order and detail those additional enlisted members. However, for cases being referred in 2019, the CA can detail enlisted Service Members on the convening order without the request from the accused. While the enlisted members may be on the convening order, they will not serve on the member panel unless and until an enlisted accused makes the election to have enlisted Service Members serve on the panel. Additionally, the CA may detail Service Members on the convening order who serve in the same unit as the accused.

[See Appendix B – Overview of the Military Justice System]

PLEA AGREEMENTS (QUICKMAN pages 23-24)

REFERENCES:

- (a) RCM 705
- (b) JAGMAN, Section 0137

NEED FOR PLEA AGREEMENTS: Plea agreements, when appropriate, serve the interests of both the government and the accused. In exchange for a guilty plea and a limit on the authorized punishment that may be imposed upon the accused, the government is often spared the time and expense of lengthy trials, which commands must pay for with Operation and Management funds. In addition, guilty pleas accompanied by a plea agreement often eliminate the need for victims and witnesses to participate in a trial, lessening the mental and emotional toll of a court-martial. A guilty plea supported by an agreement may also assist a command with maintaining normal operations, mission readiness, and/or accomplishment.

CONVENING AUTHORITIES MUST APPROVE ALL PLEA AGREEMENTS: Plea agreements are written agreements between the CA and the accused. Trial counsel (TC) and staff judge advocates (SJA) for the CA may make recommendations, but only the CA may approve the agreement.

SCOPE OF A PLEA AGREEMENT:

- The accused may agree to:
 - Plead guilty
 - Waive an Article 32 investigation/hearing
 - Waive members [e.g., agree to be tried by military judge (MJ) alone]
 - Waive government funding of sentencing witnesses
 - Be tried no later than a specific date
 - Stipulate to facts or testimony that establish guilt
 - Make restitution to the victim
 - Testify against others
 - Conform behavior as conditions of probation or any form of leniency
 - Waive the rights to an administrative separation board after trial
 - A particular forum for court-martial
- The CA may agree to:
 - Protect the accused from part or all of any portion of the adjudged sentence
 - Dismiss or reduce certain charges
 - Protect the accused from potential automatic sentencing provisions

PLEA AGREEMENT NEGOTIATION PROCEDURES: Negotiations may originate with the accused, the defense counsel (DC), TC, SJA, or the CA. Any proposals that do not originate with the CA must be forwarded to the CA for consideration. As part of the negotiation:

- Counteroffers are permissible.
- The final agreement must be in writing.
- The victim must be provided an opportunity to express views concerning the plea agreement terms and conditions. If the victim elects to provide input, that input must be considered by the CA prior to signing the agreement. The victim's input is not controlling upon the CA's actions.
- The plea agreement must contain all aspects of the agreement. Under-the-table agreements, or any side agreements not contained in the agreement, may render the entire written plea agreement invalid.

- Authority to sign the agreement may be delegated by the CA to the TC. Any such delegation should be in writing to satisfy a court-martial that the TC has the authority to sign on behalf of the CA.

WITHDRAWAL FROM THE PLEA AGREEMENT:

- The CA may withdraw:
 - At any time before performance by the accused begins;
 - If the accused fails to fulfill a material term of the agreement;
 - If the MJ finds disagreement as to a material term; and/or
 - If the court-martial's findings are set aside by a court of appeals.
- The accused may withdraw from the plea agreement at any time, however:
 - MJ permission may be required to withdraw a plea of guilty or a confessional stipulation of fact.

CHANGES TO PLEA AGREEMENTS AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:

- For offenses occurring on or after 1 January 2019 and the parties have agreed to use the new sentencing procedures, then there will only be one part of a guilty plea agreement. In that agreement, the parties will detail the sentence limitations, if any, and those limitations will be binding upon the court-martial whether the military judge or members sentence the accused.
- In such cases, the members will still provide a “global” or “unitary” sentence for all offenses to which the accused has plead guilty.
- Under this new sentencing scheme, the military judge must articulate the sentence with more specificity. If the agreement includes a term of confinement and/or fines, then the agreement must note for the military judge which offense and which specification carries that particular confinement and/or fine term. Additionally, if confinement is considered for more than one offense or specification, then the agreement must detail for the military judge whether the terms of confinement would run simultaneously (“concurrently”) or one after the other (“consecutively”). A new model plea agreement is in draft form with all of these options laid out. Consult with a judge advocate prior to signing a plea agreement.
- Lastly, the CA’s ability to suspend punishments in the plea agreement have been restricted. The only punishments that a CA can suspend are (a) confinement of 6 months or less, (b) fines, (c) forfeitures, (d) reduction in rank, and (e) other lawful punishments, such as restriction and hard labor without confinement. The CA is no longer permitted to suspend any type of punitive discharge or any confinement that is greater than 6 months, unless the military judge makes such a recommendation at the end of the court-martial proceedings or the trial counsel makes such a recommendation because the accused is providing assistance in another case/investigation.

NOTE: The CA can only agree to take actions that are within the CA’s scope of authority. For example, a CA can agree to favorably endorse a retirement request, but cannot agree to “allow the Service Member to retire.”

POST-TRIAL REVIEW (QUICKMAN pages 25-27)

REFERENCES:

- (a) RCM 1101, 1103-1107, 1113
- (b) UCMJ, Articles 57, 58, 58a, 58b, 60
- (c) JAGMAN, Sections 0151, 0152
- (d) JAGINST 5814.1A

POST-TRIAL PROCEDURES: The government has the duty to ensure timely post-trial processing of military justice cases. The government must meet strict guidelines in disposing of a case after a sentence is adjudged at trial. This is important to convening authorities (CA) because a failure to adhere to proper processing of the statement of results of trial could result in an overturned conviction [see reference (d)]. [See also Convening Authority's Action Checklist in enclosure (4) of reference (d).]

CA ACTION: Review of the court-martial by the CA after the trial is a crucial step in the court-martial process. The CA Action must be done promptly and properly in order to avoid serious legal consequences and accountability action against the CA. CA action letters must include specific information regarding the accused and must accurately reflect the trial. Use of the standard language and forms from the MCM and JAGMAN is crucial. **NOTE:** The CA's discretion to approve or disapprove findings and/or sentence has been severely limited as a result of congressional action in 2014. The breakdown of the changes is summarized below. Consult a staff judge advocate prior to signing a CA action letter to ensure all requirements are met.

- For offenses that occurred prior to 24 June 2014, the CA is not required to take any action on findings. However, the CA has the following options:
 - The CA may approve or disapprove the court's findings.
 - The CA may disapprove a finding of guilty on an original, more serious charge but approve a finding of guilty for a lesser included offense.
 - The CA may not change a finding of not guilty to a finding of guilty; however, a finding of guilty may be changed to a finding of not guilty.
 - If the CA says nothing about the findings, it is presumed that the CA approves the findings of the court-martial.
- For offenses that occurred prior to 24 June 2014, the CA has the following options to take action on the sentence:
 - The CA may approve any punishment as adjudged by the court-martial.
 - The CA may disapprove any punishment in whole or in part.
- For offenses that occurred after 24 June 2014, the CA CANNOT modify court-martial findings if:
 - The offense involves rape, sexual assault, a sexual offense against a child, or forcible sodomy; or
 - The offense's maximum allowable punishment exceeds two years OR the sentence actually adjudged includes a punitive discharge or confinement exceeding six months.
 - If a CA modifies a court-martial finding in any other case, he/she needs to provide a written explanation for doing so.
- For offenses that occurred after 24 June 2014, the CA can modify a sentence for an offense UNLESS the actual adjudged sentence includes:
 - A punitive discharge; or
 - Confinement exceeding six months.
 - If there is a pretrial agreement, a mandatory minimum sentence of dishonorable discharge may only be commuted to a bad conduct discharge.

- The exceptions to this rule to allow are if (1) pursuant to a written recommendation from the trial counsel, the accused provides substantial assistance in another trial or (2) the sentence modification is pursuant to a pretrial agreement. This second exception will no longer be available for offenses occurring on or after 1 January 2019.

WHEN THE CA MAY TAKE ACTION: Before the CA's action, the official record of trial must be prepared by the USN Region Legal Service Office or the USMC Legal Services Support Section, authenticated by the trial counsel and military judge, and served on the accused and his/her defense counsel (DC). The accused must be given the opportunity to seek clemency from the CA. An accused seeks clemency by submitting matters (such as letters from family members, friends, command members, or even the victim and members of the court-martial) that explain to the CA why the CA should approve a lesser sentence than the sentence adjudged at trial. For all GCMs, SPCMs that include a sentence to a bad-conduct discharge or confinement for one year, or SPCMs in which a victim is entitled to submit a statement pursuant to RCM 1105A, a staff judge advocate or legal officer must also review the record and prepare a memorandum to be served on the accused and his/her DC. The CA must consider the official record, matters submitted by the accused/defense counsel and the victim, the SJA's recommendation, and any victim input with respect to clemency.

EFFECTIVE DATE OF ADJUDGED PUNISHMENTS: Some punishments do not take effect until the CA takes action on the sentence adjudged at a court-martial. For cases with convictions occurring on or after 1 January 2019, those same punishments will take effect at the Entry of Judgment, which occurs after the CA's action, and is the responsibility of the military judge assigned to that court-martial. These particular punishments are restriction, hard labor without confinement, reprimand, and other lawful punishment. Confinement, however, starts immediately, and both forfeiture of pay and reduction in rank start 14 days after trial [see reference (c)]. Dismissal, dishonorable discharge (DD), and bad conduct discharge (BCD) will not take effect until appellate review is complete.

AUTOMATIC PUNISHMENTS: In addition to adjudged punishments, there are two types of automatic punishments:

- **AUTOMATIC REDUCTION:** When an enlisted Service Member's court-martial sentence includes, after CA Action, (1) a DD or BCD, or (2) more than 90 days of confinement, the Service Member will automatically be reduced to the paygrade of E-1 on the date of the CA's Action.
 - **CA's OPTIONS:** In a plea agreement, the CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow automatic reduction all the way down to E-1 to occur. Please note restrictions listed below pursuant to the Military Justice Act of 2016.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes (1) confinement for more than 6 months, (2) death, or (3) a BCD or DD plus any amount of confinement, the member will automatically forfeit two-thirds pay and allowances in the case of a special court-martial or all pay and allowances in the case of a general court-martial starting on the date of the CA's action or 14 days after the sentence is adjudged, whichever is earlier. The automatic forfeiture will be taken throughout the period of confinement and parole.
 - **CA's OPTIONS:** The CA can defer automatic forfeiture until the date the CA acts. This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after trial. Deferment changes the effective date to the date of the CA's action. At CA's action, the CA can approve the automatic forfeiture, or waive the forfeiture for a maximum of six months and direct the amount of money

to be forfeited to the accused's dependents instead. Usually, the accused sets up an allotment for a dependent in the amount of the automatic forfeiture. Please note restrictions listed below pursuant to the Military Justice Act of 2016.

CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:

- On court-martial findings (guilty/not guilty) and any adjudged sentence, the same restrictions as noted above remain in effect. The effective date for adjudged reduction in rank and both adjudged and automatic forfeitures will be the earlier of either (1) 14 days after the sentence is adjudged by the court-martial or (2) the date of the CA's Action, if the case is a summary court-martial.
- For automatic reduction in rank, the triggering events that cause the automatic reduction are a DD, BCD, or 90 days of confinement as finally included in the Entry of Judgment. For those sentences including a DD or BCD, the CA cannot affect or protect against the automatic reduction in rank because Congress restricted the scope of CA's discretion post-trial and disallows a CA from reducing or modifying a DD or BCD. If the sole triggering event for the automatic reduction in rank is 6 months of confinement or less, the CA is permitted to protect the accused from the automatic reduction. With offenses occurring 1 January 2019 or later, the effective date for automatic reduction in rank is the Entry of Judgment, which is the military judge's responsibility.
- For automatic forfeitures, the CA may still defer any automatic forfeitures, but the date of deferral will be extended out to the date of the Entry of Judgment. Separately, in terms of the triggering events that cause automatic forfeitures (confinement greater than 6 months, death, or DD/BCD), the CA cannot affect those punishments at CA's action and, thus, cannot provide protection against automatic forfeitures other than deferral. The only other mechanism by which the CA could protect the accused against automatic forfeitures is if, in a plea agreement, the CA agrees to place a cap on confinement at 6 months or less and disallows death, DD, and a BCD.

[See Appendix D – Convening Authority Limitations on Findings Modifications and Appendix E – Convening Authority Limitations on Sentencing Modifications]

FRATERNIZATION OVERVIEW (QUICKMAN pages 75-76)

REFERENCES:

- (a) OPNAVINST 5370.2 (series)
- (b) Marine Corps Manual 1100.4
- (c) U.S. Navy Regulations
- (d) UCMJ, Article 134

BACKGROUND: "Fraternization" is a gender-neutral concept used to identify personal relationships that do not respect the bounds of acceptable senior-subordinate relationships. Fraternalization is prohibited and punishable under the Uniform Code of Military Justice. Per reference (a), commands are expected to take administrative and disciplinary action as necessary to correct this inappropriate behavior. Being in a direct senior/subordinate supervisory relationship or in the same chain of command is not a prerequisite for fraternization.

UNDULY FAMILIAR RELATIONSHIP DEFINED: There is no single definition of what constitutes an unduly familiar relationship. Except for cases where a relationship is per se prohibited, such as in the case of officers and enlisted personnel, each relationship must be evaluated on a case-by-case basis. Examples of unduly familiar relationships include, but are not limited to: dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling, and borrowing money when such activities are prejudicial to good order and discipline or are of a nature to bring discredit upon the naval service.

PREJUDICIAL TO GOOD ORDER AND DISCIPLINE: A relationship is prejudicial to good order and discipline when it results in circumstances which call into question the senior Service Member's objectivity, result in actual or apparent preferential treatment, undermine the authority of the senior member, or compromise the chain of command and/or mission.

PROHIBITED RELATIONSHIPS (presumed to be prejudicial to good order and discipline):

- **OFFICER/ENLISTED:** Unduly familiar relationships between officers and enlisted Service Members that do not respect differences in grade or rank.
- **CHIEF PETTY OFFICER/JUNIOR ENLISTED:** Personal relationships between chief petty officers and junior personnel (E-1 to E-6) assigned to the same command, that are unduly familiar and that do not respect differences in grade or rank.

E-1 to E-6 ENLISTED SERVICE MEMBERS OF DIFFERENT PAYGRADES: Personal relationships between two enlisted Service Members, both of which are in paygrade E-1 to E-6, are prohibited if:

- They do not respect differences in paygrade; and
- Are prejudicial to good order and discipline.

OFFICER RELATIONSHIPS: The same rule that applies to E-1 to E-6 enlisted Service Members of different paygrades applies to all officer paygrades.

STAFF/INSTRUCTOR AND STUDENT RELATIONSHIPS: Personal relationships between staff or Instructor Service members and student personnel within training commands that do not respect differences in grade, rank, and/or the staff/student professional relationship are prohibited. A staff member/instructor who engages in a "prohibited sexual activity" with a student may also be charged under article 93a of the UCMJ. Consent is not a defense to this offense.

RECRUITER/RECRUIT AND APPLICANT: Personal relationships between recruiters and recruits or applicants that do not respect the special professional relationship between them are prohibited. Such relationships by their very nature are prejudicial to good order and discipline. A recruiter who engages in a “prohibited sexual activity” with a recruit may also be charged under article 93a of the UCMJ. Consent is not a defense to this offense.

RELATIONSHIPS WITH SERVICE MEMBERS OF OTHER ARMED SERVICES: The fraternization policy applies to all prohibited relationships between Navy members and other members, regardless of service. Multi-service commands must create clear policies because of differences in service regulations and customs. This prohibition also applies to relationships between U.S. Service Members and foreign military members (e.g. a U.S. officer and a foreign national enlisted member).

GENDER-NEUTRAL: The focus of the fraternization policy is on the detriment to good order and discipline and not on the gender of the parties involved.

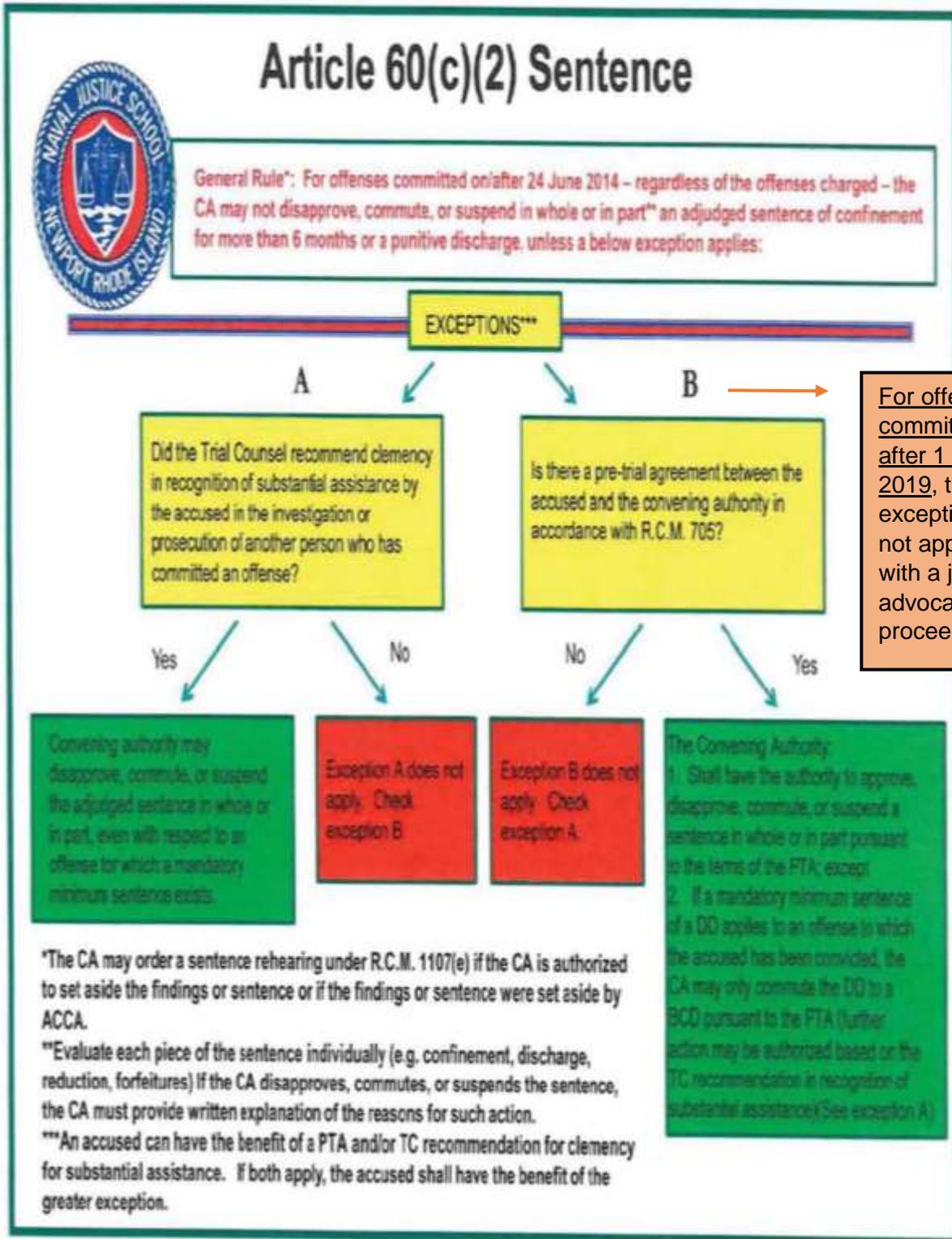
SUBSEQUENT MARRIAGE: Parties that were in a relationship that constituted fraternization cannot cure the fraternization by marrying. Marriage does not excuse Service Members who were in a prohibited relationship before they married, and they can still be held fully accountable via disciplinary or administrative action.

MARRIED MEMBERS: Will not be assigned to the same chain of command (consistent with the needs of the USN/USMC).

RESPONSIBILITY FOR PREVENTING FRATERNIZATION: The responsibility for avoiding fraternization rests primarily with the senior Service Member in the relationship. However, both Service Members are accountable for their own conduct and both may be held accountable via disciplinary or administrative action.

ALLEGATIONS: All allegations of fraternization must be promptly investigated, and commanders should take appropriate administrative and disciplinary action. [*See Appendix I – Handling Fraternization Allegations*]

CONVENING AUTHORITY LIMITATIONS ON SENTENCING MODIFICATIONS



ARTICLE 15 PUNISHMENT LIMITATIONS

Imposed By	Imposed On	Bread & Water or DIMRATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4&5)	Reduction (4&6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	½ of 1 Mo. For 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	3 Days	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) **May be awarded only if attached to or embarked in a vessel and may not be combined with other restraint punishment or extra duties.**
- (2) **May not be combined with restriction or extra duties.**
- (3) **May not be combined with restriction.**
- (4) **May be imposed in addition to or in lieu of all other punishments.**
- (5) **Shall be expressed in whole dollar amounts only.**
- (6) **Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion).**
- (7) **Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties.**
- (8) **OICs regardless of rank have NJP authority over enlisted personnel only. OIC's and Marine CC may only reduce personnel within their promotion authority.**
- (9) **Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)**
- (10) **Bread & Water or DIMRATS no longer allowed as punishment for offenses committed on or after 1 January 2019**