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# The Advisor

## Region Legal Service Office Southeast

**Special points of interest:**

- All about CNATRA
- Foreclosure Process for *Dummies*
- Hey VWAC!, more protections for Victims.
- New UCMJ Articles 120 and 134

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## Advice You Don't Have to Pay for, only Read and Learn

CDR Mike Holifield, CNRSE SJA and Director, Command Services

**Shakespeare. Sinatra. Child pornography**. Three topics you rarely see discussed together in the same publication. Here at The Advisor's editorial Star Chamber, however, we won't be constrained by convention when bringing you the legal news you need to know. In this edition you'll find articles ranging from VWAP and storm water management to foreclosure rights and relations with civilian law enforcement. We've also included a summary of recent court-martial results to assist you in spreading the universal truth that actions have consequences. And, as if this weren't enough, we did not neglect to provide the scratch to your legal crossword itch. But, as the saying goes, that's not all: Every page of The Advisor doubles as a coupon redeemable for free legal advice from your local Staff Judge Advocate. (We also honor all competitors' coupons.)

The one theme running throughout this edition's eclectic compilation of legal updates and dissertations is this: The Law is a complex and ever-changing thing. Fortunately, COs and legal officers aren't expected to maintain laser-like focus on the differences between the various state and Federal laws, or meticulously track UCMJ changes from year to year. That's our job; you have more important things to do than spending precious free time slogging through LexisNexis or the Joint Ethics Regulation. Just leave the legal slogging to us. On page 12 is a complete listing of all RLSO legal offices in the Region. We are standing by to provide the fleet with timely, accurate legal advice.

No coupon necessary.

## VWAP Corner: DD Form 2701 and Initial Actions in Response to a Crime

LT Guy W. Eden, Deputy SJA, Navy Region SE

It is Monday morning after a nice, relaxing weekend. You checked into your command a couple weeks ago and have been assigned the collateral duty of Victim and Witness Assistance Coordinator (VWAC). The minute you are settled at your workspace, you are notified that one of the Sailors at your command was a victim of a crime on base over the weekend. Base Security is investigating and has already interviewed your Sailor. Your command turns to you for answers on the Sailor's rights as the victim of a crime. **What do you do**?

Unfortunately, in our Navy this is a common scenario, and whether the crime in question is a major or minor offense, the role of the VWAC begins immediately. It is the VWAC's responsibility to educate command personnel on the Victim and Witness Assistance Program (VWAP), to ensure VWAP materials are distributed to members of the command, and to make sure victim and witness rights are honored. Luckily the DD Form 2701 makes it easy for the VWAC to meet his or her responsibilities. *Continued*

## VWAP Corner continued

DD Form 2701 is usually provided to victims and witnesses of crime by law enforcement. But sometimes this does not happen, so a VWAC should also contact victims and witnesses and be prepared to provide this form to them as well. DD Form 2701 contains a snapshot of rights that victims and witnesses have under VWAP, including, but not limited to, the right to be free from threats or harassment, potential compensation for injuries stemming from the crime, and notifications of whether an accused has been taken into custody and the status of the accused's trial. Important contact information is also provided on the DD Form 2701, including the investigator, the VWAC, the prosecutor (if applicable), and the state office for Crime Victim Compensation.

VWAP applies to all levels of military justice and administrative proceedings. Therefore, the DD Form 2701 must be provided to victims and witnesses of crimes disposed of at courts-martial, non-judicial punishment, boards of inquiry, and administrative separation boards.

As a general rule: **WHEN IN DOUBT, HAND THE 2701 OUT**

**VWAP Rights As A Victim (Contained in DD Form 2701):**

-The right to be treated with fairness and with respect for your dignity and privacy;

- The right to be reasonably protected from the accused offender;

- The right to be notified of court proceedings;

- The right to be present at all public court proceedings related to the offense, unless the court determines that your testimony would be materially affected if you as the victim heard other testimony at trial;

- The right to confer with the attorney for the government in the case;

- The right to available restitution;

- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

## Was Romeo a Sex Offender?
## An Overview of "Close in Age" Exemptions in Navy Region Southeast

LT Adam Brandon, Staff Judge Advocate, NAS Jacksonville

Few crimes deserve more punishment than the sexual molestation of a child. Under the law, minors under the age of consent (the legal age for consensual sex) are legally incapable of consent and, therefore, any sexual activity with a minor is criminal. Most states require criminals who prey on children to register as "sex offenders" in the communities where they live, work, or attend school. By identifying a class of offenders that is statistically likely to reoffend, these public registries give families a chance to protect their children from sexual predators.

At the same time, most people recognize that there is an enormous difference between the coercive acts of adult sex offenders and the consensual acts of teenagers in romantic relationships. Even those who believe that teenagers should not engage in sexual activity recognize that consensual sex should not land the older of the two on the sex offender list. To remedy this situation, some states have enacted "Romeo and Juliet" laws. Named after Shakespeare's ill-fated couple, these laws create "close in age" exemptions to the statutory age of consent. Where enacted, these laws prevent a modern-day Romeo from finding himself convicted of a felony and/or on the sex offender registry.

Romeo and Juliet laws vary considerably within the states covered by Navy Region Southeast. There are different ages of consent. Some states have "close in age" exemptions, and in most states a reasonable mistake of age is not a defense to the crime of sex with a child. The chart on the next page summarizes the key differences.

The bottom line is that limited Romeo and Juliet laws exist in some—but not all—states covered by Navy Region Southeast. Theoretically, this means that it is possible that Romeo could be prosecuted and designated as a sex offender. While prosecutions of teenagers for consensual sex are extremely rare, this is due more to the discretion and common sense of individual prosecutors and district attorneys—not the strict text of the law itself.

| *Jurisdiction* | *Age of Consent* | *Is there a Romeo and Juliet law?* | *Is a reasonable mistake of age a defense?* |
|---|---|---|---|
| **Alabama** | 16 | No. But penalties are more severe if the offender is older than 19. | No. |
| **Florida** | 18 | Yes. A person 23 or younger may engage in sexual activity with a minor aged 16 or 17. In other cases where sexual activity with a minor is a crime, individuals may be protected from the sex offender list if the victim in the case is above 14, a willing participant in the sexual activity and no more than four years younger than the offender. The offense must also be the only sex crime on the offender's record. | No. |
| **Georgia** | 16 | Partially. But if the offender is 18 or younger and no more than 4 years older than the victim, then the offender is guilty of a misdemeanor, not a felony. | No. |
| **Louisiana** | 17 | No. However, felony carnal knowledge of a juvenile is committed when a person who is 19 years of age or older has sexual intercourse, with consent, with a person who is between 12 and 17 years of age. Misdemeanor carnal knowledge of a juvenile is committed when a person who is between 17 and 19 years of age has sexual intercourse, with consent, with a person who is between 15 years and 17 years of age, and when the difference between the age of the victim and age of the offender is greater than 2 years. | No. |
| **Mississippi** | 16 | No. Any person 17 or older who has sexual relations with a minor between 14 and 16 years old can be charged with statutory rape. If the offender is less than3 years older than the younger partner, the charge is reduced to sexual battery. | No. |
| **South Carolina** | 16 | Yes. A close-in-age exemption protects individuals under 18 who engage in sexual relations with a minor at least 14 years old. | No. |
| **Texas** | 17 | Yes. It is an affirmative defense if the defendant is less than 3 years older than the victim and the sexual act was consensual. | No. |
| **UCMJ** | 16 | No. There is no "Romeo and Juliet" law in the military. However, there is an affirmative defense for a reasonable mistake of age. | Yes, it is an affirmative defense if the accused reasonably believed that the child was 16 or older and the child was actually at least 12. |

This chart is only a simplified summary of complex statutes; it does not constitute legal advice. If you have questions on how a jurisdiction's law applies to a specific situation, you should seek advice from an attorney. Commands should contact their local Staff Judge Advocates or Region Legal Service Office.

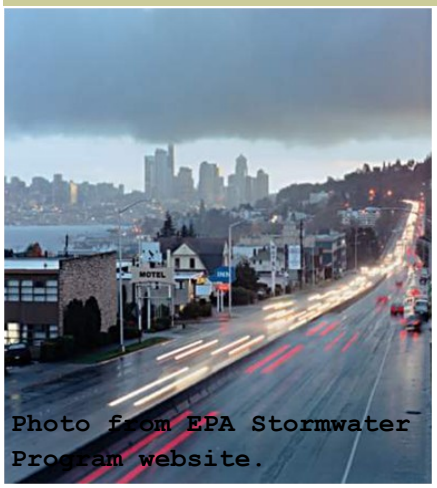
Photo from EPA Stormwater Program website.

## StormWater: A New Era for Federal Facilities

LCDR Matthew Kurek, CNRSE Deputy Region Environmental Counsel

On January 4, 2011, Congress enacted Public Law 111-378 which ushered in a new era for federal facilities as it amended Clean Water Act § 313(c) to clarify what constitutes a reasonable service charge for stormwater and provided guidelines for payment. Since then, the federal government has been grappling with implementation.

On January 31, 2012, CNIC issued an EXORD promulgating CNICNOTE 5090 entitled "Interim Guidance for Payment of Stormwater Management Charges". CNICNOTE 5090 is effective immediately, provides uniform procedures for handling stormwater service charges, and delineates responsibilities of personnel involved in the process. As "Interim" guidance, CNICNOTE 5090 is effective for either one year or until superseded by further direction; an OPNAVINST is currently being drafted.

Receipt of stormwater service charges triggers the four-phase uniform handling procedure: 1) receipt and initial notifications; 2) review and information gathering; 3) negotiation with billing entity; and 4) payment determination. The first phase is the most crucial for installations to understand. Upon receipt of a stormwater service charge or bill, installation Commanding Officers are responsible for immediately forwarding it to Region Counsel. Region Counsel spearheads the process from there to completion, with the ultimate decision to pay or not made by the Region Comptroller. A decision to pay can only be made when there is a documented legal opinion the fee constitutes a reasonable service charge per CWA § 313(c).

The three key takeaways for installations are: 1) immediately upon receipt forward stormwater service charges to Region Counsel; 2) payment decisions reside at the Region; and 3) contact Region Environmental Counsel with questions or concerns.

## "Come Fly With Me:" The Inside Scoop on the Chief of Naval Air Training Command

LCDR Mary Murphy, Staff Judge Advocate, CNATRA


Although he doesn't sing, the Chief of Naval Air Training (CNATRA) oversees all of the Naval Air Training Command which consists of 5 Training Wings and 17 Squadrons. CNATRA is also in charge of the Naval Flight Demonstration Squadron (NFDS), the Blue Angels, and the Naval Aviation Training Unit (NATU) at Vance AFB. He serves as Commander Naval Air Forces (CNAF) Deputy Commander for training. CNATRA's Training Wings provide training for all Naval Aviators (pilots) and Naval Flight Officers (NFO) as well as student aviators from Italy, Brazil, Germany, Norway, Spain, Denmark, Saudi Arabia, France, Singapore, and India.

In terms of its chain of command, CNATRA is aligned under CNAF Pacific Fleet and Commander Naval Air Forces in the Naval Aviation Enterprise (NAE) concept. CNATRA's headquarters is located onboard NAS Corpus Christi (NASCC) and its Training Wings and Squadrons are dispersed across the Southeast region.

CNATRA's mission is to "safely train the world's finest combat quality aviation professionals and deliver them to the fleet for follow-on training at exactly the *right time,* in exactly the *right numbers,* with the *right skill sets*, at an *optimal cost*." There is no coincidence that CNATRA's mission statement begins with the word "safely." Safety is always the number one concern. On average, CNATRA produces close to 1500 pilots and NFOs each year. Training pilots requires a significant investment in time and money. Every pilot and NFO goes to a Fleet Readiness Squadron (FRS) after completing their training. The FRS is the first time the pilots are in the actual aircraft they will be flying in the fleet. After FRS, they head to a fleet squadron to deploy.

Every other week, CNATRA has a Smart Meeting with its Training Wings, and the Wing Commodores brief on the status of production and any issues they have encountered over the last two weeks. Because CNATRA is responsible for making sure pilots and NFOs make it to the fleet on time, the CNATRA headquarter's staff coordinates with other stakeholders in the NAE concept and creates a plan that ensures production and mission requirements are met despite an increase in demand for student production, limited funds, and reduced manning.. Every student throughout NATRACOM is tracked, and careful attention is paid to students who are "behind"- no matter where the student is in the training pipeline.

The flight training pipeline for student naval aviators (SNA) begins with "Primary." SNAs are assigned to one of three commands for Primary - Training Wing Four (NASCC), Training Wing Five (NAS Whiting Field), or NATU (Vance AFB). The SNA's performance and platform preference determine where he or she heads next for the next phase of training. Jet SNAs head to either Training Wing One (NAS Meridian) or Training Wing Two (NAS Kingsville); rotary SNAs are sent to Training Wing Five; and multi-engine pilots head to Training Wing Four. All NFO students receive training at Training Wing Six (NAS Pensacola).

Just as Frank Sinatra could not have recorded his hit "Fly Me to the Moon" without recording crews, musicians, and backup singers, CNATRA could not meet its production requirements without the training crew and "backup singers" who work within NATRACOM. These people are responsible for ensuring the planes are fixed, the students receive proper training, and all administrative needs are met. Unlike at most commands, 52% of the workers in NATRACOM are contractors, and, with the exception of NFDS aircraft, contract workers perform the maintenance on the aircraft assigned to CNATRA. The breakdown for the rest of NATRACOM is: 15% USN Officers; 14% Civilians; 6% USNR; 6% USMC; 3% USN enlisted; 2% USAF; 1% USMCR; and 1% USCG. NATRACOM relies heavily on the use of reservist instructors to meet production requirements and relies on the civilians to provide continuity and perspective. Most of the civilians on staff at headquarters have been at CNATRA for fifteen years or longer. This clearly illustrates the importance of civilians and reservist instructors and their contributions to CNATRA's mission.

If you would like to learn more about CNATRA and its history, you can visit the website: https://www.cnatra.navy.mil/ and invite everyone to check out CNATRA's seven principles of operational excellence (listed below). While the focus is aviation, these principles could just as easily apply to SJAs.

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***Integrity***

Do the right thing. Adhere to the highest standards at all times.

***Level of Knowledge***

Know your job and procedures. Never stop learning.

***Procedural Compliance***

By the book procedures. No short cuts. Fight complacency.

***Formal Communications***

Use clearly stated and standardized language that minimizes misunderstanding.

***Questioning Attitude***

Speak up, ask, investigate when you sense or know something is not right.

***Forceful Backup***

Speak up, ask and act when you know something is wrong.

***Risk Management***

Identify, understand and mitigate risks.

## Knock Knock: When Civilian Law Enforcement Comes for One of your Service Members

LCDR Cheryl Ausband, Staff Judge Advocate, NAS Pensacola

Just because the cops show up at your command with an arrest warrant doesn't mean you have to force the member to go with them, nor should you, without following the proper procedures. Chapter 6 of the JAGMAN goes into detail about what is required before commands allow members to be arrested and taken off the installation against their will. If you are in this situation the command should balance the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation, against the right of the State to exercise its jurisdiction. So, what do you do if they knock on your door?

Step one, look to see what kind of paper they have:

If they have an In-State Warrant: Commanding officers are authorized to, and normally will, deliver the member when a proper state warrant is issued. Before the commands turn a member over to the civilian authorities they must follow two steps: (1) consult with a Judge Advocate (who will review the warrant to be sure it is proper); and (2) obtain a delivery agreement. The Delivery Agreement must be in writing and signed by someone with authority to bind the State. An example of the agreement can be found in JAGMAN Appendix A-6-b. If the warrant is for a civilian employee, the same above rules apply but you do not have to complete a delivery agreement.

If they have an Out-of-State Warrant: When civil authorities from another State request delivery of a member, any officer exercising general court-martial jurisdiction or any commanding officer, after consultation with a judge advocate, is authorized, upon compliance with the above steps, to deliver the member. The member may be delivered if he or she waives extradition (a sample with all the requirements for an effective waiver can be found in the JAGMAN, Appendix A-6-a), or upon presentation of a fugitive warrant. When a member declines to waive extradition, the nearest Staff Judge Advocate shall be informed and shall confer with the civil authorities as appropriate. The member shall not be transferred or ordered out of the State in which he is then located without the permission of the Judge Advocate General, unless a fugitive warrant is obtained.

If it's a Federal Warrant: When Federal law enforcement authorities display proper credentials and Federal warrants for the arrest of members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a DON installation, commanding officers are authorized to and should allow the arrest of the individual sought; no delivery agreement is necessary.

If they don't have a Warrant: If there is no warrant, a command must seek guidance from their Echelon II commander before delivering a member to the authorities and consult with a Judge Advocate.

Step two: Effect the delivery. When a command has determined that a person is to be delivered in accordance with the above steps the following guidance should be considered.

(1) If the person to be delivered is a military member, the member may be ordered to report to a location designated by the commanding officer, for example, to the base legal office, and surrendered to civil authorities.

(2) If the person to be delivered is a civilian, the person may be invited to report to the designated space for delivery. If the civilian refuses, the civilian authorities may be escorted to a place where the civilian is located in order that delivery may be affected. A civilian may be directed to leave a classified area.

(3) All should be done with minimum interference to good order and discipline.

JAGMAN Chapter 6 provides additional details and guidance on this topic, and your local Staff Judge Advocate can and should advise you whenever you find yourself in this situation.

# Understanding the Foreclosure Process

LT Alan Fowler, Staff Judge Advocate, NAS Key West

When a homeowner stops making his or her mortgage payments, it may take a year or more before the tenant is affected. During the course of that year, a tenant will receive paperwork in the mail about the foreclosure process, which may contain undefined legal terms and fail to fully explain the foreclosure process. Twice, my residence has been foreclosed on – once while stationed at Naval Station Everett and again while stationed at Naval Air Station Key West. While the immediate reaction is fear of a short-fused ejectment from one's residence, the foreclosure process is not difficult to navigate, and the protections for tenants in foreclosure make it likely that the tenant may even find a better home than their current one.

**Pre-Foreclosure – Process.** When a homeowner stops making his or her mortgage payments, much like any other credit obligation, a bank's collections department will seek to contact the homeowner to get the payments current or to negotiate a sale of the home to another person, commonly known as a "short sale."

**Pre-Foreclosure – Impact on Tenants.** Unfortunately, most tenants do not know, nor have any reason to know, that a homeowner is failing to pay his or her mortgage. In my experience, a landlord's consistent failure to pay a mortgage typically coincides with a financial hardship that affects the landlord's other obligations, such as maintenance, lawn care, and homeowners association dues. Likewise, communication from the landlord typically decreases or ceases altogether. If you experience difficulty contacting your landlord and the landlord is failing to respond to maintenance or other service requests, it may be a sign the landlord has fallen on hard times and may be behind on his or her mortgage. If, and when you speak to your landlord, you may want to inquire about the status of the mortgage payments.

**Foreclosure - Process.** If, after three to six months of non-payments, the homeowner fails to bring the payments current and is unresponsive (thus, precluding the "short sale" option), then the bank executes the court paperwork to foreclose on the property. In some states, this paperwork is a formal lawsuit, called a Complaint, which gives the homeowner an opportunity to present a defense and contest the foreclosure. In other states a Notice of Default is filed which is less formal, and the primarily available response by the homeowner is to bring the payments current. In either case, the tenant will receive a copy of the paperwork, since it is usually mailed to the property for the attention of any occupant. Once the Complaint or Notice of Default is filed, most homeowners do not have a defense for their nonpayment or the ability to bring the payments current. Even without the homeowner mounting a defense to a Complaint, it can take anywhere from 60 days to a few months for the bank to obtain a judgment against the homeowner. In some states, such as a Florida, banks and homeowners are required to mediate the lawsuit, which could result in the restructuring of the loan and the continued ownership by the homeowner (which is good for a tenant) or, more likely, it could result in merely delaying the process. Likewise, a Notice of Default will typically stand for about 60 days before the bank takes further action. In states where a Complaint is filed but the homeowner fails to defend or has no defense, the court enters a Final Judgment against the homeowner and issues a Notice of Sale. Likewise, in states where only a Notice of Default is required and the homeowner has failed to bring the mortgage payments current, the court will enter a Notice of Sale upon the bank's motion for the same. The Notice of Sale describes the date and time when the property will be sold at an auction, called a "foreclosure sale," "sheriff's sale," or "sheriff's auction."

**Foreclosure – Impact on Tenants.** When a tenant learns of a foreclosure of the residence, he or she should consult a legal assistance attorney. Notably, neither a Final Judgment nor a Notice of Sale strips away ownership of the property from the homeowner – it merely permits the property to be later sold at a foreclosure sale. Therefore, illogical as it may seem (and maddening as it may be), a tenant still has a legal obligation to pay his or her rent. The fact that the property is in foreclosure is not typically grounds to terminate the lease. Likewise, a landlord's failure to make repairs or maintain the home will only be grounds for termination of the lease if it's particularly egregious. Rather than trying to break the lease agreement, a savvy tenant is better suited to seek to renegotiate the rental obligation with the landlord or, better yet, get the landlord to agree to the termination of future rent payments. When I was stationed in Naval Station Everett, I learned that my residence was in foreclosure, but a Notice of Sale had not yet been issued by the court. After speaking with my landlord, he agreed to accept half the original rent amount. It took several months for the Notice of Sale to be executed, and I saved my family thousands of dollars. Whatever agreement you make, get it in writing and signed by you and your landlord, or, at a minimum, confirm the agreement in a letter to your landlord.

*Continued*

## Foreclosures continued


**Foreclosure Sale - Process.** The foreclosure sale is typically scheduled 20 to 25 days after the court's entering the Notice of Sale. Note, however, the foreclosure sale can be delayed for good reason, bad reason, or (seemingly) no reason at all. Whenever delayed, the tenant will receive another Notice of Sale in the mail, describing the date and time of the newly-scheduled sale. Interestingly, the foreclosure sale takes place on the steps of the courthouse, where the opening bid is placed by the bank in the exact amount owed by the homeowner. Then, like any traditional auction, the auctioneer will accept competing bids from individuals before there is a winner. Typically, the Clerk of Court transfers ownership of the property to the winning bidder within 10 days. If the bank is the sole bidder, it owns the property, which, if you've been following the news, has occurred at record levels the past few years (this scenario is commonly referred to as "bank-owned property"). The homeowner's ownership of the property only ceases after the transfer of property.

**Foreclosure Sale – Impact on Tenants.** First, after the foreclosure sale, the landlord no longer owns the property, which means that the landlord cannot rent the property. Thus, the lease agreement with the landlord has terminated, and no rent payments are due to the landlord. Tenants should save the rent payments for later payment to the new owner; though, frequently, the new owner doesn't request any payments for the time between the foreclosure sale and the time the new owner makes contact with the tenant. Moreover, since the landlord no longer owns the home and, thus, will not be making repairs to the property upon the conclusion of the lease agreement, the landlord must immediately return the security deposit to the tenant. Landlords typically have a hard time understanding this. And, frequently, landlords have spent the security deposit, despite their legal obligation to separate these funds. So, pursuing a tenant's security deposit is a good task for a legal assistance attorney. In summary, following a foreclosure sale, tenants should sit tight, wait to be contacted by the new owner, save the rent payment, and immediately contact the landlord for a full return of the security deposit.

**Post-Foreclosure Sale – Process.** The new owner, be it a bank or an individual, will soon want to take control of the property. With record numbers of foreclosures and bank-owned properties and homeowners or tenants still living in those homes, banks have created a "Cash for Keys" program, where the bank will offer the resident a certain amount of money to peacefully vacate the premises by a certain date. This offer will usually first be communicated in writing, but it may also come later via an in-person visit. This "Cash for Keys" offer should be viewed as just that – an offer, which can be rejected, accepted, or negotiated. When my residence in Key West was sold at a foreclosure sale, I successfully negotiated with the new owner, my landlords' mortgage company, to double their "Cash for Keys" offer, because of the in-home improvements my wife and I had made and because of the short-fused, requested move out date. If the new owner is an individual, he or she probably won't offer a cash incentive to a tenant, unless the new owner is particularly sophisticated and experienced in these matters. More often than not, an individual will direct the tenant to vacate. When reviewing a "Cash for Keys" offer or some other offer from a new owner, tenants should be aware of their rights under the Protecting Tenants at Foreclosure Act.

**Post-Foreclosure – Impact on Tenants & Federal Law.** Historically, a foreclosure sale terminates an existing lease agreement under most, or perhaps, all state law. Thus, for example, an unsuspecting tenant with six months on his or her lease agreement would have the agreement terminated after a foreclosure sale and would have to vacate weeks later. Under the recently-enacted federal law, Protecting Tenants at Foreclosure Act (PTFA), tenants now have greater protections. The law provides the following:

> If there is an existing, bona fide lease agreement at the time of the foreclosure sale, the new owner must honor the terms of the lease agreement, unless the new owner will be using the home for his or her primary residence and gives the tenant 90 days notice of the same. Most individuals and banks who purchase foreclosed homes do not intend to use the property as their primary residence. Therefore, most tenants will be able to live out the remainder of the lease. The new owner, of course, is entitled to collect the rent under the terms of the lease agreement. Even if the new owner does plan to make the home his or her primary residence, the law still requires 90 days notice to the tenant.

In the event there is no lease agreement, or if there is a lease agreement but there is less than 90 days left in the lease period, a new owner cannot take control of the property until after giving the tenant 90 days notice to vacate.

Therefore, worst case scenario, a tenant has 90 days to vacate his or her residence, during which time the new owner may collect rent under the terms of the old lease agreement. Despite the protections of the PTFA, a savvy tenant, however, may want to accept the new owner's cash in exchange for moving out earlier. I recommended that a tenant consult a legal assistance attorney, formulate a plan, and maximize his or her options.

**Household Goods Move.** The primary concern for soon-to-be displaced tenants, of course is the costs of the move. Fortunately, the military has planned for this. In the last several years, the National Defense Authorization Act has authorized Household Goods Moves for tenants being displaced due to a landlord's foreclosure. To be eligible, a Final Judgment or Notice of Sale must be entered against the homeowner. In addition to speaking with a legal assistance attorney, consult your Personal Property Office about this opportunity.

With the onset of historic foreclosure rates, servicemembers and their families have found themselves subject to a disruption in their home life that can be distracting and confusing. Armed with an understanding of the process, the protection of PTFA, the safety net of a Household Goods Move, and the advocacy of a legal assistance attorney, any tenant can safely navigate the foreclosure process to a peaceful, uneventful transition to a new home.

## FY12 NDAA Offers More Protections for Victims; What Your CO Needs to Know and Do

LT Matt Anderson, Staff Judge Advocate NAS Corpus Christi

After years of discussions, lawsuits, bad press, and courts-martial wrangling, Congress passed the FY12 National Defense Authorization Act (NDAA), altering the UCMJ and changing policies in regards to victims of sexual assaults. In anticipation of this, the Secretary of Defense released instructions regarding rights of victims.

In RLSOs and NLSOs across the world, Navy JAGs are discussing the merits and mysteries of such policy changes. Trial Counsel add duties to their checklist to ensure they are following all the guidelines. Defense Counsel prep their clients' cases while working within these new rules. SJAs, on the other hand, do not own the luxury of stroking their chins, puffing their pipes, and waxing philosophically about the meaning of these policy changes. Instead, during our briefs with base, squadron, or other unit COs, we will inevitably be asked, "JAG—what does this mean for me?"

First, explain to the CO the new Military Rule of Evidence 514, which creates a victim advocate privilege applicable to the victims of sexual assaults and crimes of domestic violence. Your CO needs to understand that communications between the victim and the victim advocate are legally privileged communications. COs take sexual assault very seriously. They want to gather all the information and make the right decisions. When there is a sexual assault in their command, they become information-hungry and cannot be fed enough. However, if the CO understands that there is a privilege akin to the doctor-patient or attorney-client privilege between victim and victim advocate, you can better manage his or her expectations for information. In the past, SJAs may have seen situations where the CO asks the victim advocate or the SARC questions about the victim: How he/she is doing, if he/she is getting services she needs. Advise the COs to be cautious in asking the types of questions that may invade that privileged communication. The CO should continue to make sure that victims are afforded their rights, and that all of the support mechanisms on base are utilized.

Second, emphasize that the victim needs to have access to a legal assistance attorney. The FY12 NDAA and the latest instructions now require a range of assistance from physically caring for victims to legally supporting victims in various ways. Victims need to be aware of their rights both within the military and in the civilian world.

*Continued*

## FY12 NDAA Continued

Victim advocates do their best, but cannot play the part of an attorney who can help guide the victims through the court-martial process, explain the regulations which are in place to protect the victim's military career, and protect the victim's right to not be re-victimized. The CO most likely understands the roles of the SJA, Trial Counsel, and Defense Counsel. Make sure you take time to explain the role of the legal assistance attorney and who that attorney works for. You may need to remind your CO that the victim securing counsel should not be seen as adverse to either the investigation or the court-martial process.

Finally, the right to request PCS orders has the potential for the biggest impact on a COs operation. Whether the CO you are advising commands a squadron, a ship, or a base, quickly PCS'ing a military member can be a logistical nightmare. There will be an unfilled billet that can adversely impact operations. It can complicate and increase the costs of the court-martial or other proceedings. Thus, your CO must have a full grasp and understanding of this process. Section 582 of the FY12 NDAA lays out exactly what a CO must know and do:

1. The CO has 72 hours to make a determination about whether to transfer the victim or not.
2. If the CO declines the request and does not transfer the victim, the victim can appeal to the GCMCA authority in the CO's chain of command. (Keep in mind that unless the victim is assigned to an installation, the GCMCA in question may not be the Region.)
3. The CO must take the victim's input (read preferences) into consideration before making a decision.
4. The victim must be informed expeditiously about his or her right to be transferred.
5. The CO must make the decision based on the following criteria:
    - The victim's reason for the request (i.e., to avoid the accused, PTSD, etc.);
    - Potential to transfer the alleged offender instead of the victim;
    - Nature and circumstances of the offense;
    - Whether a temporary transfer could meet the victim's needs and the operational needs of the Unit;
    - Training status of the victim requesting the transfer;
    - Availability of positions within other units in the installation;
    - Status of the investigation and potential impact on the investigation and future disposition of the offense, after consultation with NCIS;
    - Location of the offender;
    - Offender's military status (Service member or Civilian); and,
    - Other pertinent circumstances or facts.

Every effort should be made not to negatively impact the career of the victim, and the victim should be made aware of potential impacts of any transfer that he or she may request.

These changes will hopefully encourage sexual assault reporting, and maximize the advice and support given to victims. FY12 NDAA will have massive impacts on the investigation of sexual assaults in the military. If a CO understands a victim's rights, and his or her responsibility to the victim, you can more easily focus on the pursuit of justice, knowing that a victim will be afforded every right available to him or her.

## The Re-revamped Article 120 and the new Article 134 for Child Pornography

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In December 2011, the President signed Executive Order (EO) 13593 to amend the UCMJ and provide for increased protections to victims of sexual assaults and other violent crimes. The EO changed, again, Article 120 and added a new Article 134 to address the ever-increasing caseload of child pornography offenses.

Article 120 was completely overhauled and divided into three offenses: 1) Article 120, Rape and sexual assault (for adults); 2) Article 120b, Rape and sexual assault of a child; and 3) Article 120c, Other sexual misconduct. This change will clarify the existing Article 120 by separating penetration offenses from non-penetration offenses. It is important to note that Article 125 was not repealed, and is still the proper charge to use for forcible sodomy. The changes to Article 120 will become effective June 2012.

Effective as of January 2012, the new Article 134 provision for child pornography criminalizes possession, viewing, receiving, intent to distribute, distribution, and production of child pornography. Trial Counsel will no longer have to assimilate Federal criminal statutes, 18 USC § 2252 or 18 USC § 2252A, for charging child pornography offenses. The new Article incorporates language that does not require the Government to prove the actual age of the child depicted in the images. Finally, EO increased the maximum allowable punishment for child pornography offenses. Under the new Art. 134 provision, the maximum punishments are as follows: 1) possession, receiving, viewing – 10 yrs; 2) possessing with intent to distribute – 15 yrs; 3) distributing – 20 years; and, 4) producing – 30 years. The one change that the EO did not make was creating mandatory minimums for these offenses.

## Recent court-martial sentences in Navy Region Southeast

General Courts-Martial

- Chief Petty Officer charged with sexually abusing his 10-year old niece. Pled guilty to Art. 120, sexual assault of minor under 12. Members sentenced accused to 25 years conf., RIR to E-1, and DD.
- O-5 pled guilty to violating Art. 128 (assault) for pointing a gun at a civilian driver. MJ sentenced accused to 6 months conf. and $2000 forfeiture for 2 months.
- O-3 pled guilty to violating Art. 112a, wrongful possession and manufacture of marijuana. Accused was growing and manufacturing marijuana in his home. MJ sentenced accused to 33 months conf., a dismissal, $10,000 fine and 2 months contingent confinement if fine not paid.
- E-4 pled guilty to Art. 120s, sexual harassment, assault, and wrongful sexual conduct. Members sentenced accused to 60 days restriction, 60 days hard labor w/o confinement, forfeitures. Accused spent 4 months in PTC. Has to register as sex offender.

Special Courts-Martial

- E-6 pled guilty to taking bribes from Sailors committing BAH fraud. MJ sentenced accused to RIR to E-4, 30 days conf. and 45 days of hard labor w/o confinement.
- E-5 charged with Art. 112a and Art. 128 x 2 specs. Accused used marijuana on multiple occasions for period of 6 months. MJ sentenced accused to 1 year conf., RIR E-1, and BCD.
- E-4 pled guilty to Art. 120 x 3 for indecent conduct and Art. 134 x 3 for unlawful entry. On various occasions, Sailor entered vacant hotel rooms, stripped naked, and masturbated on bed until housekeepers came in to clean the room. MJ sentenced accused to 9 months conf., RIR E-1., and BCD. Has to register as sex offender.
- E-3 pled guilty to desertion (drove to Canadian border and left car and a note), UA, damage to nonmilitary property, and drunk/disorderly. MJ sentenced accused to 100 days confinement, BCD, RIR E-1, and BCD.

Summary Courts-Martial

- E-4 charged with Art. 92, spice use and possession of drug paraphernalia in barracks room. SCM awarded 30 days conf., RIR E-2.
- E-3 charged with Art. 112a for possession and Art. 134 doctor shopping in violation of FL law. SCM awarded 14 days conf. and RIR to E-1.