

CODE 20

SIDEBAR

NATIONAL DEFENSE AUTHORIZATION ACT FY19

On 13 August 2018, the President signed the NDAA FY19. This NDAA FY19 incorporates additional changes to the Manual for Courts-Martial that will go into effect on 1 January 2019. The full text of the NDAA FY19 is available on <https://jsc.defense.gov>.

The major changes that impact the military justice process include the following:

- Article 128, UCMJ, Aggravated Assault is modified to include strangulation and suffocation as a means to commit aggravated assault. The supplementary materials for the MCM to include drafting of the elements and the maximum punishment will be provided at a later time prior to 1 January 2019.
- Article 128b – Domestic Violence was created as an additional punitive article. The supplementary materials for the MCM to include drafting of the elements and the maximum punishment will be provided at a later time prior to 1 January 2019. Article 128b states:

Any person who—

- (1) Commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;
- (2) With intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—
 - A. Commits an offense under this chapter against any person; or
 - B. Commits an offense under this chapter against any property, including an animal;
- (3) With intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;
- (4) With intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or
- (5) Assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.

In addition to changes to the military justice processes, the following changes were implemented by NDAA FY19:

- Sec. 533. Authorities of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.
 - This section created the authority for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) to hold hearings,

- sit and act at such times and places, take testimony, and receive such evidence as the DAC-IPAD considers appropriate
- This section also creates authority for the DAC-IPAD to collect data from a department or agency of the Federal Government that the committee considers necessary. The Committee must take steps to prevent the unauthorized disclosure of personally identifiable information.
 - Sec. 534. Report on feasibility of expanding services of the Special Victims' Counsel to victims of domestic violence.
 - This section imposes a requirement from SECDEF, in consultation with the Service Secretaries, to issue a report on the feasibility of expanding Victims' Legal Counsel (VLC) services to include domestic violence victims.
 - This report is due by 1 February 2019.
 - Sec 535. Uniform command action form on disposition of unrestricted sexual assault cases involving members of the Armed Forces.
 - This section requires the SECDEF to create a uniform form to report the disposition of unrestricted sexual assault cases across all Services.
 - Sec. 536. Standardization of policies related to expedited transfer in cases of sexual assault or domestic violence.
 - This section requires the SECDEF to create standard procedures for expedited transfers in sexual assault and domestic violence cases.
 - Sec. 541. Clarification of expiration of term of appellate military judges of the United States Court of Military Commission Review.
 - This section creates a term for appellate military judges assigned to the Court of Military Commission Review. The term for these judges expires on the earlier of the date on which-- (A) the judge leaves active duty or (B) the judge is reassigned to other duties in accordance with 10 U.S.C. 949b(b)(4).
 - Sec 542. Security clearance reinvestigation of certain personnel who commit certain offenses.
 - This section amends 10 U.S.C. 1564 by creating a section for the reinvestigation or readjudication of certain individuals.
 - The reinvestigation or readjudication of a security clearance occurs when a flag officer, a general officer, or an employee of the DoD in the Senior Executive Service is convicted in a court of competent jurisdiction of (1) sexual assault; (2) sexual harassment; (3) fraud against the U.S.; or (4) any other violation that the Secretary determines renders that individual susceptible to blackmail or raises serious concern regarding the ability of that individual to hold a security clearance; or a commanding officer determines that a flag officer, a general officer or an employee of the DoD in the Senior Executive Service has committed an offense described above.
 - This section requires the Secretary to also ensure relevant information of this conviction or determination is reported into Federal law enforcement records and security clearance databases and transmitted to other Federal agencies.
 - Sec. 543. Development of oversight plan for implementation of Department of Defense harassment prevention and response policy.
 - This section requires that each Service Secretaries submit to the Committees on Armed Services of the Senate and House a report on the Service's plan to implement DODI 1020.03 – "Harassment Prevention and response in the Armed Forces." The requirements of this

harassment prevention and response programs are provided in DODI 1020.03 and require at a minimum the following:

- Submitting implementation plans to the Director, Force Resiliency.
- Incorporating performance measures that assess the effectiveness of harassment prevention and response programs.
- Adopting compliance standards for promoting, supporting, and enforcing policies, plans and programs.
- Tracking, collecting, and reporting data and information on sexual harassment incidents based on standards established by the Secretary.
- Instituting anonymous complaint mechanisms.
- This report must be submitted not later than 1 July 2019.
- Sec. 544. Oversight of registered sex offender management program.
 - This section requires that SECDEF create a position within the Office of SECDEF with the principal responsibility of providing oversight of the registered sex offender management program throughout the DoD.
 - This official/entity will collect data from the Services to determine compliance with the DODI 5525.20 and collect data on servicemembers convicted of a qualifying sex offense.
 - By 1 June 2019, SECDEF owes to the Committee on the Armed Services of the House a briefing on the compliance of the military departments relating to sex offenders and the data collected.
- Sec. 545. Development of resource guides regarding sexual assault for the military service academies.
 - This section requires that the Superintendent of each military service academy develop a guide for all students regarding sexual assault.
 - This guide must be distributed to students within 30 days of enactment of this Act and at the beginning of each academic year after that.
 - This section provides detailed guidance on the minimum contents of this guide.
- Sec. 546. Improved crime reporting.
 - This section requires SECDEF, in consultation with the Secretaries of the military departments, to establish a consolidated tracking process for the DoD to ensure increased oversight of the timely submission of crime reporting data to the FBI under 18 U.S.C. 922(g).
 - By 1 July 2019, SECDEF shall submit a letter to the Senate and House Armed Services committees with the details of this tracking process.
- Sec. 547. Report on victims of sexual assault in reports of military criminal investigative organizations.
 - By 30 Sept 2019 and every two years thereafter, SECDEF must submit a report on sexual assault cases where a victim of sexual assault is involved in collateral misconduct.

This Sidebar has been posted to Code 20's page on the JAG Portal at:
<https://portal.secnav.navy.mil/orgs/JAG/20/SitePages/Home.aspx>.

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