

THE COUNSELOR

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RECENTLY SIGNED NDAA BRINGS MAJOR CHANGES TO COURTS-MARTIAL PRACTICE AND SEXUAL ASSAULT CASES

The 2014 edition of the National Defense Authorization Act (NDAA) requires changes to courts-martial practice under UCMJ Articles 60, 120 and 125 and sets forth other important measures related to sexual assault cases. Although many of the details of the 2014 amendments are unclear, more information will be available as the changes are implemented within the next year. Several of the major changes are highlighted below.

Recently Signed NDAA Brings Major Changes to Courts-Martial Practice and Sexual Assault Cases

Article 60 (Section 1702): The convening authority may no longer adjust any findings of guilt for (1) felony offenses where the sentence is longer than six months or contains a punitive discharge (or dismissal) or (2) any sexual assault-related crimes, irrespective of sentence. The convening authority can only modify a sentence if a pretrial agreement is in place or if the accused helped secure evidence or cooperated with the government in prosecuting another UCMJ offense. These changes will take effect on 24 June 2014.

Articles 120 and 125 (Section 1703): Prior to the 2014 amendments, sexual assault and sexual assault of a child cases had a five-year statute of limitations. Now, these cases may be tried and punished at any time without limitation.

Articles 120 and 125 (Section 1705): Effective 24 June 2014, Articles 120 and 125, UCMJ, will have mandatory minimum punishments of dishonorable discharge for enlisted personnel and dismissal for officers. The accused must also appear before a general court-martial.

Articles 120 and 125 (Section 1707): The recent version of the NDAA also repealed the offense of consensual sodomy under Article 125, UCMJ. The revised article now only includes forcible sodomy and bestiality.

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Article 92 Violation for Retaliation After Reporting a Criminal Offense (Section 1709): Retaliation for reporting a criminal offense will be a violation of Article 92, UCMJ. By 24 June 2014, SECDEF must submit a report to the Senate Armed Services Committee (SASC) and House Armed Services Committee (HASC), who will define retaliation and recommend whether a new punitive article is needed to prohibit retaliation.

Reassignment of Accused After Sexual Assault-Related Offense to Maintain Good Order and Discipline (Section 1713): Any active duty member of the Armed Forces accused of committing a sexual assault or related offense may be temporarily reassigned or removed. This amendment does not require expedited processing of a member who is the subject of an unrestricted report of sexual assault. However, it allows the Secretary to provide guidance to commanders regarding their authority to take action in those instances when removal of the alleged perpetrator is appropriate for maintaining good order and discipline.

SECNAV Tracking of Command Climate Assessment Requirement (Section 1721): COs must conduct organizational climate assessments for the purposes of preventing and responding to sexual assaults. SECNAV will track COs' compliance with this requirement. COs will NOT be evaluated based on the results of the command climate assessments. This amendment is effective immediately.

Non-Referral Review Requirements for Sex-Related Offenses (Section 1744): If the SJA, pursuant to Article 34, UCMJ, recommends non-referral of charges of a sex-related offense and the convening authority *agrees*, the next-highest general court-martial convening authority must conduct an independent review. If the convening authority *disagrees* with the SJA's recommendation to refer charges, the case must be forwarded up the chain of command to SECNAV. Victims are provided an opportunity to opine as to whether the offense qualifies as a sex-related offense. A victim's statement and views will be considered by the Convening Authority in the referral decision.

Inclusion and Command Review of Sex-Related Offenses in Personal Service Records (Section 1745): A member's service record must include notations of convictions at court-martial, NJP, or punitive administrative action for sex-related offenses. Whenever a member is assigned or transferred, the CO must review the member's service record. By being aware of a member's history, a CO can reduce the likelihood that repeat offenders will escape notice.

The full text of the 2014 NDAA can be found at:

<http://beta.congress.gov/bill/113th/house-bill/3304/text>.

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SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY

Sexual Assault Initial Disposition Authority

Authority to dispose of cases involving allegations of sexual assault rests with the command's Sexual Assault Initial Disposition Authority (SA-IDA). Per the SECDEF memo issued on 20 April 2012, the Initial Disposition Authority for sexual assault cases is restricted to the O-6 level and above and that authority is non-delegable. This means that COs at the O-5 level and below are **not** SA-IDA's and may **not** make an initial disposition determination (NJP, court martial, no punishment, etc.) in sexual assault cases involving penetration and/or sodomy. Rather, these COs must forward the matter to the appropriate SA-IDA within 30 days of receipt of the allegation of sexual assault. Please note that NDAA Section 1744 modifies the authority of SA-IDAs and requires higher level review in cases in which the SA-IDA decides to non-refer a case.

While the authority to dispose of sexual assault cases rests with the SA-IDA, forwarding COs may provide SA-IDAs with a recommendation as to how a particular case should be disposed. Furthermore, if the SA-IDA returns the case, the subordinate CO may take any action deemed appropriate.

It is vital that each command understand who its designated SA-IDA is and ensure that he or she disposes of all cases involving allegations of sexual assault appropriately. Any commander evaluating a sexual assault allegation should contact a staff judge advocate before disposing of the case

TAX SEASON RESOURCES FOR SAILORS

Tax Season Resources for Sailors

Tax season is quickly approaching. The Navy JAG Corps provides resources for Sailors in need of assistance through its Volunteer Income Tax Assistance (VITA) Tax Centers, which are located at Joint Base Anacostia-Bolling, NSA Annapolis, and NAS Patuxent River. The VITA Tax Centers are self-service. However, the benefit of these Tax Centers is that they provide access to free H&R Block tax software and will be manned by IRS-trained volunteers, who can answer questions and provide basic assistance to Sailors while they file their taxes.

Tax information and documents are scheduled to be released to active duty service members on 24 January and the centers will operate from 4 February to 15 April 2014. To make an appointment, please call the Tax Center closest to you.

JOINT BASE ANACOSTIA-BOLLING: (202)767-5297

NSA ANNAPOLIS: (410)293-3743

NAS PATUXENT RIVER: (301)342-7643

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RESULTS OF TRIAL 1ST QUARTER 2014

No general or special courts-martial this quarter.

*Results of Trial 1st
Quarter 2014*

OFFICER BOARD OF INQUIRY RESULTS 1ST QUARTER 2014

Navy O-3 was ordered to show cause for retention due to substandard performance of duty: physical fitness assessment failure. Service member submitted qualified resignation.

Navy O-4 was ordered to show cause for retention due to substandard performance of duty: physical fitness assessment failure. Board members recommended retention. This Board of Inquiry was held on 24 October 2013.

Navy O-4 was ordered to show cause for retention due to misconduct and substandard performance of duty: failure to conform to prescribed standards of military department. Board members recommended retention. This Board of Inquiry was held on 7 November 2013.

Navy O-3 was ordered to show cause for retention due to substandard performance of duty: physical fitness assessment failure. Board members recommended separation with an Honorable discharge characterization. This Board of Inquiry was held on 15 November 2013.

Navy O-6 was ordered to show cause for retention due to misconduct and substandard performance of duty: failure to obey order or regulation, false official statement, and wrongful use and possession of a controlled substance. Board members recommended separation with an Honorable discharge characterization. This Board of Inquiry was held on 9 December 2013.

Navy O-6 was ordered to show cause for retention due to misconduct and substandard performance of duty: failure to obey order or regulation, conduct unbecoming an officer and gentleman, and failure to conform to prescribed standards of military department. Board members recommended retention. This Board of Inquiry was held on 17 December 2013.

*Officer Board of
Inquiry Results 1st
Quarter 2014*

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COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

*Command Services
Staff Judge Advocate
Directory*

NSA WASHINGTON/WASHINGTON NAVY YARD
(202)685-7046

JOINT BASE ANACOSTIA-BOLLING
(202)767-1767 or (202)685-5597

NSA BETHESDA
(202)685-5525

NSA ANNAPOLIS
(410)293-9203

NAS PATUXENT RIVER
(301)342-1934

NSA SOUTH POTOMAC
(301)342-1934

COMMAND DUTY OFFICER: (202)329-0249
E-MAIL: RLSO.NDW@NAVY.MIL

*For NDW related issues, please
contact:*

*NAVAL DISTRICT WASHINGTON
Staff Judge Advocate
(202) 433-2424*

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