

Military Justice Act of 2016

(Changes take effect 1 January 2019, unless specifically stated below)

Jurisdiction

No Bad Conduct Discharge Special Court-Martial

- Why? Theoretically gets through trial more quickly because limited to minor offenses and trial is by judge alone, no members
- Maximum punishment
 - Confinement for 6 months
 - Forfeiture of 2/3 pay for 6 months
 - No punitive discharge; separation may only be pursued administratively
- Member may object if:
 - Any offense (except drug use/possession) has max of >2 yrs confinement
 - Any offense requires sex offender registration
- Can use directly if all offenses occur 1 January 2019 or later. If *some* offenses occur before and after 1 January, member must consent to using new SPCM

Fixed Number of Court-Martial Members: 12-Capital Cases, 8-GCM, 4-SPCM; can include enlisted and alternate members on convening order in advance

Expanded Jurisdiction over Reservists

Punitive Articles (Renumbered, Reorganized, Amended, Added)

Use the law in effect when the alleged offense was committed

Some of the New or Reorganized Offenses

- Sexual activities with recruit/trainee by person in special position of trust (Art 93a) —includes applicants
- Wrongful broadcast of intimate images (Art 117a)
- Fraudulent use of credit/debit cards (Art 121a)
- Offenses concerning government computers (Art 123)—“hacking” and accessing classified or other protected information
- Domestic Violence (Art 128b)—threats, intimidation, assault, violation of PO
- Retaliation (Art 132)—to impact reporting of crime, comms with IG/Congress

Some of the Amended Offenses

- Rape and Sexual Assault (Article 120) — Incapable of consenting when incapable of appraising nature of conduct **OR** when physically incapable of communicating
- Sexual contact (Article 120) **only** exists when contact is made with the victim’s vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks
- Adultery (Article 134) is now called “Extramarital Sexual Contact.” Expanded to include genital-genital, oral-genital, anal-genital, and oral-anal contact. Court-ordered separation is a defense

Preferral & Referral of Charges

Decision 1: Court-Martial or No Court-Martial? 14 Factors to Consider

1. Mission-related responsibilities of the command
2. Whether the offenses occurred during wartime, combat, contingency operations
3. The effect of the offense on the morale, health, safety, welfare, and good order and discipline of the command
4. The nature, seriousness, and circumstances of the offense/accused’s culpability
5. The views of the victim (as defined by UCMJ) as to disposition
6. The extent of the harm caused to any victim of the offense
7. Availability/willingness of the victim/witnesses to testify
8. Admissible evidence will likely be sufficient to obtain and sustain a conviction
9. Input from law enforcement agencies interested in the specific case
10. The truth-seeking function of trial by court-martial
11. Accused’s willingness to cooperate in the investigation or prosecution of others
12. Accused’s criminal history or history of misconduct, whether military or civilian
13. Probable sentence or other consequences to the accused of a conviction
14. Impact and appropriateness of alternative disposition options with respect to the accused’s potential for continued service, justice, and good order and discipline

Military Justice Act of 2016 (Continued)

Preferral & Referral of Charges (Continued)

4 Additional Factors When Declining Court-Martial

1. Options available under the alternative means of disposition
2. Likelihood of an effective outcome
3. Views of the victim, if any, concerning the alternative disposition of the case
4. Effect of alternative disposition on the interests of justice, good order, discipline

Do Not Consider Race, Religion, Gender, Political Association, Personal Beliefs/Feelings, Political or Professional Pressure

Art. 30a—Pre-referral investigative subpoenas for documents (GCMCA only)

Decision 2: What charges are appropriate? Consider the above, plus whether one C-M for all known offenses would lead to confusion at trial, unnecessary exposure of accused to harsher punishment. Is alternative disposition more appropriate?

Decision 3: What is the proper forum and disposition? Must consult with JAG. Consider the above, plus maximum and minimum punishments, accused's potential for future service.

Alternative Disposition

Non-judicial Punishment: No more bread and water!

Decision 4: Is a guilty plea agreement appropriate? Consider the above, plus 13 others, including:

- Seriousness of the offense
- Accused's history, service, remorse, cooperation, further service
- Victim and witness input
- Likelihood of conviction at trial
- Probable punishment and collateral consequences from conviction

Changes to Plea Agreements: One part deal; judge knows the terms and agreed upon sentence limitations are binding upon judge/members

- Sentence limitations are expressed as:
 - Maximum punishment **or**
 - Minimum punishment **or**
 - Punishment range (max and min) (only for confinement and fines)
- Members give one unitary sentence (e.g., 12 yrs confinement for all charges)
- Military judge gives confinement and fines per specification (e.g., 2 years for Charge I, Specification 2 and 10 years for Charge II, Specification 1)

For plea agreements, if all offenses occur 1 January 2019 or later, use new rules above. If offenses occur before *and* after 1 January, use old rules unless member consents to using new rules

Trial Process

Conviction requires 3/4 of members instead of 2/3

Post-trial Process

Authority to Overturn Guilty Findings/Reduce Punishments

- Convening authority's (i.e., you, Commanding Officers) action post-trial remains strictly limited. Cannot overturn findings if:
 - Maximum confinement for any offense is more than 2 years,
 - Total confinement awarded is more than 6 months,
 - Punitive discharge or death penalty awarded, OR
 - Convicted of certain sexual offenses under Art. 120, 120b
- Cannot reduce the following punishments:
 - Total confinement awarded is more than 6 months, AND
 - Punitive discharge or death penalty awarded

Old convening authority power to act on findings and punishment is based on date of earliest convicted offense (e.g., earliest conviction misconduct dates back to 2008, use 2008 rules)

CONTACT JAG FOR HELP!