

# MIDLANT Legal Compass

*Guiding Warfighters through Legal and Ethical Waters*

## INSIDE THIS ISSUE:

ALNAV Requiring Commanders to Consider Victim's Jurisdiction Preference	2
Updates to Sexual Assault Response and Reporting Requirements: the 8-Day SAIRO Report	3
Updates to the UCMJ	4
Standards of Conduct for Social Media Use	5
New Rules for On-Base DUIs in Virginia	7
MIDLANT Adjudged Court-Martial Sentences	8
MIDLANT Board of Inquiry Results	10
Command Services POCs	11

### *Basic Legal Information for Command TRIADs and individual Sailors.*

This edition of the Legal Compass discusses developments in sexual assault prevention and response law and policy, changes to the UCMJ, Standards of Conduct for Social Media Use, and Rules of On-base DUIs in Virginia. For the most up-to-date guidance and advice, contact your local RLSO MIDLANT Command Services Office.

As always, we end with our courts-martial and Board of Inquiry results. This gives you a snapshot of the cases that were completed this quarter and their results. For questions about these cases, please contact either the trial department or the SJA to Commander, Navy Region Mid-Atlantic (CNRMA).

If there are ever topics you are interested in us covering or seeking additional information about, please contact our Legal Compass Editor, the Command Services Department Head, LCDR Adam Yost.

Very Respectfully,  
/S/  
Lawrence D. Hill, Jr.  
CAPT, JAGC, USN  
Commanding Officer, RLSO MIDLANT

The primary mission of Region Legal Service Office Mid-Atlantic (RLSO MIDLANT) is to provide prosecution, command services, and legal assistance support to eligible commands and persons in support of Fleet operational readiness.

The *MIDLANT Legal Compass* is a periodic newsletter published by the RLSO MIDLANT Command Services Department.



## ALNAV Requiring Commanders to Consider Victim's Jurisdiction Preference

By LT Ben Haight, JAGC, USN

ALNAV 061/15 was released on July 31, 2015, which establishes a process for consultation with the victim of an alleged sex-related offense that occurs within the United States. It requires commanders to consider the victim's preference with regards to whether the offense be prosecuted by court-martial or in a civilian court with jurisdiction of the offense.

ALNAV 061/15 amends JAGMAN 0128 in the following ways:

1. A victim of a sex-related offense that occurred in the United States SHALL be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. A sex-related offense is defined as any violation of Article 120, 120a, 120b, 120c, or 125 or any attempt thereof under Article 80. The requirement to consider victim preferences applies to all sex-related offenses, including contact offenses.

2. The cognizant commander SHALL consider the victim's preference for jurisdiction prior to making an initial disposition decision. The victim's views are NOT binding on the commander. The commander SHOULD continue to consider the victim's preferences until the final disposition of the case. Cognizant commander means the Sexual Assault Initial Disposition Authority (SA-IDA), General Court-Martial Convening Authority, or any other commander taking action on the case.

3. If the victim of an alleged sex-related offense expressed a preference for prosecution of the offense in a civilian court, the cognizant commander SHALL ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference. The cognizant commander SHALL ensure the victim is promptly notified of any decision by the civilian authority to prosecute or not prosecute the offense. The cognizant commander does NOT need to personally notify the victim and the civilian authorities of jurisdiction preferences. Rather, the cognizant commander is merely responsible for ensuring the notifications are made and may delegate this task to someone in their chain of command.

***BLUF:** "For alleged sex-related offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense."*

-ALNAV 061/15

## Updates to Sexual Assault Response and Reporting Requirements: the 8-Day SAIRO Report

By LT Jamie Cole, JAGC, USN

On 20 January 2015, NAVADMIN 014/15 was released, establishing the 8-day Sexual Assault Incident Response Oversight (SAIRO) report. This report, to be released no more than 8 calendar days after receiving an unrestricted report of sexual assault, is intended to document the steps taken to provide necessary services to the victim as well as document the investigative steps taken by any involved law enforcement agencies. This report is important because it helps provide crucial information regarding the timeliness of the provision of SAPR services as well as the timeliness of investigations. The SAIRO report was intended to be a FOLUP SITREP to the initial SITREP.

*“The SAIRO (8-day) Report is a one-time report required to be submitted within eight calendar days following a command becoming aware of a sexual assault.”*

-NAVADMIN 162/15

On 13 July 2015, NAVADMIN 162/15 was released, providing amplifying guidance on the 8-day SAIRO report. From now on, 8-day SAIRO reports are no longer to be delivered as a FOLUP SITREP. Instead, they are to be submitted as a fillable .pdf form (available at: [https://navalforms.documentservices.dla.mil/formsDir/\\_OPNAV\\_1752\\_2\\_13941.pdf](https://navalforms.documentservices.dla.mil/formsDir/_OPNAV_1752_2_13941.pdf)). When filling out SAIRO reports, work with SAPR VAs and NCIS to collect all relevant information. When completed, the SAIRO reports shall be submitted at a minimum to: 1) the installation CO, if such incidents occurred on or in the vicinity of a military installation; 2) the chain of command of the victim and/or alleged offender, up to and including the first Flag Officer; 3) the ISIC of the service member alleged offender if the alleged offender is a CO or Flag Officer. In addition, your chain of command or ISIC may have additional reporting requirements for SAIROs.

As a reminder, there are several other reporting responsibilities for sexual assaults. First, within 5 minutes of learning about the sexual assault, a voice report must be made to the requisite regional operations center as part of the OPNAV situational reporting (SITREP) requirements. Second, NCIS and SARC must be notified. Third, within 24 hours of learning about the assault, a SITREP must be released. Fourth, within 8 days of the initial report, the SAIRO must be submitted. Fifth, within 30 days of the initial report, the First Flag meeting must occur. Sixth and finally, SITREP updates should be released as appropriate (this is no longer required every 30 days, but a final closeout SITREP is required once a case disposition has been reached). As a recommended best practice, always liaise with your most closely assigned staff judge advocate to ensure all of the required wickets are completed in a timely manner.

## Updates to the UCMJ

By Navy JAG Corps, Code 20

The Joint Service Committee on Military Justice (JSC) recently released the updated version of the UCMJ. These updates incorporate all enacted legislative changes as of the date of this Sidebar. These updates should be kept in mind instead of the now out-of-date version in the Manual for Courts-Martial (MCM), Appendix 2.

Notable updates include:

- New Article 6b, Rights of the Victim of an Offense. (See Sidebar on Victim Rights of 18 May 15.)
- Requires that certain sex-related offenses (120(a) and (b), 120b, and 125, Forcible sodomy) be tried at a General Court-Martial. (Article 18.)
- Replaces pretrial investigations with preliminary hearings. (Article 32; see Sidebar of 22 Dec 14.)
- No statute of limitations for sexual assault or sexual assault of a child. (Article 43.)
- Counsel for accused shall request to interview victim of a sex-related offense through victims' counsel. (Article 46.)
- Appropriate authority may order depositions only when, due to exceptional circumstances, it is in the interest of justice. (Article 49.)
- Requires dismissal or dishonorable discharge for certain sex-related offenses. (Article 56.)
- Limits the convening authority's ability to modify court-martial findings and sentences in certain cases; adds victim opportunity to submit post-trial matters. (Article 60; see Sidebar of 8 Jul 14.)
- Limits Article 125 to forcible sodomy and bestiality.

Upon issuance of Executive Orders by the President, an updated MCM incorporating changes to the Rules for Courts-Martial and Military Rules of Evidence will be released by the JSC. The updated MCM is expected to be released in electronic form later this summer, with a print edition to be published in early 2016.

*These updates should be kept in mind instead of the now out-of-date version in the Manual for Courts-Martial (MCM), Appendix 2.*

## Standards of Conduct for Social Media Use

By RLSO Midlant Command Services Staff

Recently a NAVADMIN adopted standards of conduct for social media use in line with the standards published by the Office of Government Ethics. These standards govern the use of social media sites both in the workplace and at home.

### Use of Personal Social Media Account while on Duty

Unless use of personal social media accounts is somehow related to official duties, they should not be accessed while on duty. Official time is to be used in an honest effort to perform official duties. Additionally, government property is only to be used to perform official duties, unless use for other purposes has been authorized.

Moreover, a supervisor may not ask or order a subordinate to access or manage a supervisor's account nor may a supervisor have a subordinate create content for the supervisor's account.

### Reference to Government Title of Position & Appearance of Official Sanction

Often the question arises of whether employees may use their official title on their social media account. Although identifying one's title or position in an area of an account designated for biographical information is allowed, use of one's official title, position, or authority for personal gain or in a manner that gives an impression that the government endorses or sanctions one's activities on social media is illegal.

Factors that might create an impermissible appearance of government endorsement or sanction include:

- Claiming to act on behalf of the government
- Reference to government connection in support of a statement
- Prominently featuring a government agency's name, seal, or uniform
- Referencing one's title or position in areas other than those designated for biographical info
- Holding a highly visible position such as a senior or political position or being authorized to speak for the government
- Other circumstances than the ones listed could also create an impermissible impression

Posting a disclaimer that states the government does not endorse a post is a good way to avoid creating the appearance of government endorsement. Although posting a disclaimer is not required, doing so is highly encouraged if it would reduce confusion that might otherwise arise.

*Although identifying one's title or position in an area of an account designated for biographical information is allowed, use of one's official title, position, or authority for personal gain or in a manner that gives an impression that the government endorses or sanctions one's activities on social media is illegal.*

**Recommending and Endorsing Others on Social Media**

Employees are allowed to recommend/endorse the skills of others on sites such as LinkedIn as long as they do so in their personal capacity. However, they may only include their title or position with the endorsement if the site automatically includes that information whenever a recommendation is made. Affirmatively choosing to include a reference to title, position, or employer in a recommendation is prohibited unless the person making the recommendation has personal knowledge of the individual from working with him or is recommending him for federal employment.

**Seeking Employment through Social Media**

When seeking employment on social media, federal employees are required to disqualify themselves from participation in any particular matter that will have an effect on the financial interests of a person with whom they are seeking a job. Posting a resume on a social media website does not constitute seeking employment; neither does receiving an unsolicited job offer. However, a government employee who responds to an unsolicited job offer with anything other than a rejection or reaches out to an employer concerning future employment qualifies as seeking employment.

**Disclosing Non-Public Information**

Classifications regarding the disclosure of information such as “classified” or “confidential” apply when using social media. Government employees may not disclose non-public information to further their private interests or the private interests of others. Employees may share information that is already publicly available, but may not accept compensation for statements or communications on social media that relate to their official duties.

**Personal Fundraising**

Employees may use personal social media accounts to fundraise for non-profit charitable organizations in a personal capacity as long as they do not personally solicit funds from a subordinate or known prohibited source. A general fundraising request posted on social media does not equate to a personal solicitation. This is true even if the employee and subordinate are “connected” or if the subordinate responds to the general request. Employees may not, however, respond to inquiries from subordinates regarding the fundraising request. Furthermore, an employee may not specifically reference, link to, or otherwise target a subordinate or known prohibited source when fundraising over social media. In addition, employees cannot use their official title, position or authority as a means of furthering the fundraising effort.

**Official Social Media Accounts**

Official Federal Agency social media accounts are to be used only for official purposes and in line with policies established by the Command. As social media continues to change, policies regarding its use will continue to be updated. If you have any questions regarding these policies, please contact the RLSO.

*Employees may use personal social media accounts to fundraise for non-profit charitable organizations in a personal capacity as long as they do not personally solicit funds from a subordinate or known prohibited source.*

## New Rules for On-Base DUIs in Hampton Roads, Virginia

By Mr. Eric Taber, RLSO Midlant Extern

Recently, the Federal District Court for the Eastern District of Virginia ruled that if a servicemember **assigned to shore duty** receives non-judicial punishment (NJP) for a crime occurring on base (such as DUI or shoplifting), this will prevent that servicemember from subsequently receiving a conviction in federal magistrate court. The Court reasoned that to do so would violate the Fifth Amendment's Double Jeopardy Clause.

It is important to remember that this decision **only** applies to crimes occurring on a military installation **in the Hampton Roads area of Virginia** when a servicemember **assigned to a shore command** has received a federal magistrate court citation for the offense (DD Form 1805). It does **not** apply when a servicemember is arrested and/or charged by state or local authorities or in any area/installation outside of Hampton Roads, Virginia, and it does **not** apply when a sailor is assigned to or embarked on a ship.

As a practical matter, there are three primary scenarios in which this situation can play out. First, if a servicemember is charged with an on-base offense, the command can attempt to NJP him or her. If the servicemember accepts NJP, then this would prevent the servicemember from receiving a subsequent conviction in federal magistrate court. The advantage of this approach is that it is almost always the fastest avenue for holding the servicemember accountable and promoting good order and discipline. The disadvantages of this approach are that the punishment may not be as severe as that which could be imposed by federal magistrate court, and the NJP does not carry the stigma of a federal criminal conviction.

Second, the command can court-martial the servicemember. While this is not ordinary practice for the types of minor offenses normally occurring on base within the jurisdiction of federal magistrate court, a command always has this option if the servicemember refuses NJP, or the command considers the offense to be serious enough to warrant military judicial action. Court-martialing the servicemember would also preclude his or her subsequent prosecution in federal magistrate court. The advantage of this approach is that it can be used to disincentive servicemembers from refusing NJP and the possible punishments available at court-martial are likely to be more severe than those in federal magistrate court. The disadvantages of this approach are obviously financial cost and time.

Finally, the command can take no action against the servicemember. In this scenario, the servicemember would attend federal magistrate court and receive whatever punishment was imposed there. The advantage of this approach is that it requires virtually no expenditure of any command resources (including time to prepare and execute NJP). The disadvantage of this approach is that it will be slower than NJP, and, because the burden of proof is much higher during a criminal trial than during NJP, it's possible a slightly lower percentage of offenders will be held accountable in federal magistrate court.

As a final note, most of the cases for servicemembers being tried in federal magistrate court will be prosecuted by a Special Assistant United States Attorney (SAUSA), who is an active duty Navy JAG. If your command has any questions about this, please contact either the Norfolk SAUSA office (757-441-6391) or the RLSO MIDLANT call center (757-445-5973 or 5976).

*A Federal District Court in the Eastern District of Virginia has ruled that NJP bars the Department of Justice (DOJ) from prosecuting a Sailor in Federal court under the Double Jeopardy Clause of the 5th Amendment.*

***Command Services:*** Attorneys in the Command Services Department provide legal advice and support to commands and command representatives (i.e. legal officers) that do not have an assigned Staff Judge Advocate (SJA). Covered areas include investigations, NJPs and other disciplinary proceedings, administrative separation boards, and ethics. To speak with an attorney in Norfolk's Command Services Department, please call 757-444-1266.

If your command is located in the Northeast AOR, please see the complete listing of SJAs on page 11.

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### ***RLSO MIDLANT Adjudged Court-Martial Sentences October – December 2015***

#### **General Courts-Martial**

At a General Court-Martial in Norfolk, Virginia, an E-6 was tried for rape of a child and indecent liberty with a child. On 8 October 2015, the panel of members returned a verdict of not guilty.

At a General Court-Martial in Norfolk, Virginia, an E-2 pled guilty pursuant to a pretrial agreement to sexual assault. On 26 October 2015, the military judge sentenced him to be discharged with a Dishonorable Discharge, total forfeiture of all pay and allowances, reduction in rank to paygrade E-1, and confinement for 40 months. Pursuant to the pretrial agreement confinement greater than 13 months will be suspended. The suspended confinement may be order executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-7 pled guilty pursuant to a pretrial agreement to sexual abuse of a child and sexual assault of a child. On 28 October 2015, the military judge sentenced him to be discharged with a Dishonorable Discharge, total forfeiture of all pay and allowances, reduction in rank to paygrade E-1, and confinement for 30 months. Pursuant to the pretrial agreement confinement greater than 24 months will be suspended and forfeitures will be waived in favor of his dependents. The suspended confinement may be order executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to sexual assault and wrongful use of marijuana. On 18 November 2015, the military judge sentenced him to be discharged with a Dishonorable Discharge, total forfeiture of all pay and allowances, reduction in rank to paygrade E-1, and confinement for 86 months. Pursuant to the pretrial agreement confinement greater than 18 months will be suspended. The suspended confinement may be order executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-2 was tried for assault and battery, possession of child pornography, and enticing a minor to engage in sexual activity. He pled guilty pursuant to a pretrial agreement to assault and battery and was found not guilty of possession of child pornography and enticing a minor to engage in sexual activity. On 1 December 2015, the military judge sentenced him to reduction in rate to E-1, forfeiture of \$1,000.00 pay per month for 6 months, and to confinement for 6 months.

At a General Court-Martial in Norfolk, Virginia, an E-6 was tried for attempted rape of a child, sexual abuse of a child, and rape of a child. On 7 December 2015, the panel of members returned a verdict of not guilty.

At a General Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to assault consummated by a battery on a child under the age of 16, obstruction of justice, and unauthorized transportation of a minor onto base. On 11 December 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1, and confinement for 10 months. The pretrial agreement has no effect on the adjudged sentence.

### **Special Courts-Martial**

At a Special Court-Martial in Norfolk, Virginia, an E-6 was tried for failure to obey a lawful order and assault consummated by a battery. On 6 November 2015, the panel of members returned a verdict of not guilty.

At a Special Court-Martial in Norfolk, Virginia, an E-5 pled guilty pursuant to a pretrial agreement to violation of a lawful general order, false official statement, sale of military property, larceny, and attempted larceny. On 18 November 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, forfeiture of two thirds pay and allowances for eight months, reduction in rank to paygrade E-1, and confinement for eight months. Pursuant to the pretrial agreement his punitive discharge will be suspended and the forfeitures will be disapproved. The suspended punitive discharge may be order executed if the service member violates the terms of the pretrial agreement.

At a Special Court-Martial in Norfolk, Virginia, an E-4 was found guilty of two specifications of sexual harassment and two specifications of abusive sexual contact. He was found not guilty of one specification of sexual harassment and four specifications of abusive sexual contact. On 11 December 2015, the members sentenced him to a Bad Conduct Discharge. He also spent 66 days in pre-trial confinement.

At a Special Court-Martial in Norfolk, Virginia, an E-5 pled guilty pursuant to a pretrial agreement to assault and battery and violation of a military protective order. On 16 December 2015, the military judge sentenced him to 55 days confinement. The pretrial agreement has no effect on the adjudged sentence.

At a Special Court-Martial in Norfolk, Virginia, an E-7 pled guilty pursuant to a pretrial agreement to three specifications of violating a lawful order, willful damage of non-military property, and assault consummated by battery. On 17 December 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to

paygrade E-5, and confinement for 85 days. Pursuant to the pretrial agreement his punitive discharge will be suspended. The suspended punitive discharge may be order executed if the service member violates the terms of the pretrial agreement.

At a Special Court-Martial in Norfolk, Virginia, an E-4 pled guilty pursuant to a pretrial agreement to one charge, five specifications of indecent viewing, and one charge, one specification of indecent recording. On 22 December 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-1, and confinement for 12 months. The pretrial agreement has no effect on the adjudged sentence.

At a Special Court-Martial in Norfolk, Virginia, an E-5 pled guilty pursuant to a pretrial agreement to assault consummated by a battery and communicating a threat. On 23 December 2015, the military judge sentenced him to reduction in rank to paygrade E-3 and confinement for 12 months.

At a Special Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to indecent exposure. On 28 December 2015, the military judge sentenced him to 29 days confinement. The pretrial agreement has no effect on the adjudged sentence.

### ***RLSO MIDLANT Board of Inquiry Results October – December 2015***

During a board held on 1 October 2015 an O-3, USN, was ordered to show cause for retention due to misconduct under Articles 80, 86, and 112a. The board found that the member did not commit misconduct. The board recommended that the member be retained on active duty.

During a board held on 6 October 2015 an O-6, USN, was ordered to show cause for retention due to misconduct under Article 133. The board found that the member did not commit misconduct. The board recommended that the member be retained on active duty.

During a board held on 13 October 2015 an O-3, USN, was ordered to show cause for retention due to misconduct under Article 112a. The board found that the member did not commit misconduct. The board recommended that the member be retained on active duty.

During a board held on 20 October 2015 an O-4, USN, was ordered to show cause for retention due to misconduct under Articles 92, 107, and 133. The board found that the member did not commit misconduct. The board recommended that the member be retained on active duty.

During a board held on 23 November 2015 an O-4, USN, was ordered to show cause for retention due to misconduct under Article 92. The board found that the member did not commit misconduct. The board recommended that the member be retained on active duty.

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*RLSO Mid-Atlantic welcomes suggestions for articles and recommendations for improvement. For addition to the RLSO Legal Compass distribution list or to make suggestions or recommendations, please email: [adam.yost@navy.mil](mailto:adam.yost@navy.mil)*

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