

U.S. Department of
Homeland Security

United States
Coast Guard



MILITARY JUSTICE MANUAL

COMDTINST M5810.1H
JULY 2021

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COMMANDANT INSTRUCTION M5810.1H

Subj: MILITARY JUSTICE MANUAL

- Ref:
- (a) Uniform Code of Military Justice, 10 U.S.C. §§ 801 – 946a (as amended)
 - (b) Manual for Courts-Martial (MCM), United States (2019)
 - (c) Discipline and Conduct, COMDTINST M1600.2 (series)
 - (d) Enlistments, Evaluations and Advancements, COMDTINST M1000.2 (series)
 - (e) Personnel, Pay and Procedures Manual, PPCINST M1000.2 (series)
 - (f) Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series)
 - (g) United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series)
 - (h) Reserve Policy Manual, COMDTINST M1001.28 (series)
 - (i) Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series)
 - (j) Administrative Investigations Manual, COMDTINST M5830.1 (series)
 - (k) Coast Guard detailing SOP-22C
 - (l) U.S. Navy Manual of the Judge Advocate General, JAGINST 5800.7 (series)
 - (m) Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series)
 - (n) Special Victims' Counsel Program, COMDTINST 5801.5 (series)
 - (o) Sexual Assault Prevention and Response and Recovery (SAPRR) Program, COMDTINST M1754.10 (series)
 - (p) Office of the Judge Advocate General and Naval Legal Service Command Physical Security Program, JAG/COMNAVLEGSVCCOM INST 5530.2 (series)
 - (q) Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series)
 - (r) Coast Guard Clemency Board, COMDTINST 5814.1 (series)
 - (s) Military Qualifications and Insignia, COMDTINST M1200.1 (series)

1. **PURPOSE.** This Manual prescribes Secretarial and Judge Advocate General of the Coast Guard policies, regulations, and procedures applicable to the administration of military justice in the Coast Guard pursuant to, and in support of, References (a) and (b).

DISTRIBUTION – SDL No. 170

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NON-STANDARD DISTRIBUTION:

2. ACTION. All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. Internet release is authorized.
3. DIRECTIVES AFFECTED. Military Justice Manual, COMDTINST M5810.1G is cancelled.
4. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
5. MAJOR CHANGES. This revision to the Military Justice Manual accounts for substantial statutory changes required by the National Defense Authorization Act of 2020, as well as various programmatic changes. This Manual includes a new chapter outlining requirements regarding uniform standards of data collection and public access to court-martial dockets, filings, and records pursuant to Art. 140a, UCMJ. Additional major changes include revisions to post-trial processing and review. The chapter that previously addressed Command Influence has been removed.
6. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
 - a. Commandant Office of Environmental Management, Commandant (CG-47) reviewed the development of this (insert type of directive or guidance), and the general policies contained within it, and determined that this policy falls under the Department of Homeland Security (DHS) categorical exclusion A3. No further environmental analysis is necessary in accordance with the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series).
 - b. This Manual will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial changes to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Department of Homeland Security (DHS) and Coast Guard NEPA policy, and compliance with all other applicable environmental mandates.
 - c. This directive will not result in any substantial change to existing environmental conditions or violation of any applicable federal, state, or local laws relating to the protection of the environment. It is the responsibility of the action proponent to evaluate all future specific actions resulting from this policy for compliance with the National Environmental Policy Act (NEPA), other applicable environmental mandates, and the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series).

7. DISTRIBUTION. No paper distribution will be made of this Manual. An electronic version will be located on the following Commandant (CG-612) websites: <http://www.dcms.uscg.mil/directives/>, and on CGPortal: <https://cgportal2.uscg.mil/library/directives/SitePages/Home.aspx>.
8. RECORDS MANAGEMENT CONSIDERATIONS. Records created as a result of this Manual, regardless of format or media, must be managed in accordance with the records retention schedules located on the Records Resource Center CGPortal site: <https://cg.portal.uscg.mil/units/cg61/CG611/SitePages/Home.aspx>.
9. FORMS/REPORTS. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the Internet: <https://dcms.uscg.afpims.mil/Our-Organization/Assistant-Commandant-for-C4IT-CG-6/The-Office-of-Information-Management-CG-61/> and CGPortal: <https://cgportal2.uscg.mil/library/forms/SitePages/Home.aspx>. Department of Defense forms are available at <http://www.esd.whs.mil/Directives/forms/>. Additional templates and resources are available at on the Office of Military Justice (CG-LMJ) website <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
10. REQUEST FOR CHANGES. Anyone may recommend changes to this Manual. Military members forward changes via the chain of command to the Office of Military Justice at HQS-DG-LST-CG-LMJ@uscg.mil.

/M. BERT/
Rear Admiral, U.S. Coast Guard
Judge Advocate General

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Chapter 1 Nonpunitive Measures

Section A. Administrative Measures Independent of Article 15, UCMJ

A.1. Background	Commanding officers are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment. The Administrative corrective measures generally fall into three categories: extra military instruction, administrative withholding of privileges, and nonpunitive censure. See Rule for Court-Martial (RCM) 306(c)(2).
A.2. Extra Military Instruction (EMI)	EMI is an administrative measure authorized under RCM 306(c)(2) as a legitimate training method. EMI is instruction in a phase of military duty in which an individual is deficient. It is intended for, and directed towards, the correction of that deficiency. It is an authorized training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. EMI must be initiated in writing.
A.2.a. EMI is not punishment	EMI is not to be confused with the punishment of extra duties that may be awarded at nonjudicial punishment or hard labor without confinement awarded at court-martial. The tasks and/or training ordered to be performed as EMI must relate to and have the logical purpose of correcting the appropriate deficiency. For example a member may be required to study a manual, reference, or book and produce a report or answer questions about the material. When a member is deficient in completing properly assigned menial labor only then may menial labor be assigned as EMI to correct that deficiency. As EMI takes the form of on-the-job training, a qualified supervisor must be available to answer questions and inspect the task or work accomplished to ensure the training objectives are achieved. That supervisor is authorized to terminate the EMI once the training objectives have been accomplished.
A.2.b. Limitations on EMI	EMI: <ol style="list-style-type: none"> 1. Must not be conducted for more than two hours per day. 2. If assigned or approved by the commanding officer, may be conducted at a reasonable time outside normal working hours, however it must not be used to deprive a member of normal liberty to which the member is entitled. 3. While its completion may incidentally delay the member's liberty, a member that is otherwise entitled to liberty must commence normal liberty upon completion of EMI. 4. Must not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned. 5. Must not be performed on the member's Sabbath or other significant holy days of religious obligation (e.g. Good Friday, Yom Kippur, etc.). 6. EMI is not normally considered appropriate for E-7 or above.
A.2.c. EMI total period of time	EMI should not normally be ordered for a period exceeding fourteen sessions and if not on consecutive days, to exceed one month in total period of time before completed. If the deficiency is not correctable within the training provided under these limitations, alternative actions should be considered (e.g., performance probation, etc.).
A.2.d. Authority to assign EMI during normal working hours	The authority to assign EMI to be performed during normal working hours is not limited to any particular grade or rate, but is an inherent part of that authority over subordinates vested in officers and petty officers in connection with their duties and responsibilities. This authority to assign EMI to be performed during normal working hours may be withdrawn by any superior.

A.2.e. Authority to assign EMI after normal working hours	The commanding officer has the authority to assign EMI to be performed after normal working hours. Such authority may be delegated, as appropriate, to subordinate officers and petty officers, in connection with duties and responsibilities assigned to them. However, after-hours EMI may only be assigned with the knowledge of the commanding officer.
A.2.f. Supervision of EMI required	An individual deemed by the command to be qualified to correct the deficiency must supervise the performance of EMI. EMI may be ordered to coincide with an appropriate supervisor's work or duty schedule during reasonable hours.
A.2.g. Termination	EMI is automatically terminated at the end of its ordered period and is terminated sooner if the EMI supervisor determines the deficiency has been corrected.
A.3. Administrative withholding of privileges	A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as administrative corrective measures are: special liberty; scheduling of leave during a particular period (reasonable opportunity to take annual leave may not be denied); exchange of duty; participation in special command programs; access to base or ship libraries, movies, or enlisted or officers' clubs; base parking; and base or ship special services events. It may also encompass the withholding of special pay as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations, and is otherwise in accordance with law. Final authority to withhold a privilege rests with the level of authority empowered to grant the privilege unless properly delegated. Withholding of privileges may be done orally or in writing.
A.3.a. Deprivation of liberty	Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Lawful deprivation of normal liberty may result from other lawful actions (e.g., authorized pretrial restraint; deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of foreign relations of the United States). Reasonable conditions may be placed on liberty without constituting punishment. For example a commanding officer of a vessel during a port-call may restrict members from renting motorcycles and mopeds, place certain facilities off-limits, or prohibit certain food or drink products as may be reasonably required for the health and well-being of the crew or the conduct of foreign relations. Advice should always be sought from the servicing legal office.
A.3.b. Nonpunitive nature of certain additional work	It is not a punishment when members in the Coast Guard are required to remain on board and be physically present outside of normal working hours for work assignments that should have been completed during normal working hours, or for the accomplishment of additional essential work, or to achieve the currently required level of operational readiness. This is necessary for the efficiency of the Coast Guard that official functions are performed and that certain work is accomplished in a timely manner.
A.4 Administrative censure	Administrative censure is not punitive and may be administered either orally or in writing ("letters of censure"). Administrative letters of censure are private in nature and, other than administrative letters of censure issued by the Commandant, must not be forwarded to the Chief of Personnel, quoted in or appended to performance reports, included as Enclosures to investigative reports, or otherwise included in official Coast Guard records of the recipient. See Ch. 1.E.4, Discipline and Conduct, COMDTINST M1600.2 (series).

Section B. Conduct Marks

B.1 Applicable Reference	Rules governing conduct marks are properly a subject of administrative regulation. See Chapter 4.D, Enlistments, Evaluations, and Advancements, COMDTINST M1000.2 (series).
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B.2. Policy

A low conduct mark is not a punishment for an offense, and should not be used as such. A low conduct mark merely reflects that the member has committed an offense. It is the offense (or more specifically, the wrongful conduct underlying the offense), not the holding of a disciplinary proceeding (such as NJP or court-martial), that is the basis for the low conduct mark. Marking officials have discretion to determine appropriate conduct marks.

Section C. Verbal Counseling

C.1. Purpose

Counseling refers to senior members or supervisors offering advice and recommendations to juniors or subordinates on matters that may include conduct and performance. The purpose of counseling is to offer guidance and direction to a servicemember in order to improve performance or conduct, enhance the member's career, or help the member overcome personal or professional challenges. Appropriate counseling may take place in an individual setting, or in a group setting such as Chief's Counsel or the Wardroom.

C.2. Nature of counseling

Counseling is not a punitive measure. As such, counseling should not include formal aspects such as a green tablecloth, saluting, and reporting. Counseling must not be used as a way to punish a member, such as by embarrassing or verbally abusing the member in order to deter the member or others from conduct or performance problems.

C.3. Article 31(b), UCMJ and counseling

Counseling must never be used to circumvent the protections provided by Article 31(b), UCMJ. As such, counseling must not be used to question a member about suspected conduct or performance issues, or as a substitute for command investigation. If any person conducting counseling suspects the person being counseled of committing an offense, the counselor must immediately stop asking questions and consult with the servicing legal office through the command. If a member is suspected of misconduct, a commanding officer may order members of the chain of command to refrain from counseling the member on the subject of the misconduct until an investigation is completed and disposed of by the commanding officer.

Chapter 2 Nonjudicial Punishment (NJP)

Section A. Authority and Purpose of NJP

A.1. Authority Article 15, UCMJ, provides commanding officers with the authority to impose NJP without resorting to the judicial forum of a court-martial. Part V, of the Manual for Courts-Martial (MCM) supplements Article 15, UCMJ, and provides procedural guidance. To the extent that Part V, MCM and this Chapter are in conflict, the MCM is controlling. Punishment imposed under Article 15, UCMJ, is called “nonjudicial punishment” to distinguish it from punishment imposed by court-martial, which is “judicial punishment.” NJP may also be referred to as Captain’s Mast, Mast, Admiral’s Mast if imposed by a flag officer, or Article 15 Punishment.

A.2. Purpose of NJP

A.2.a. Maintenance of discipline Each commanding officer is responsible for the maintenance of discipline within his or her command. Allegations of minor offenses should be disposed of in a timely manner and at the lowest appropriate level of disposition. When a minor offense has been committed and lesser administrative measures are considered insufficient to meet the needs of good order and discipline, a commanding officer should consider invoking his or her authority to impose NJP. This disposition decision rests within the sound discretion of the commanding officer and must be made on an individual basis considering the nature of the offenses, any mitigating or extenuating circumstances, any recommendations made by subordinate commanding officers, the interest of justice, military exigencies, and the effect of the decision on the member and the command. The imposition of NJP is not appropriate for serious offenses. See Subsection 2.D.2.

A.2.b. Rehabilitation NJP has an important rehabilitative component. It not only provides a commanding officer with an essential and prompt means of maintaining good order and discipline, but may also promote positive behavioral changes.

Section B. Persons Authorized to Impose NJP

B.1. Commanding officers and officers-in-charge of Coast Guard units All commanding officers may impose NJP upon personnel assigned to their units. All officers-in-charge may impose NJP upon enlisted members assigned to their unit. Throughout this Chapter, references to “commanding officers” as NJP authorities include officers-in-charge, except where specifically noted. A Coast Guard “unit” is a separately identified Coast Guard organizational entity, under a duly assigned commanding officer or officer-in-charge, provided with personnel and material for the performance of a prescribed mission. A commanding officer’s authority to impose NJP may be withheld or limited by a superior commanding officer or the Secretary.

B.2. Commanding officers of enlisted or military personnel Organizational entities established and headed by a commanding officer of enlisted or military personnel pursuant to Section 3-2-5, United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), are Coast Guard units for the purpose of this Chapter and therefore the commanding officer of enlisted or military personnel is authorized to impose NJP on members of that command. However, a commanding officer of enlisted or military personnel must not impose NJP on a member assigned to a subordinate unit that has a duly appointed commanding officer or officer-in-charge. For example, a commanding officer of military personnel at a sector must not impose NJP on a member assigned to a station, even if that station is a subordinate unit of the sector.

B.3. Acting commanding officer The power to impose NJP is inherent in the position and not in the individual. Any officer formally appointed to temporarily replace the commanding officer due to the absence of the assigned commanding officer because of death, incapacitation, illness, TAD assignment, relief for cause, or leave has the power of the assigned commanding officer to impose punishment. However, the maximum punishment that may be imposed by the NJP authority is limited by the rank of the

successor. For example, a lieutenant (O-3) who succeeds to command in the absence of the assigned commanding officer who is a lieutenant commander (O-4) may impose the amount of punishment allowed a commanding officer in the grade of O-3. A subordinate may not impose NJP in situations where the commanding officer is not present at the unit but has not formally ceded command, such as when the commanding officer is on liberty or is otherwise engaged.

B.4. Principal assistant

Any officer exercising general court-martial jurisdiction (OEGCMJ) or an officer of flag rank in command may delegate his or her powers to impose NJP under Article 15, UCMJ, to a “principal assistant.” A principal assistant has the same authority as the officer who delegated the powers, unless the delegation is otherwise limited. The principal assistant must have achieved the rank of at least O-5 and be a member of the OEGCMJ’s staff. Unlike acting commanding officers (discussed in Subsection 2.B.3.), the maximum limitations on punishments will be determined by the grade of the officer who delegated this authority. The delegation must be in writing. For example, if an O-7 delegates his or her powers to a principal assistant who is an O-5, the O-5 may impose the amount of punishment allowed a flag officer. The delegation of NJP authority to a principal assistant does not prohibit the OEGCMJ from imposing NJP authority him or herself in cases where it is deemed appropriate.

B.5. Superior commanding officer

A commanding officer may refer an offense to the next superior commanding officer in the chain of command for disposition, including the imposition of NJP. Although a commanding officer is not disqualified from imposing NJP because of a personal interest or involvement in the case, he or she may desire to forward the matter to maintain the appearance of fairness. Forwarding a matter may also be appropriate when the appropriate punishment may be beyond the limits of the commanding officer’s NJP authority. Additionally, there are situations in which the member’s commanding officer is required to forward a matter to a superior officer in the chain of command, such as if NJP authority has been withheld. See Subsection 2.B.7. Cases may not be referred to a commanding officer of enlisted or military personnel. See Subsection 2.B.2. If the commanding officer decides to refer the offense to the next superior officer, he or she must forward all pertinent documents, including the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910, any written statements, a brief explanation of the reasons for referring the matter, and a recommendation for disposition. See Rule for Court-Martial (RCM) 306(c)(5).

B.6. Subsequent commanding officer

If the member is transferred to a new unit after an alleged offense is committed, but before NJP is imposed, all information concerning the alleged offense should be referred for appropriate action to the commanding officer of the member’s new unit or a competent authority in the member’s new chain of command. Likewise, imposition of NJP by a subsequent commanding officer is permitted if there is a change of command after an alleged offense is committed but before NJP is imposed.

B.7. Withholding NJP authority

The Secretary or a superior commanding officer may withhold authority to impose NJP from a subordinate commanding officer. The superior may withhold all NJP authority or may withhold the authority to impose NJP in certain types of cases (e.g., all alcohol cases), for certain ranks/grades (e.g., all officers), or to impose certain punishments (e.g., reduction in rank). A superior commander may also withhold the authority to dispose of individual cases. However, a superior commanding officer must not direct a subordinate authority to impose NJP in a particular case or suggest to a subordinate what categories of offenses should be disposed of at NJP. If the superior command has concerns as to how the case is being handled by the subordinate, he or she should withhold NJP authority for that case and dispose of the matter him or herself. Whenever practicable, such withholding must be in writing.

B.8. Training required for those with authority to impose NJP

Per Article 137, UCMJ, those with authority to impose NJP must receive periodic training regarding the purpose and administration of the UCMJ. Periodic training will be valid from the time received until the trainee is no longer in a billet with authority to impose NJP or 3 years, whichever comes first. Staff Judge Advocates will ensure that those with authority to impose NJP, within their area of responsibility, have completed the periodic training. The following courses include training blocks that fulfil the Article 137, UCMJ periodic training requirements:

- a. Prospective Commanding Officer, Officer in Charge, Executive Officer and Executive Petty Officer Afloat Course;
- b. Aviation Prospective Commanding Officer and Executive Officer Course;
- c. Boat Forces Command Cadre Course;
- d. Command Assignment Preparation Training (CAPT) Course;
- e. Sector Commander Course; and
- f. Sector Department Head Course.

The cognizant Staff Judge Advocate's office can document compliance with Article 137, UCMJ via certification that a member attended one of these courses within six months of arrival in a billet that includes authority to impose NJP. When training is provided by a judge advocate, not at a course listed above, the cognizant Staff Judge Advocate's office should be notified in order to document compliance with Article 137, UCMJ. Periodic training can take place in forums such as commanding officer conferences or during unit visits. The Office of Military Justice (CG-LMJ) can provide training tools.

Section C. Persons Subject to NJP

C.1. Military members of the command	At the time NJP is imposed, the member being punished must be a member of the command of the commanding officer who imposes the punishment. A member is "of the command" if he or she is assigned or attached to the command by written order. A member may be "of the command" of more than one command at the same time, such as a member assigned or attached to a unit for the purpose of performing TAD.
C.2. TAD personnel	NJP may be imposed upon TAD personnel by the commanding officer of the member's permanent unit or by the commanding officer of the unit to which the member is temporarily assigned. Since a member may not be punished by both commanding officers for the same offense, it is desirable, if circumstances permit, for the respective commanding officers to confer and reach agreement as to which one will exercise NJP authority. Neither commanding officer may attempt to influence or direct the actions of the other. A member must not be assigned TAD from a shore unit to a vessel for the primary purpose of thwarting the member's right to demand trial by court-martial in lieu of NJP. See Subsection 2.H.2.
C.3. Reservists	A member of the Reserves is subject to the UCMJ while performing Inactive Duty for Training (IDT), Active Duty for Training (ADT), or active duty. Accordingly, all offenses committed by a reservist while on active duty, IDT, or ADT may subject the reservist to discipline, including NJP. Personal jurisdiction over reservists performing IDT includes travel to and from their IDT training site, intervals between consecutive periods of IDT on the same day, and intervals between IDT on consecutive days. See Article 2(a)(3), UCMJ. Reservists performing IDT or ADT with an active service unit are considered under that unit's control in the same manner as TAD personnel. See Subsection 2.Y. and generally Ch. 3, Reserve Policy Manual, COMDTINST M1001.28 (series).
C.4. Civilians	Civilians are never subject to NJP, even if otherwise subject to the UCMJ under Article 2(a)(10), UCMJ.
C.5. Members of other armed forces serving with the Coast Guard	A Coast Guard commanding officer may exercise NJP authority over a member of another armed force assigned or attached to his or her command. However, exercise of NJP authority by an appropriate officer within the member's same armed force is preferable because of the differing regulations and administrative procedures among the armed forces. Any exercise of NJP over a member of another armed force is subject to the member's service regulations, applicable directives, and inter-service agreements. Such documents, and the servicing legal office, should be consulted if imposition of NJP on members of other services is contemplated. The member's service regulations govern the rights and procedures for imposition of NJP.
C.6. Members of the Coast Guard Serving	Before an officer in another armed force imposes NJP on a Coast Guard member under his or her command, that commanding officer should review applicable agreements and directives and determine if the Coast Guard member should be permanently or temporarily reassigned to a Coast

with other armed forces	Guard command. If the commanding officer decides to impose NJP, the member must be afforded all rights provided under this Manual. Following the imposition of NJP, the commanding officer must e-mail a report of the offense and punishment awarded to Commandant via the Office of Military Justice (CG-LMJ) and the member's Coast Guard program manager. A commanding officer of another armed force with multiple Coast Guard members assigned may also request that a Coast Guard officer assigned to that command be designated as commanding officer, Coast Guard Military Personnel, in accordance with Section 3-2-5, United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), which would allow that individual to impose NJP. See Subsection 2.B.2.
C.7. Retirees	A retiree may not be recalled to active duty solely for the imposition of NJP, even if otherwise subject to the UCMJ under Article 2(a)(4), UCMJ.
C.8. Public Health Service members	A convening authority may take action under the UCMJ against an active duty member of the Public Health Service (PHS) assigned to duty and serving with the Coast Guard. Before doing so the convening authority should contact his or her servicing legal office and obtain a copy of the current USCG-USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS personnel.

Section D. Offenses for which NJP may be Appropriate

D.1. Minor offenses	NJP may be imposed for minor offenses made punishable by the UCMJ. For a list of factors to consider when determining whether an offense is minor. See MCM Part V, Para.1.e. Questions about whether an alleged offense is minor should be directed to the servicing legal office.
D.2. Offenses not considered minor	NJP must not be imposed for offenses made punishable under Articles 120(a), 120(b), and 120b, UCMJ, and attempts to commit those offenses under Article 80, UCMJ, because those offenses are not minor. Also the Sexual Assault Initial Disposition Authority (SA-IDA) for any allegation of Article 120 (including Article 120(c) and 120(d)), or 120b, UCMJ, and attempts to commit those offenses under Article 80, UCMJ, must be a convening authority identified in Subsection 5.C.1.
D.3. Offenses must be in Part IV, MCM	NJP may only be imposed for punitive offenses listed in Part IV, MCM. This matters because not every failure to follow Coast Guard policy forms a basis for an offense under the UCMJ. Many Coast Guard policies are not enforceable as punitive orders under Article 92, UCMJ. Additionally, not every flag officer in the service is authorized to issue lawful general orders under Article 92(1), UCMJ. Questions regarding whether misconduct constitutes an offense under the UCMJ should be directed to the servicing legal office.

Section E. Limitations on the Exercise of NJP

E.1. Multiple offenses	All known offenses determined to be appropriate for disposition by NJP and ready to be considered at the time, including all such offenses arising from a single incident or course of conduct must be considered together at a single NJP. However, if several offenses arise from the same incident and one or more offenses from that incident are not appropriate for NJP, the commanding officer should not impose NJP for any offenses without prior consultation with the servicing legal office. A commanding officer is not required to delay NJP to complete an investigation into unrelated conduct.
E.2. Double punishment	NJP may not be imposed twice for the same offense. Misconduct punished at NJP may, in some circumstances, subsequently form the basis for charges at court-martial. Compare with RCM 907(b)(2)(D)(iii).
E.3. Civil offenses and dual adjudication	

E.3.a. Offenses prosecuted in a United States federal court	NJP may not be imposed for an offense that has been prosecuted in a United States federal court. However, the imposition of NJP does not bar the federal government from later trying the offense in federal court.
E.3.b. Dual adjudication	Dual adjudication occurs when a member is subject to both state or foreign prosecution and NJP for offenses arising out of the same misconduct. This occurs most frequently when the member commits misconduct while on liberty or leave. State or foreign authorities may prosecute that member under state or foreign law, while the military also has jurisdiction to prosecute the member, as the UCMJ applies to active duty members at all times regardless of geographic location. Dual adjudication is not prohibited by law or regulation. However, as a matter of policy it is disfavored in the military. See RCM 201(d) Discussion.
E.3.c. Misconduct that is pending trial or was adjudicated in a state or foreign court	<p>Prior to imposing NJP for misconduct that is pending trial or was adjudicated in a state or foreign court, the commanding officer must request authorization from the Commander, Pacific Area, the Commander, Atlantic Area or the Deputy Commandant for Mission Support, as appropriate. "Pending trial" means that an indictment, complaint, information, or other accusatory instrument has been brought against the member or that the member is being held over for trial based on a judicial probable cause hearing. Any pretrial diversion or similar program in which the member does not receive a criminal record upon successful completion does not amount to being "tried" or "pending trial." Requests for authorization for dual adjudication must be in writing and should provide a thorough justification as to why NJP is necessary in the subject case. Such requests must be routed through the chain of command. Imposition of NJP within the terms of this policy is limited to cases that meet one or more of the following criteria:</p> <ol style="list-style-type: none"> i. Cases in which punishment by civil authorities consists solely of probation, and local practice, or the actual terms of probation, do not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical. ii. Cases in which civilian proceedings concluded without conviction for any reason other than acquittal after trial on the merits. iii. Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (e.g., where conduct leading to trial before a state or foreign court has reflected adversely upon the Coast Guard or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).
E.3.d. Imposition of NJP for offenses that are related to but not the same as those being tried by a state or foreign court	The prohibition against dual adjudication does not apply to offenses that are related to the state or foreign charges but are not themselves being prosecuted by the non-military entity. A commanding officer may impose NJP for offenses that are related to, but not the same as, those being tried by the state or foreign court. This policy applies both to offenses that are military-specific and thus entirely outside of state jurisdiction (e.g., AWOL, conduct unbecoming an officer) or offenses which the state could prosecute but has decided against pursuing (e.g., imposing NJP for underage drinking when the state, despite the ability to charge the member with underage drinking, has instead only pursued the DUI offense).
E.4. Offenses previously tried at court-martial	NJP may not be imposed for an offense previously tried by court-martial. "Tried by court-martial" for the purposes of this Section means that there has been a finding of guilty or not guilty with respect to the offense. A member has not been tried by court-martial under this Section if the charges were withdrawn and dismissed prior to the announcement of findings.
E.5. Statute of limitations	NJP may not be imposed for offenses which were committed more than two years before the date of the NJP proceeding. Rare exceptions to this prohibition, which apply only to periods of unauthorized absence, are found in Article 43(c), UCMJ.

Section F. Report of Offense

F.1. Initial report of offense	A report of misconduct from any source may serve as the basis for initiating a preliminary inquiry. Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910, may be used to notify the command of an allegation of misconduct, but it is not required. A person need not have personally witnessed the alleged act in order to report a suspected offense.
F.2. Determining type of preliminary inquiry	In accordance with RCM 303, when the commanding officer receives information that a member of the command is accused or suspected of committing an offense, he or she must make or cause to be made a preliminary inquiry into the suspected offenses. There are three types of preliminary inquiries that may result from a report of an allegation: command-level investigations, CGIS investigations, and CGCIS investigations.
F.2.a. Misconduct requiring CGIS notification	Not all allegations of misconduct are appropriate for a command-level preliminary inquiry. Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series), requires that the command notify CGIS upon receipt of a report of alleged felony violations, violations of federal criminal law, lost or stolen government property, work place violence, child pornography, child and spouse abuse, and other crimes. Upon receipt of an allegation of misconduct, the command should consult Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series) to determine if the allegation is of the type that CGIS notification is required. If CGIS notification is required, the command is prohibited from initiating a command-level investigation until notified by CGIS that CGIS will not undertake an investigation. The command should consult its servicing legal office if there are questions as to whether CGIS notification is required.
F.2.b. Misconduct requiring CGCIS notification	Not all allegations of misconduct are appropriate for a command-level preliminary inquiry. Coast Guard Counterintelligence Activities, COMDTINST 3850.1 (series), requires that the command notify CGCIS upon receipt of a report of potential national security crimes, including but not limited to: espionage, subversion, sabotage, assassination, suspected or actual unauthorized acquisition of military technology, research and development information or Coast Guard acquisition program information by—or on behalf of—a foreign power, or other national security crimes conducted by or on behalf of a foreign nations, entities, persons, international criminal organizations, or international terrorist organizations. Upon receipt of an allegation of misconduct, the command should consult Coast Guard Counterintelligence Activities, COMDTINST 3850.1 (series) to determine if the allegation is of the type that CGCIS notification is required. If CGCIS notification is required, the command is prohibited from initiating a command-level investigation until notified by CGCIS that CGCIS will not undertake an investigation. The command should consult its servicing legal office if there are questions as to whether CGCIS notification is required.
F.2.c. Command level investigations	If the allegation does not involve an offense that requires CGIS notification, or if CGIS has been notified and has declined to investigate, the command should then initiate a command-level investigation into the offense. The authority to initiate a command-level investigation can be delegated to the executive officer.
F.3. Allegations of offenses under 120 and 120b, UCMJ and attempts to commit the offense under Article 80, UCMJ	
F.3.a. Initiation of a command-level	A commanding officer who receives a report alleging that any of the following offenses were committed is prohibited from initiating a command-level investigation into these allegations: <ul style="list-style-type: none"> i. Article 120(a), UCMJ, rape; ii. Article 120(b), UCMJ, sexual assault;

investigation prohibited	<ul style="list-style-type: none"> iii. Article 120(c), UCMJ, aggravated sexual contact; iv. Article 120(d), UCMJ, abusive sexual contact; v. Article 120b(a), UCMJ, rape of a child; vi. Article 120b(b), UCMJ, sexual assault of a child; vii. Article 120b(c), UCMJ, sexual abuse of a child; and viii. Article 80, UCMJ, attempts to commit offenses listed in i. - vii.
F.3.b. Reporting requirements	These allegations must be immediately reported to CGIS in accordance with Sexual Assault Prevention and Response Program, COMDTINST M1754.10 (series) and Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series). A checklist for commanders is available on the SAPR website, https://www.dcms.uscg.mil/Portals/10/CG-1/cg111/docs/SAPR/SA_Unit_Commander's_Checklist_for_Unrestricted_Reports.pdf?ver=2018-07-10-153455-783 .
F.4. Pre-disposition restraint not authorized	Pre-NJP confinement or restriction is not authorized. A command may not automatically place a member in restraint solely because he or she has been placed on report or because an allegation has been raised. Pretrial restraint, including pretrial restriction or confinement, may be imposed only in accordance with RCM 304 and 305. Generally, pretrial restraint may be imposed if necessary to ensure an accused's presence at trial or to prevent the commission of additional serious offenses. The member must be immediately released from restraint if the command decides to dispose of the offenses other than at court-martial. If a command believes that the alleged conduct warrants pretrial restraint, it must notify the servicing legal office. However, offenses that warrant pretrial restraint would not typically be considered minor such that disposition at NJP would be appropriate. See Chapter 6 (discussing pretrial restraint further).

Section G. Initial Action

G.1. Initiating a command level investigation	Upon determination that the alleged misconduct does not require a CGIS or CGCIS investigation, the commanding officer should initiate an investigation. The command may also do so if CGIS has declined to investigate, after being notified of an allegation as required under Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series). For allegations of sexual misconduct see Subsection 2.F.3. The authority to initiate a command-level investigation may be delegated to the executive officer.
G.1.a. Commanding officer review of the CG-4910 or initial report	This function may also be performed by the executive officer, chief of military personnel, administrative officer, or any officer or petty officer designated by the commanding officer. If designated, a civilian employee in a supervisory position may also perform this ministerial function. If the reviewer determines that an offense may have been committed and the offense is of the type for which NJP is normally imposed, he or she should designate a preliminary inquiry officer (PIO) to conduct a preliminary inquiry and fill in appropriate information on a Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910. See RCM 303, Preliminary inquiry into reported offenses. The commanding officer may also dismiss the matter and take no further action or take nonpunitive measures. See Chapter 1 (discussing nonpunitive measures).
G.1.b. No authority to dismiss certain sexual misconduct allegations.	Neither the commanding officer nor executive officer may dismiss the matter if the allegation involves an offense of sexual misconduct under Article 120 or 120b, UCMJ. See Subsection 2.F.3. (discussing investigation of offenses relating to sexual misconduct); and Subsection 5.C.1. (Withholding Initial Disposition Authority in Sexual Assault Cases).
G.2. Preliminary inquiry officer duties	

COMDTINST M5810.1H

G.2.a. Resource familiarization	The PIO must become familiar with this Section (2.G.) in its entirety, and with Section 4.E. of the Administrative Investigations Manual, COMDTINST M5830.1 (series), entitled “Managing the Standard Investigation.” That Section provides critical advice on developing an investigation plan, obtaining evidence, documenting witness statements, providing rights advisements, and applying the rules of evidence.
G.2.b. Form CG-4910	The PIO must ensure the applicable sections of the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 are properly completed.
G.2.c. Offense Elements	The PIO must review the description of each of the suspected offenses in Part IV, MCM, and address each of the listed elements during the inquiry.
G.2.d. Evidence collection	The PIO must question any witnesses and collect any documents (log entries, receipts, etc.), statements, and other evidence of the suspected offenses. The PIO should obtain a signed written statement from each witness who has information about the alleged offenses. If a witness refuses to provide a written statement, the PIO should prepare a summary of the interview. It is usually recommended that the PIO not question the suspect until after collecting available evidence and questioning other witnesses. By doing so, the PIO is better prepared to interview the suspect, formulate questions, confront issues in contention and ascertain the suspect’s credibility.
G.2.e. Discovery of new offenses	The Details of Offenses block of the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 should be updated, if necessary, to reflect the evidence collected by the PIO. For example new offenses discovered by the PIO can be added. Further if the evidence supports a different offense than the one initially listed the details should be updated. See Subsection 2.G.4.
G.2.f. Inquiries conducted remotely	The PIO may conduct portions of the inquiry remotely, though in most circumstances, an on-site investigation yields superior results. If the inquiry is conducted remotely, the PIO must take extra care when advising a member of the alleged offenses, providing a rights warning, and obtaining a waiver and statement from the member. See Subsection 2.G.6.
G.2.g. Conclusion of preliminary inquiry	At the conclusion of the preliminary inquiry, the PIO must complete the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 and return the form and any supporting materials obtained during the inquiry to the executive officer. The Details of Offenses block of the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 must include the PIO’s summarized opinion of what actually occurred. Also, the PIO Recommendation block as to the appropriate disposition of the matter must be completed. Though it is not required, a PIO may wish to follow Chapter 4.F., “Concluding the Investigation”, of the Administrative Investigations Manual, COMDTINST M5830.1 (series), to report findings, opinions, and recommendations.
G.3. Offenses previously investigated	If the alleged offenses are the subject of a CGIS Report of Investigation, administrative investigation report, or federal, state, or local law enforcement investigative report, the PIO should review and may adopt the facts from that report. The PIO should conduct additional investigation only if he or she believes that additional information is needed before making a recommendation for disposition.
G.4. New or different offenses	If during the course of the inquiry, the PIO becomes aware of new or different offenses that may have been committed by the member; the PIO should inquire into those offenses. The PIO should make a recommendation concerning the disposition of the new offenses.
G.5. Suspected serious or	If the preliminary inquiry reveals at any time that a criminal investigation by CGIS is required or may be appropriate, the PIO should stop the inquiry and request further guidance from the authority

significant offenses	ordering the investigation. Ordinarily, there is no reason to continue the PIO inquiry if a criminal investigation is commenced.
G.6. Rights warning	Under Article 31(b), UCMJ, a military member suspected of an offense may not be questioned unless he or she is informed of the nature of the offense, advised that he or she does not have to make a statement, and informed that any statement made may be used as evidence. The PIO must advise the person named as the suspect of the investigation of his or her rights under Article 31(b), UCMJ, before asking that person any questions. UCMJ and Miranda/Tempia Rights, Form CG-5810E should be used. The PIO should have a separate witness sign the rights advisement and any written statement given by the suspect. If the PIO suspects that other military members have committed an offense, that person must also be advised of their rights before questioning, even if they are not the subject of the preliminary inquiry.
G.7. Right to consult with an attorney	Questioning must stop immediately if the suspect says that he or she desires to consult with an attorney at any time during the questioning. The right to consult with an attorney is distinct from and does not include an obligation on behalf of the government to provide an attorney. The PIO should note in the report that the suspect asked to consult with an attorney. Questioning may not resume until after the member has been provided the opportunity to consult with an attorney. However, in most cases, sufficient information about the offenses may be obtained through other sources, and it may not be necessary to question the suspect and thus not necessary to provide the suspect with an opportunity to consult with counsel. The command should consult its servicing legal office if it believes that it cannot properly dispose of the charges without obtaining information directly from the suspect.
G.8. PIO recommendation requirements	
G.8.a. Required recommendation	<p>The PIO must include a recommendation for one of four possible dispositions:</p> <ul style="list-style-type: none"> i. <u>Closure</u>. If the facts indicate that an offense under the UCMJ has not been committed or punishment is not appropriate, the PIO should recommend that the matter be closed. ii. <u>NJP</u>. If the PIO believes the facts support a conclusion that the member committed an offense under the UCMJ (see Subsection 2.K.7. regarding the burden of proof at NJP) and NJP appears appropriate, the PIO should recommend NJP and, as the executive officer may direct, make arrangements for any witnesses, statements, documents, and other physical evidence that bear on both sides of the case to be brought to the attention of the commanding officer. iii. <u>Court-martial</u>. If the PIO believes that the alleged conduct is serious and not minor, the PIO should recommend trial by court-martial. iv. <u>Other administrative measures</u>. The PIO may recommend any administrative measures that might seem appropriate. See Section 1.A. for examples of administrative measures that the PIO may recommend.
G.8.b. Punishment recommendation	The PIO must not recommend a type or amount of punishment. It is appropriate, however, for the PIO to note important factors for the commanding officer to consider when determining an appropriate punishment in the event that NJP is awarded, such as the impact on the victim, the burden on the unit, etc.
G.9. Final review of preliminary inquiry	The executive officer should review the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 and any PIO's report. The executive officer must refer the matter to the commanding officer recommending a disposition for the offenses. For example, the executive officer may recommend that the offenses be addressed administratively, disposed of at NJP, be considered for trial by court-martial, or that the matter be closed.

G.9.a. Amending the Report of Offense and Disposition	The Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 may be amended as necessary to ensure the Details of Offenses are supported by evidence.
G.10. Executive officers have no NJP authority	Neither an executive officer nor an executive petty officer has any authority to impose NJP. The authority to impose NJP resides solely with the commanding officer. However, subordinate officers may administratively rebuke, censure, criticize, or warn a suspected offender, and, if authorized by the commanding officer, may initiate other administrative action not amounting to NJP. See Chapter 1. In addition, the executive officer may make a disposition recommendation to the commanding officer. See Subsection 2.B.3 for the policy on acting commanding officers.
G.11. Commanding officer's determination of disposition	The commanding officer must make a determination of the proper disposition of the case in accordance with RCM 306.
G.11.a. Commanding officer's options	<p>The commanding officer may take one of the following actions:</p> <ul style="list-style-type: none"> i. Take no action and thus close the case; ii. Take administrative action (See Section 1.A); iii. dispose of the offenses NJP; iv. forward to a superior authority; or v. consider trial by court-martial. <p>Note that at this point, there are no preferred charges, as defined in RCM 307. Therefore, the commanding officer may not directly refer the case to court-martial. For information regarding preferral of charges. See Chapter 12.</p>
G.11.b. Decision to dispose at NJP	If the commanding officer decides a matter should be disposed of at NJP, he or she will cause the member to be notified of the intended action and appoint a mast representative. If CGIS was consulted regarding the investigation, whether they investigated or not, CGIS should be informed of the disposition. If the matter is closed or addressed administratively, it is a good practice to inform the individual who initiated the report of the disposition.
G.11.c. Proper hearing required for NJP	The decision by the commanding officer to dispose of the offenses at NJP does not equate to a finding by the commanding officer that the member committed the offenses. It is only a determination that NJP is the appropriate forum to determine whether the offenses were committed. In order to actually impose NJP, the commanding officer must find the member committed a criminal offense, as defined under the UCMJ and the MCM, after the member has been afforded a proper hearing, as defined in Part V, MCM.
G.11.d. Adverse Administrative Action	Commanding officers should consider the adverse administrative consequences that are automatically triggered after imposing NJP. These adverse administrative consequences may have wide ranging effects on the member, which include, for example: loss of eligibility for good conduct award; eligibility for reenlistment or promotion; show cause board; recoupment of selective reenlistment bonus; administrative discharge; loss of BAH; removal from any Class "A" school waiting list. As noted below, in Subsection 2.K.29. "dismissal with a warning" is not considered NJP and will not result in adverse administrative actions. Commanding officers are encouraged to seek legal advice to understand the interrelationship between the imposition of NJP and automatic administrative consequences.

Section H. Right to Demand Trial by Court-Martial in lieu of NJP

H.1. By member not	If the matter will be forwarded for NJP, a member who is not attached to or embarked on a vessel must be informed that he or she has a right to demand trial by court-martial in lieu of NJP. He or
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attached to or embarked on a vessel

she must also be informed of the right to consult with an attorney before accepting or rejecting NJP. Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to Shore Unit), Form CG-5810A, or Acknowledgment of Rights – Acceptance of NJP (Officer Attached to Shore Unit), Form CG-5810B should be used to document that the member was notified of his or her rights and whether the member demanded court-martial in lieu of NJP. The command should facilitate the consultation with the attorney by contacting the command’s servicing legal office for the appropriate contact information. A reference explaining how a consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. Vessel precommissioning teams or detachments are not attached to or embarked upon a vessel within the meaning of MCM, Part V. Members assigned TAD ashore from a vessel are not attached to or embarked upon a vessel and therefore must be afforded the right to demand trial by court-martial. Members assigned under PCS orders to a vessel as their permanent unit who, subsequent to allegedly committing misconduct, are placed temporarily at shore units, even if not officially assigned under TAD orders, are not attached to or embarked upon a vessel and therefore must be afforded the right to demand trial by court-martial.

H.2. By member attached to or embarked on a vessel

There is no right to demand trial by court-martial in lieu of NJP by member attached (via PCS orders) to or embarked on a vessel.

H.2.a. “Vessel” defined

The term “vessel” as defined in 1 U.S.C. § 3 and the discussion to RCM 103 is very broad.

H.2.b. Assigning to a “vessel” for the purpose of denying trial by court-martial prohibited

Commands are prohibited from assigning a member to a vessel for the purpose of denying the member the right to demand trial by court-martial. See Subsection 2.H.4. However, if a member is assigned to a cutter under TAD orders, he or she is considered to be attached to the vessel and does not have the right to demand trial by court-martial.

H.2.c. Consultation with an attorney

The command may, in its sole discretion and if it will not unreasonably delay the proceedings, arrange for the member to consult with a military attorney or provide the member the opportunity to consult with a civilian attorney at the member’s own expense prior to imposing NJP to allow the member to obtain information about the NJP process. Facilitation of the consultation with an attorney can be accomplished by contacting the command’s servicing legal office for the appropriate contact information. A reference explaining how a consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. Rights notification must be documented using Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to, or Embarked in, a Vessel), Form CG-5810C, or Acknowledgment of Rights – Acceptance of NJP (Officer Attached to, or Embarked in, a Vessel), Form CG-5810D.

H.3. Effect of demand for court-martial in lieu of NJP

A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked in a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to court-martial resides solely with the command and superior commanders, despite a member’s demand. NJP may not be imposed, however, while the demand is in effect.

H.3.a. Transfer of a member from a shore unit to a vessel

The transfer of a member from a shore unit to a vessel after refusing NJP does not invalidate the exercise of this right for those offenses for which a demand for courts-martial was made. A demand for trial by court-martial does not limit the command’s authority to implement administrative measures. See Section 1.A.

after refusing
NJP

Section I. Member Representation at NJP

- I.1. Background** A mast is not an adversarial proceeding. It is different from a court-martial; a member has no right to be represented by an attorney at mast. However, the member may obtain the services of an attorney or any other person, at no expense to the government, to appear as the member's spokesperson. See MCM, Part V, Para.4.c.(1)(B) and Subsection 2.I.5.
- I.2. Consultation with counsel for members not attached to or embarked on a vessel** A member not attached to or embarked in a vessel will be afforded the opportunity to consult with counsel in order to make an informed decision, prior to making an election to accept NJP or demand trial by court martial in lieu of NJP. Failure to offer the member an opportunity to consult with counsel prior to making an election to accept or refuse NJP precludes the use of that NJP for sentence enhancing purposes in any future court-martial of the member. This limitation was set forth in the case of *United States v. Booker*, 5 M.J. 238, 243 (C.M.A. 1977). The command should facilitate the consultation with the attorney by contacting the command's servicing legal office for the appropriate contact information. A reference explaining how a consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. The consultation may be telephonic. A member does not have a right to consult a particular military attorney, and the attorney made available need not be certified in accordance with Article 27(b), UCMJ. The member may also retain a civilian attorney at no expense to the government provided the proceeding is not unduly delayed.
- I.3. No right to consultation with counsel for members attached to or embarked on a vessel** A member attached to or embarked in a vessel has no right to demand trial by court-martial in lieu of NJP or, consequently, to consult with a military or civilian attorney prior to NJP regarding the option to demand trial by court-martial. However, a commanding officer, at his or her discretion, may permit the member to consult with an attorney. Facilitation of the consultation with an attorney can be accomplished by contacting the command's servicing legal office for the appropriate contact information. A reference explaining how a consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- I.4. Attorney-client relationship** An attorney-client relationship attaches when the right to consult is exercised, but only for purposes of attorney-client privilege. Military attorneys available for consultation purposes may not represent the member unless directed to do so by proper authority. Whether or not the member exercises the right to confer, any decision to accept NJP must be in writing, signed by the member, and indicate that it was a knowing and voluntary decision. Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to Shore Unit), Form CG-5810A, and Acknowledgement of Rights – Acceptance of NJP (Officer Attached to Shore Unit), Form CG-5810B, are used to document the decision, and must be attached to the record of NJP.
- I.4.a. Armed service of the attorney made available** The attorney made available by the Coast Guard may be an attorney from another military service, pursuant to inter-service agreement or memorandum of understanding.
- I.5. Mast representation**
- I.5.a. Appointment** A mast representative will be appointed to assist the member in preparing for and participating in the mast proceedings, unless the member affirmatively declines appointment of a mast representative. However, even if the member declines appointment of a mast representative, the command may, but is not required to, appoint one and so inform the member. The representative

should be an officer or petty officer and must, if practicable, be attached to the unit of the commanding officer conducting the mast.

- I.5.b. Request for a particular mast representative If there is an individual attached to the unit whom the member desires to have as a mast representative, such individual should be appointed if practicable and if the person is reasonably available. Even though requested, such an individual should not be appointed if he or she is involved in the matter that is the subject of the mast or expected to be a witness in the proceedings. The command is not required to assign a specifically requested mast representative and may, in those situations where a requested representative is not assigned, assign as a mast representative an individual deemed capable of best assisting the member to present the member's case.
- I.5.c. Role of mast representative The mast representative serves primarily to assist the member in preparing for and presenting the member's side of the matter and to speak for the member, if the member desires. The mast representative may question witnesses, submit questions to be asked of witnesses, present evidence, and make statements inviting the commanding officer's attention to those matters he or she feels are important or essential to an appropriate disposition of the matter. In addition, the mast representative may make a plea for leniency, and to that end, may solicit and submit statements regarding the reputation of the member at the unit as well as other matters in extenuation or mitigation.
- I.5.d. Communication between mast representative and member Communications between a member and the member's mast representative are not privileged in the same manner as the communications between an attorney and client. Mast representatives will be advised at the time of appointment that their communications are not privileged. Although the communications are not privileged, the commanding officer should respect the privacy of the conversations and give the member and the member's mast representative an opportunity to confer in private.

I.6. Spokesperson

- I.6.a. Entitlement In lieu of a mast representative, the member may elect to be accompanied at mast by a spokesperson. A spokesperson is different from a mast representative and does not perform the same role at a mast. A spokesperson does not have to be a crewmember or even a member of the Coast Guard and may be an attorney retained by the member. At the sole discretion of the commanding officer, a member may be accompanied by an assigned mast representative in addition to the spokesperson. A spokesperson is provided or arranged for solely by the member at no cost to the government. A command need not allow a spokesperson to accompany the member so long as the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and/or an oral reprimand. See MCM, Part V, Para.4.c.(1)(B). A spokesperson is not entitled to travel or similar expenses. Further, any acknowledgement of rights should be made personally by the member and not by the spokesperson.
- I.6.b. Attorneys as Spokespersons A spokesperson need not be an attorney, but the commanding officer may not exclude the spokesperson from the mast solely because he or she is an attorney.
- I.6.c. Scheduling The reasonable scheduling of a mast need not be delayed to permit the presence of a spokesperson. A mast that was reasonably scheduled and at which the spokesperson could not be present is not limited by the punishment caps outlined in Subsection I.6.a.
- I.6.d. Not an adversarial proceeding A mast is not an adversarial proceeding. Thus, a spokesperson is not permitted to examine or cross-examine witnesses, unless permitted by the commanding officer as a matter of discretion. A spokesperson is always permitted to speak for a member when the member is otherwise entitled to speak, except for acknowledgment of rights.

- I.6.e. Communications between a member and the member's spokesperson are not confidential. The only exception is when the spokesperson is an attorney retained to represent the member. If the spokesperson is an attorney, the communications are protected by the attorney-client privilege.
- Communication between spokesperson and member

Section J. Examination of Documents and Evidence

- J.1. Procedures** Prior to imposition of NJP the member must be allowed to examine documents and other evidence that the NJP authority will examine and consider in determining whether to impose NJP. If a command is concerned that permitting examination will compromise an interest such as a victim's or witness' privacy, or an ongoing law enforcement investigation, the command should contact the servicing legal office. However, the commanding officer may redact documents or place limitations on examination or disclosure of documents to protect any interests. Upon request, such documents should also be provided to military counsel representing or advising the member. To avoid delays during the mast itself, the member and the member's designated mast representative should be provided the opportunity to review such materials, including the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG 4910, the PIO's report and any witness statements, prior to the mast. This may have been accomplished at some commands by the PIO or the executive officer. Alternatively, the commanding officer may review the documents and evidence with the member during the mast hearing. The regional CGIS office should be consulted prior to examination of a CGIS Report of Investigation.

Section K. Mast Procedure

- K.1. Nonjudicial in nature** A commanding officer's decision to impose NJP does not constitute a judicial finding of guilt and is not a criminal conviction. A member does not have a criminal record as a result of the imposition of NJP. This distinction prevents the stigma of a criminal conviction while still giving a commanding officer a prompt and efficient tool to maintain good order and discipline at the unit. It is equally important to note that while NJP is an administrative process, as opposed to a criminal process, in order to punish an individual under Article 15, UCMJ, the mast authority must determine that the member committed all elements of an offense as defined by the UCMJ.
- K.2. Location** Traditionally, mast was held on a ship's quarterdeck, or "before the mast." Although most masts are now held in a cutter's wardroom or cabin or the commanding officer's office ashore, the commanding officer may hold mast where the unit's crew can observe it. The setting should maintain appropriate dignity and decorum for such a proceeding and allow the mast to be held without interruption or distractions. The fact that a mast is held ashore rather than onboard a cutter has no impact on the determination as to whether the member is attached to or embarked in a cutter.
- K.3. Presence of member** The member is required to be present at the mast subject to the following exceptions:
- a. Member afforded rights of a party. A mast may be held in the member's absence where NJP is awarded on the basis of the record of a court of inquiry or an investigative body during which proceedings the member was afforded the rights of a party with respect to the offenses for which NJP is contemplated. See Section 2.V.;
 - b. Member absent without authority. A mast may be conducted in a member's absence for a member absent without authority if the member was previously given notice that the command was considering NJP, informed of the suspected offenses and his or her rights at mast, and, if not attached to or embarked in a vessel, did not demand trial by court-martial in lieu of NJP;
 - c. Member waives right to be present. A member may waive this right to be present at mast by submitting in writing a statement of his or her desire to waive presence at the mast and an acknowledgement that he or she has had an opportunity to submit all matters in defense, extenuation and mitigation for the commanding officer's consideration. Even if the member properly waives this right, the commanding officer may require the member's presence.

- K.4. Special arrangements for member at a detached or geographically distributed unit** A member may be considered “present” if the mast is held by two-way videoconference in which the member and the mast authority can see each other. This is applicable for members at a detached or geographically distributed unit. A member assigned to a detached unit may also waive the right to be present at mast or ask to participate in the mast by telephone conference call.
- K.5. Official attendees** Normally, the unit executive officer, the unit command chief (if mast is held for an enlisted member), and the member’s department head, division officer, and/or chief petty officer attend the mast. The absence of one of these individuals is not grounds to delay the proceeding. A unit master-at-arms may attend and coordinate the proceeding as directed by the commanding officer. A yeoman or other clerical assistant may be directed to attend to take notes of the proceeding and prepare record entries. If the member has a mast representative, he or she must be present unless excused by the member. If the member has a spokesperson in lieu of a mast representative, the spokesperson may be present if the mast would not be unduly delayed to permit the presence of a spokesperson. All official attendees, including those listed above, attend the mast at the discretion of the commanding officer.
- K.6. Proceedings open to the public** A mast is normally open to the public unless the commanding officer determines that it should be closed due to operational necessity, to prevent disclosure of classified information, or other good cause. In addition, the commanding officer may close the proceedings if the maximum punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand. See MCM, Part V, Para.4.c.(1)(G). However, an open mast is favored and the commanding officer should give serious consideration to keeping the hearing open, if doing so would not jeopardize the proceedings. Any persons whom the member desires present should be allowed to attend unless the mast is closed or the request for attendance is unreasonable. The command is not required to delay the mast or make special arrangements to provide public access to the proceeding. Nothing in these requirements precludes the member from conferring privately with the commanding officer during the member’s opportunity to make a statement. At the commanding officer’s discretion the member can relate privately matters that are of a personal nature.
- K.7. Burden and standard of proof** The standard of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is “more likely than not” that the member committed an offense defined by the UCMJ. Each element of each offense as defined in the MCM must be supported by a preponderance of the evidence (i.e., it is “more likely than not” that the element occurred). This standard is more rigorous than a “probable cause” standard of proof used by law enforcement to obtain a warrant, but a lower standard of proof than the “beyond a reasonable doubt” standard used at a court-martial.
- K.8. Fundamental fairness and the Rules of Evidence** The Rules of Military Evidence, except as noted below, do not apply at NJP. The commanding officer should apply a rule of fundamental fairness: Under all of the circumstances, is it fair to consider this evidence? The commanding officer should consult the servicing legal office with any questions about whether or not to consider specific evidence.
- K.8.a. Exceptions: Rules of Evidence that apply at NJP** A member retains the right against self-incrimination and may not be forced to make a statement or answer incriminating questions. See Article 31(b), UCMJ. Privileges arising from communications with a spouse, an attorney, a member of the clergy, a psychotherapist, or a victim advocate apply, with certain exceptions. See MCM, Part III, Section V.
- K.8.b. Hearsay statements** The commanding officer may consider hearsay, or statements made outside the proceeding, such as police reports and oral or written statements made to an investigator, whether or not the person who made the statement appears in person. When deciding whether a hearsay statement is credible

and the weight it should be given, the commanding officer should carefully evaluate the circumstances under which the statement was made.

K.8.c. Judicial exclusionary rules

Judicial exclusionary rules involving rights warnings and search and seizure do not apply, and the commanding officer may consider evidence that would be inadmissible at court-martial.

K.9. NJP disposition agreements

Commanding officers are discouraged from entering into a “plea agreement” in connection with NJP and may do so only after consulting the servicing legal office.

K.10. NJP Script and Guide

An NJP Script and Guide is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. Following the suggested script is not required for a valid NJP; however, ensuring the member’s rights are provided and preserved is required. The script is intended to assist the mast authority to accomplish that goal. The detailed script answers the majority of questions and issues that may arise during a mast hearing. The mast authority may amend and stylize the provided scripts as necessary or follow a different process to meet the unit’s need for good order and discipline to the extent the member’s rights under law and the regulations provided in this Chapter are preserved and followed.

K.11. Commanding officer’s opening statement

The commanding officer should begin the mast by advising the member of the procedure that will be followed during the hearing. He or she should again inform the member of the right to remain silent and that any statement may be used against the member in deciding to impose NJP or in a trial by court-martial. A member who is not attached to or embarked in a vessel should also be reminded of the right to demand trial by court-martial in lieu of NJP. The mast must be terminated if the member asserts his or her right to demand trial by court-martial at any time prior to imposition of NJP.

K.12. Informing the member of the reported offenses

The commanding officer should inform the member of the identity of the person who submitted the report of offense and the offenses alleged. The description of each offense should be sufficiently detailed to allow the member to respond to the allegations. Normally, this information may be taken directly from the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910. In some cases, it may be necessary to provide additional information about the offenses to ensure that the member is adequately informed of the allegations.

K.13. Inquiry of member

The commanding officer should ask the member if he or she admits committing the alleged offenses. If the member admits committing the offenses, the commanding officer does not need to examine witnesses or receive any additional evidence about the offenses. If the member admits to the offenses, the commanding officer should proceed to the punishment phase of the proceedings. If the member does not admit committing the alleged offenses, the commanding officer will review available evidence and may call witnesses. The member may also invoke the right to remain silent and decline to answer any questions. The commanding officer must not consider the member’s silence as evidence that he or she committed an offense or in deciding what punishment to impose.

K.14. Examination of evidence and witnesses by the commanding officer and member

The commanding officer may decide that the Report of Offense and Disposition and Record of Non-judicial Punishment, Form 4910, PIO report, or other available evidence is sufficient to establish the offense without calling witnesses. There is no requirement that a commanding officer call witnesses. Further, if the member asks for witnesses, the commanding officer is not obligated to call the witness unless the witness is relevant and not cumulative, reasonably available, and necessary for a full and fair proceeding. If the commanding officer determines that witnesses will be called, a witness may be questioned by speakerphone if he or she is unable to appear at the mast in person. Witnesses may be allowed to be present throughout the mast, or may, at the commanding officer’s discretion, be excluded except when called for questioning. A civilian witness, other than a Coast Guard employee, may not be compelled to appear at mast, but may do so voluntarily. A

military witness and/or a Coast Guard civilian employee may be ordered to be present for a mast, although may not be ordered to testify if the privilege against self-incrimination is claimed.

- K.15. Questions by the commanding officer** Generally, the commanding officer calls and questions each witness and may call witnesses in any order or sequence. The commanding officer may also keep witnesses separated or direct them to not discuss the case among themselves or with others but is not required to do so. The commanding officer may use any procedure to develop the facts and circumstances surrounding the alleged offenses (e.g., question and answer, open narrative). Witnesses may be questioned about any prior oral or written statements. The commanding officer may allow the executive officer or any of the other attendees to suggest questions to be asked of a witness.
- K.16. Oaths** Witnesses are not normally placed under oath, but may be if the commanding officer desires. An appropriate oath for a witness would be as follows: "Do you [swear] [affirm] that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?" The use of "affirm" versus the combination of "swear" and "so help you God" is a religious preference to be taken by the witness.
- K.17. Questioning by member** After the commanding officer finishes questioning a witness, the member or the member's mast representative should be allowed to question the witness. The commanding officer may control the proceedings as necessary to ensure that any questioning helps to discover the truth of the allegations against the member, avoids wasting time, and protects a witness from harassment or unnecessary embarrassment. The commanding officer may also require the member or the member's mast representatives to submit questions in writing prior to the mast, or orally at the mast, for the commanding officer to ask a witness. The commanding officer may prohibit a spokesperson from questioning witnesses if in the commanding officer's opinion such questioning would turn the mast into an adversarial proceeding.
- K.18. Additional witnesses** After all planned witnesses have been questioned, the member and the member's mast representative should be asked if they desire that the commanding officer call additional witnesses. If so, those witnesses should be called if they are reasonably available and the commanding officer believes that they will provide relevant information and assist the commanding officer in arriving at a decision. See Part V, Para.4.c.(1)(F). The commanding officer may temporarily suspend the mast while the additional witnesses are located.
- K.19. Dismissing unsupported allegations** The commanding officer should dismiss any alleged offense not supported by a preponderance of the evidence or that the commanding officer believes are duplicative with other existing offenses. A mast ending in dismissal of all offenses is not punishment and no entry will be made in the member's service record.
- K.20. Opportunity for member's statement** The member should be offered an opportunity to make a statement about the alleged offenses after all of the witnesses have been questioned and other evidence considered. The commanding officer may again remind the member of the right to remain silent. If the member makes a statement admitting to new or more serious offenses, an additional rights warning is appropriate. See Article 31(b), UCMJ. The member may make a statement personally or through the mast representative or spokesperson. The member may also submit a written statement. This is not the appropriate place in the proceedings for the member to offer evidence in extenuation or mitigation, as there has not yet been a finding that an offense was committed. Therefore, the commanding officer should advise the member that there will be a later opportunity to present matters in extenuation and mitigation, and to ask for character witnesses.
- K.21. Resolving discrepancies or inconsistencies** If necessary, the commanding officer may recess to consider if the offenses are supported by a preponderance of the evidence or are duplicative. Also, the commanding officer may recall any witness to resolve discrepancies or inconsistencies. The mast will proceed with respect to any remaining offenses. If no offenses remain, the commanding officer will terminate the mast.

- K.22. Findings** If the commanding officer determines based on a preponderance of the evidence that the member committed one or more offenses, the commanding officer should announce, in layman's terms, what offenses the member committed.
- K.23. Appropriate punishment factors** If a commanding officer finds that an offense was committed, he or she must consider the appropriate punishment. The following factors should be considered by the commanding officer before rendering appropriate punishment:
- a. Seriousness of the offense;
 - b. Circumstances surrounding the offense;
 - c. Member's prior documented performance and career potential;
 - d. Potential rehabilitative effect of punishment on the particular member;
 - e. Mitigating and extenuating circumstances;
 - f. Effect of offense upon the good order and discipline within the command;
 - g. Deterrent effect of punishment on potential offenders;
 - h. Comments by members of the command; and
 - i. Recommendations from any subordinate commanders.
- K.24. Consideration of Extenuation and mitigation prior to awarding punishment** The commanding officer should allow the member to present evidence in extenuation or mitigation of the offense. Extenuation evidence is information tending to explain the circumstances surrounding the commission of the offenses. Mitigation evidence is information that might justify the imposition of a lighter punishment than might otherwise be awarded. Such evidence may be presented orally or in writing.
- K.25. Prior documented performance** The commanding officer should review the member's personal data record (PDR) and consider the member's prior performance in deciding whether to impose NJP and, if so, the appropriate punishment. He or she may consider the member's marks, prior NJP or appearances at mast, positive or negative Administrative Remarks entries (Administrative Remarks, Form CG-3307), and court-martial convictions.
- K.26. Comments by members of the command** The commanding officer may ask the member's department head or division officer, command chief, and the executive officer to comment on the offenses and the member's prior performance of duties. Other persons in the member's chain of command may also be asked to comment. Those asked to comment should be prepared to present information that will help the commanding officer reach a balanced view of the conduct under consideration. If such individual knows of information that may be helpful to the member that has not been brought out at mast, he or she should make this known to the commanding officer.
- K.27. Suspension of punishment** When imposing NJP, the commanding officer should also consider whether to suspend all or part of the punishment imposed. Suspension of punishment may be appropriate when it is the member's first offense or where there are extenuating or mitigating circumstances. Suspension provides the member with an additional incentive for proper behavior. The suspension of punishment is still considered NJP, and the collateral consequences will attach.
- K.28. Vacation of suspended punishment** Vacation of earlier suspended punishment and reinstatement of the suspended punishment should be announced before new punishment is imposed.
- K.29. Dismissal** The commanding officer may decide not to punish a member and dismiss the matter with a warning. Such a decision may be based on a determination that punishment is not appropriate even though the member committed the offenses. Dismissal with a warning is not considered NJP, and no entry will be made in the member's service record.

- K.30. Referral to court-martial** If the commanding officer determines that the alleged offense is too serious to be disposed of through NJP, he or she should not announce a finding or impose NJP. The commanding officer should inform the member that he or she intends to consider disposing of the matter at trial by court-martial, or referring the matter to his or her superior commander, and that the member will be informed when a decision is made.
- K.31. Continuation and further investigation** It is not necessary that the commanding officer dispose of a case in one mast session. In unusual circumstances, the commanding officer may continue the mast proceedings to a later session to allow more time for deliberation or to require the gathering of additional information. Also, if it appears during the mast proceedings that other persons or major offenses are involved or that further investigation is required, the commanding officer may terminate the mast proceedings and order an investigation by an appropriate investigative body. None of these actions prevent a commanding officer from disposing of the matter at a subsequent mast, unless the matter is determined to involve a serious offense. If at the time the commanding officer reopens an earlier continued mast proceeding, he or she has received reports of additional offenses of which the member is suspected, and the commanding officer has determined that these additional offenses will be disposed of at a mast proceeding, all of the offenses must be disposed of at the same time. This is consistent with the general policy that all known offenses be disposed of at one time at the lowest appropriate forum.
- K.32. Member's right to appeal** If the commanding officer imposes NJP, he or she must inform the member of the right to appeal.
- K.33. Publication to unit personnel** Publication of NJP results serves to deter other members of the unit from committing similar offenses and has positive effects on unit morale. Commanding officers may, if the interests of offender rehabilitation, good order and discipline, morale, and perceptions of fairness so warrant, establish a policy to announce NJP disposition decisions. For example, announcement may be made in a Plan of the Day, posted on a bulletin board, announced at formation, announced at all hands, or through official e-mail. If the means of publishing NJP results is accessible to or disseminated outside the Coast Guard, the results will be published without the member's name.

Section L. Punishment at NJP

- L.1. Maximum punishment limited by rank or grade** The maximum punishment that may be imposed depends upon the rank of the authority imposing NJP, the rank or grade of the member being punished, and in some situations, by the combination of punishments awarded. The limitations shown in the following two tables apply to each instance of NJP and not to each offense.
- L.2. Table of maximum punishment for officers and warrant officers** Subject to the limitations in Subsection 2.L.4 and Section 2.M, the following table depicts the maximum punishments that may be awarded at NJP to an officer or warrant officer:

Maximum punishment(s) imposed upon an officer or warrant officer when imposed by a . . .			
<i>Punishment type</i>	Flag Officer	LCDR (O-4) or above	LT (O-3) or below
Admonition or reprimand	Yes	Yes	Yes
Arrest in quarters	30 days	No	No
Restriction	60 days	30 days	15 days
Forfeiture of pay	½ of 1 month pay per month for 2 months	No	No

L.3. Table of maximum punishment for enlisted personnel

Subject to the limitations in Subsection 2.L.4 and Section 2.M, the following table depicts the maximum punishments that may be awarded at mast to an enlisted member:

Maximum punishment(s) imposed upon an enlisted member when imposed by a . . .			
<i>Punishment type</i>	LCDR (O-4) or above	LT (O-3) or below	Enlisted officer in charge
Admonition or reprimand	Yes	Yes	No
Restriction	60 days	14 days	14 days
Extra duties (E-6 and below only)	45 days	14 days	14 days
Forfeiture of pay	½ of 1 month pay per month for 2 months	7 day's pay	3 day's pay
Reduction in pay grade (E-6 and below only)	Yes	Yes	No

L.4. Limitations and prohibitions on punishments

All authorized maximum punishments listed may be imposed in a single mast with the following exceptions:

1. Arrest in quarters may not be imposed in combination with restriction;
2. If restriction and extra duties are awarded at the same mast, they must be combined to run concurrently. And, if both restriction and extra duties are awarded, the maximum amount of each must not exceed the maximum that may be imposed for extra duties. See Subsection 2.M.5. Restriction and extra duties may not run consecutively;
3. Extra duties may only be imposed on members of the grade of E-6 and below;
4. Arrest in quarters and restriction may not be imposed on a reservist at NJP awarded during inactive duty training or involuntary active duty pursuant to an order;
 - i. and
5. Reduction in rank may only be imposed on members of the grade E-6 and below.

Section M. Types of Authorized Punishments

M.1. Punitive admonition or reprimand

Punitive admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a member's conduct. A reprimand is a more severe form of censure than an admonition. Punitive admonition and reprimand should not be confused with non-punitive censure

and other forms of administrative corrective measures. See MCM, Part V, Para.5.c.(1); and Chapter 1.E., Discipline and Conduct, COMDTINST M1600.2 (series).

- M.1.a. Format In the case of commissioned officers and warrant officers, admonitions and reprimands awarded at NJP must be administered in writing. For enlisted members, they may be administered either orally or in writing. The punitive letter of admonition or reprimand must be similar in form to the template Letter of Censure, available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- M.1.b. Personnel below the grade of E-7 Punitive letters of admonition or reprimand are not generally considered appropriate in the case of enlisted personnel below the grade of E-7, but are not precluded.
- M.1.c. When overturned on appeal If a punitive letter is appealed and overturned on appeal, a copy of the letter will not be filed in the official record of the member concerned.
- M.2. Restriction** Restriction is moral restraint to specified geographical limits set by the commanding officer imposing the punishment. While the limits of restriction are usually specified to be that of the vessel or the boundaries of a shore unit, the limit can be greater or, within reasonable limits, lesser. It is recommended, especially at larger units, that a written letter be directed to the member setting forth the exact times and geographical limits of the restriction. The letter should be as specific as possible. For example, a restriction to the limits of Coast Guard Sector San Francisco would authorize the restricted member to be anywhere within the limits of Sector San Francisco (e.g., Lake Tahoe, Point Arena, Bodega Bay, Rio Vista and points in between) whereas a restriction to the limits of Station San Francisco property would authorize the member to be anywhere on the U.S. property that composes the station. A template Letter of Restriction is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- M.2.a. Personnel serving on a vessel In the case of a member serving on a vessel, the execution of the punishment may be delayed until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport. However, the restriction must run consecutively. If the commanding officer determines that the restriction will begin during the cutter’s next port call, it cannot be suspended after that brief stop and continues to run while the cutter is underway.
- M.2.b. Interruption Once commenced, restriction runs continuously and cannot be interrupted, except during the service of a punishment of confinement or restriction adjudged by a court-martial, an appeal of the NJP, or emergency leave. In the event that restriction is interrupted, the remaining period of restriction must be served in full upon termination of the interruption.
- M.2.c. Effect on military duties Unless specified by the commanding officer, a restricted member will ordinarily be required to perform his or her full military duties.
- M.2.d. Collateral consequences Restriction may deprive the member of other benefits as a collateral consequence. Restriction will never be the basis for increases in benefits/pay, such as in the case of family separation allowance.
- M.3. Arrest in quarters** Arrest in quarters is a moral restraint of officers to specified quarters established by the commanding officer imposing the punishment. The officer may be required to perform certain portions of his or her regular duties as long as the duties do not involve the exercise of authority over subordinates. Only flag officers or their principal assistants can award punishment of arrest in quarters.

M.4. Correctional custody	Correctional custody is not an authorized punishment at Coast Guard NJP. It would be logistically burdensome for the Coast Guard to establish and operate a correctional custody unit.
M.5. Extra duties	Extra duties means the performance of duties in addition to the member's regular duties. Military duties of any kind may be assigned. Extra duties assigned to petty officers must not be of a type that demeans their grade or position. Extra duties must not constitute a known health or safety hazard to the member or that constitute cruel or unusual punishment. Extra duties are performed before or after regular working hours. The member is not required to perform extra duties on his or her Sabbath day or other significant holy days of religious obligation (e.g. Good Friday, Yom Kippur, etc.), but will still receive credit for performing extra duty on the Sabbath day if it falls within the prescribed period of extra duty. For example, if the member is awarded five days extra duty at two hours per day on Thursday, and he or she observes a Sabbath day within the next five days, then the member would be credited with performing two hours of extra duty on the Sabbath Day and need only perform extra duties on the remaining four days. In imposing this punishment, the extra duties must be stated in terms of the number of days the extra duties are to be performed. The punishment must not be stated in terms of total hours to be served or in terms that require completion of a specific assignment. The number of hours to be served daily should also be stated, and it may not exceed two hours. If the number of hours to be served daily is not stated, the default is two hours daily.
M.6. Forfeiture of pay	Forfeiture is pay lost from the pay record before the member receives it. The term "pay" includes base pay or, in the case of reserve personnel on inactive duty, compensation for periods of inactive duty training. Sea or foreign duty pay is included as "pay," but not special pay for special qualifications.
M.6.a. Expressed in whole dollar amounts	Any forfeiture of pay imposed must be expressed in whole dollar amounts per month only, and not in dollars and cents, as a percentage of pay, or in number of days' pay.
M.6.b. Awarded with reduction in pay grade	If NJP includes both reduction in pay grade and forfeiture of pay, the forfeiture must be based on the pay grade to which the member has been reduced even if the reduction is suspended.
M.7. Reduction in pay grade	Only E-6 and below may be reduced at mast. The maximum reduction in pay grade at mast, regardless of the rank of the commanding officer imposing punishment or the rank of the member facing NJP, is to the next inferior pay grade. Only commissioned officers serving as mast authority may reduce an enlisted member; officers-in-charge may not.

Section N. Effective Date of Punishment

N.1 When NJP takes effect	<p>All NJP takes effect on the date imposed, except:</p> <ol style="list-style-type: none"> 1. When the punishment is suspended; 2. If the member is assigned to a vessel and is awarded either restriction or restriction in combination with extra duties while the vessel is underway or during a deployment away from homeport, the restriction and extra duties may be deferred pending arrival of the vessel in port; 3. If the member submits a timely appeal of the punishment awarded at NJP (See Section 2.U.), and action by the appeal authority is not taken on an appeal within 5 days after the appeal is submitted, any unexecuted punishment involving restraint or extra duties must be delayed upon request of the member until after action is taken on the appeal. See MCM, Part V, Para.7.d; and 4. If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed
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before the second period of restriction begins to run. The two periods of restriction run consecutively, not concurrently.

Section O. Transfer of Member

- O.1. General rule** If a member undergoing punishment involving restraint, extra duties, or forfeiture of pay is reassigned on PCS orders or departs on TAD orders before the punishment has been fully completed, the departure of the member from the command normally remits (i.e. cancels) the remaining punishment, except as provided in Subsection 2.O.2.
- O.2. Exceptions** The punishment is not remitted when the receiving commanding officer agrees to continue the restraint, extra duties, and/or forfeiture of pay, and:
1. The sole purpose of the transfer is to provide a suitable place to carry out the unsuspended punishment because the command awarding the punishment was determined to be unsuitable for purposes of executing the punishment;
 2. The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (for a period not in excess of 60 days) to the command imposing the punishment;
 3. The member was transferred to a support command to facilitate discharge processing;
 4. The transfer was because the member missed the sailing or deployment of his or her unit without authority;
 5. The transfer was for the purpose of holding a court-martial, “show cause” board, administrative discharge or re-enlistment review board, medical board or physical evaluation board. Transfers for medical evaluation and/or treatment (inpatient or outpatient) neither interrupt nor terminate the service of restraint punishment, even though the member may not actually be under restraint; or
 6. The member was transferred because his or her continued presence adversely affected the good order and discipline or morale of the unit or was interfering with the unit’s ability to accomplish its operational mission.
- O.3. Discharge** Any unexecuted portion of NJP is automatically remitted on the day following discharge if the member does not reenlist within 24 hours.

Section P. Deferral of Punishment

- P.1. Definition of Deferral** Deferral of punishment is the delaying or postponement of the commencement of the punishment. Deferral differs from suspension, discussed in Section 2.Q. While deferral delays the imposition of punishment to a later date, suspension of punishment grants a probationary period where the member does not have to perform the restriction or extra duties and, upon successful completion of the suspension, the unexecuted part of the sentence is remitted (or cancelled).
- P.2. When deferral of unsuspended punishment is permissible** A commanding officer imposing punishment may not defer the start of an unsuspended punishment, except as follows:
1. Vessel underway at the time of NJP. The execution of restriction or restriction with extra duties may be deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport;
 2. Appeal. A member who appeals his or her NJP is required to serve any punishment while the appeal is pending. If action by the appeal authority is not taken within 5 calendar days after submission, upon the member’s request, any unserved punishment involving restraint or extra duties must be deferred until action on the appeal is taken. See MCM, Part V, Para.7.d;
 3. New punishment. If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction

must be completed before the second period of restriction begins to run. The second of period is deferred. The two periods of restriction run consecutively, not concurrently;

4. Medically unfit. If the member is found by proper authority to be medically unfit to serve the punishment, the commanding officer may defer the execution of the punishment until the member is determined by proper authority to be medically fit to serve the punishment;
5. Emergency leave. The commanding officer may defer the execution of an unsuspended punishment if the commanding officer grants the member emergency leave. In this instance, deferral ends and the punishment commences upon the member's return to duties;
6. Unauthorized absence. An unauthorized absence by a member serving NJP interrupts the service of that punishment and automatically defers continued service of that punishment. The deferment ends upon the member's return to a Coast Guard unit that knows of the existence of the deferred restraint or extra duty punishment and has the facilities to carry out the punishment. If an absentee is placed in restraint for other reasons (such as restriction or confinement in anticipation of a court-martial), such restraint does not count towards the deferred restraint punishment and the deferral of restraint punishment ends only on completion of the restraint for other reasons; and
7. Not-fit-for-duty status. If a member who is serving extra duties as a punishment is placed in a not-fit-for-duty status, the not-fit-for-duty status defers the service of extra duties. If the extra duties are being served concurrently with restriction, the restriction will continue to run in spite of the not-fit-for-duty status (so long as the member is medically fit to serve restriction). When the member is returned to a fit-for-duty status, the remaining punishment of extra duties is immediately reinstated. Any extra duty remaining to be served when the sentence to restriction is completed is remitted.

Section Q. Suspension of Punishment

Q.1. Definition of Suspension	To suspend a punishment means to hold it in abeyance, or not execute it, for a specified probationary period. If the member successfully completes the probationary period, the remainder of the punishment is remitted, or cancelled. See Section 2.T. Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ. Other appropriate conditions of the suspension may be specified in writing by the NJP authority (e.g. successful completion of anger management or alcohol rehabilitation program, attendance at family counseling sessions). If the member violates the conditions of the suspension, the suspension is vacated and the punishment is executed. The commanding officer who imposed NJP, or a successor in command, may, at any time, suspend any part or amount of the unexecuted punishment and may suspend a reduction in pay grade or forfeiture, even if executed. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of execution. The imposition of a punitive letter of admonition or reprimand may not be suspended.
Q.2. Period of suspension	A suspension must be for a definite period, not to exceed six months from the start date of the suspension, and this period must be specified when the punishment is suspended. The running of the period of suspension is tolled during periods of unauthorized and unexcused absence and when proceedings to vacate suspended punishment are commenced.
Q.3. Transfer of member remits suspending punishment	<p>When a mast punishment is suspended for a specified period and the member is transferred before the end of the period, the punishment is automatically remitted (or cancelled) when the member is transferred on PCS orders or departs on TAD orders except when:</p> <ol style="list-style-type: none"> 1. The sole purpose of the transfer is to provide a place to carry out the unsuspended punishment; 2. The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (a period not in excess of 60 days) to the command imposing the punishment; 3. The member is being returned to his or her cutter after having missed its sailing without authority;

4. The member is being returned to his or her unit after having been on temporary additional duty for the purpose of a court-martial, “show cause” board, administrative discharge board, medical board, physical evaluation board, or for medical evaluation and/or treatment;
5. The punishment is imposed by an active service unit on a reservist who returns to his or her reserve unit or any other unit for subsequent periods of active or inactive duty training;
6. The member has been assigned TAD or PCS to a support command to facilitate discharge processing; or
7. The member was transferred because his or her continued presence was adversely affecting the good order and discipline or morale of the unit or was interfering with the unit’s ability to accomplish its operational mission.

Q.4. Automatic remission

Unless the suspension is sooner vacated, suspended portions of a punishment are remitted (or cancelled), without further action, upon the termination of the period of suspension, promotion, or advancement of the member.

Section R. Vacation of Suspension
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R.1. Definition of Vacation

To vacate a suspended sentence means to end the period of suspension and enforce the sentence. A commanding officer should consult the servicing legal office before taking action to vacate a suspended punishment. Vacation of a suspended nonjudicial punishment is not itself nonjudicial punishment. Therefore additional action to impose nonjudicial punishment for a violation of a punitive article of the UCMJ upon which the vacation action is based is not precluded. See MCM, Part V, Para.6.a.

R.2. Who may vacate

A commanding officer may vacate all or a portion of the suspended punishment. Any commanding officer competent to impose the type and amount of punishment involved may vacate a suspended punishment. If the suspended punishment exceeds that which the commanding officer could initially award, the commanding officer may still vacate the suspension; however, only so much of the punishment that is within the authority of the present commanding officer to impose can be carried out. This possibility could arise where a commanding officer was replaced by an officer-in-charge, or where a commanding officer in the grade of LCDR was relieved by a LT. See MCM, Part V, Para.6.a.

R.3. Reason to vacate

Vacation of a suspension may be based on an offense under the UCMJ or other appropriate conditions of the suspension specified in writing by the NJP authority. See MCM, Part V, Para.6.a.(4). This is because unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ.

R.3.a. Timing of violation

Vacation of a suspension must be based on conduct that occurred during the period of suspension. To vacate a suspension, the commanding officer must act before the end of the suspension period.

R.3.b. Conduct not grounds to vacate a suspension

Misconduct that occurred prior to the period of suspension but discovered within that period is not grounds to vacate the suspension, although it may be grounds to initiate a new Article 15, UCMJ, proceeding, provided that the statute of limitations has not expired.

R.4. Notification

Except when prevented by unauthorized absence of the member, the commanding officer must notify the member in writing that he or she is considering whether to vacate the suspended nonjudicial punishment. The commanding officer must include a description of the grounds for vacation. (See Subsection 2.R.4.a), and notify the member of his or her rights as described in Subsection 2.R.5.a. The commanding officer should provide the member a reasonable amount of time to produce any evidence or witnesses. A template Record of Proceedings of Vacation of Suspended NJP is available on the Office of Military Justice (CG-LMJ) website, and may be used to document notification and member elections. See <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

R.4.a. Contents of notification	As part of the notification, the commanding officer must provide a description of the basis for the vacation and any other information pertinent to the suspended punishment. The notification should include all statements and evidence upon which the commanding officer intends to rely in making his or her decision, or provide an opportunity for the member to review the statements and evidence.
R.4.b. Who notifies when a commanding officer does not personally notify the member	Where circumstances prevent the commanding officer from personally notifying the member or the commanding officer elects not to do so, the commanding officer may direct a subordinate, senior in rank to the member, to notify the member.
R.5. Vacation proceedings	Although a hearing is not required to vacate a suspension, if the punishment is of the kind set out in Article 15(e)(1)-(7), UCMJ, the member should, unless impracticable, be given an opportunity to appear before the commanding officer to present any matters in defense, extenuation, or mitigation. See MCM, Part V, Para.6.a.(5). If a hearing is held, the template NJP Vacation Proceeding Script, available on the Office of Military Justice (CG-LMJ) website, may be used. See https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ .
R.5.a. Member's rights	Prior to the proceeding, a member may receive legal advice from a military attorney; a reference explaining how consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . During the proceeding, the member may present matters in defense, including reasonably available witnesses, extenuation, or mitigation regarding the violation on which the vacation action is based. The member may make either a written presentation or personal appearance or both. If appearance is impracticable due to the unavailability of the commanding officer or for extraordinary circumstances, the member may appear before a person designated by the commanding officer who will prepare a summary of the personal appearance for the commanding officer. The member may be accompanied by someone to speak on the member's behalf; however there is no requirement that a lawyer be made available to represent the member.
R.5.b. Decision to vacate	The commanding officer must consider the evidence, including the matters presented by the member, before making a decision. The decision must be documented in writing. A template Record of Proceedings of Vacation of Suspended Nonjudicial Punishment is available on the Office of Military Justice (CG-LMJ) website, and may be used to document the commanding officer's decision. See https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ .
R.6. Effect of vacation	If proceedings to vacate a suspended punishment are combined with a new action under Article 15, UCMJ, the commanding officer must ensure it is clear to the member what portion of a prior suspension is vacated prior to imposing NJP for the new conduct. The decision to vacate a suspension of NJP is not an issue that may be appealed under MCM, Part V, Para.7.
R.6.a. Effective date of vacation	Vacated punishment begins on the date the commanding officer orders the suspension vacated, following review by the servicing legal office. The order vacating a suspension must be issued within a reasonable time after commencement of the vacation proceeding.
R.6.b. Effect on suspended reductions	If a reduction in grade is suspended, but the suspension is later vacated, the date of rank in the grade to which the member is reduced is the date the original reduction was imposed by the commanding officer. The effective date, however, is the date of the vacation action. For example, if the commanding officer imposed NJP consisting of a suspended reduction in grade for six months on 1 June, and subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the member's new date of rank is 1 June.

R.7. Remitted punishment	Remitted (cancelled) punishment may not be vacated. By definition, remitted punishment no longer exists in any form to be resurrected.
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Section S. Mitigating Punishment

S.1. Definition of Mitigating Punishment	Any part or amount of an unserved portion of a punishment may be mitigated, or reduced. In mitigating a punishment, neither the quantity nor quality of the punishment may be increased. This means that the mitigated punishment may not be of a type more severe than the original punishment.
S.2. Actions authorized	<p>A commanding officer may mitigate any part or amount of the unexecuted portion of the punishment as follows:</p> <ol style="list-style-type: none"> 1. Arrest in quarters may be mitigated to restriction (officers); 2. Extra duties may be mitigated to restriction; 3. Reprimand may be mitigated to admonition; or 4. Reduction in pay grade, regardless of whether the reduction has been executed, may be mitigated to forfeiture. This form of mitigation must be done within four months of imposition and in consultation with Coast Guard Personnel Service Center (PSC).

Section T. Remission, Setting Aside, and Restoration

T.1. Persons authorized	The commanding officer who imposed the punishment, successors in command, and superior commanding officers have authority to remit or set aside punishments.
T.2. Successor in command	The term “successor in command” is defined as a commanding officer who has succeeded to the command of the commanding officer who imposed the punishment, or under whose delegated power the punishment was imposed, provided that the member punished is still in the command. The commanding officer of a unit to which a member has been transferred, either PCS or TAD, is not a successor in command.
T.3. Initiating action	Action to remit or set aside a part of the punishment and to restore some or all rights, privileges, and property affected may be taken at the commanding officer’s own initiative or on application of the member punished. Any such application should be made within a reasonable period of time.
T.4. Remission	Remitting a punishment is an exercise of clemency and applies only to an unexecuted part of a punishment. The unexecuted part of the punishment that is remitted is not carried out, but that part that has already been served, forfeited, etc., is not restored. Once remitted, an unexecuted punishment may never be revived and re-imposed. Because NJP was imposed, the collateral consequences associated with the NJP will not be affected by the remission.
T.5. Setting aside and restoration	<p>The power to set aside punishment and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority considering the case believes that the ends of justice and discipline are best served by setting aside some or all of the punishment. Setting aside all punishment is the equivalent of the member never having been punished pursuant to Article 15, UCMJ. Both executed and unexecuted portions of a punishment may be set aside. Any punishment set aside is extinguished and, unlike suspended punishment, may not be resurrected. The power to set aside executed punishment should be exercised only within a reasonable time after the punishment has been executed (four months absent unusual circumstances). If the entire punishment imposed at a mast is set aside, then:</p> <ol style="list-style-type: none"> a. The effective date of restoration to the former pay grade is the date of advancement to that pay grade prior to the date of the mast that effected the reduction. Any restoration of pay grade must be coordinated with PSC; b. The NJP that has been set aside is not considered NJP for purposes of determining the member’s eligibility for a Good Conduct Medal, advancement, or appointment to warrant officer; and

- c. A conduct mark lowered as a result of the conduct that resulted in the NJP will not automatically be raised, unless the commanding officer assigning the conduct mark deems it appropriate. Assigning an appropriate conduct mark is an administrative decision that must be made as a result of awarding NJP, but NJP is not a pre-requisite to appropriately evaluating a member's conduct under personnel regulations.

Section U. Appeal of NJP

U.1. Basis and time limit to appeal	A member who received NJP may appeal if he or she considers the punishment imposed “unjust” or “disproportionate” to the acts of misconduct for which punished. Any appeal must be submitted in writing within 5 calendar days of the imposition of the punishment, or the right to appeal is waived in the absence of good cause shown. The day the punishment is awarded does not count in the computation; however, the day that the appeal is submitted does count in the computation. The appeal period commences to run even though all or any part of the punishment imposed is suspended. An appeal is “submitted” when it is received by the member’s supervisor or any more senior individual in the member’s unit chain of command.
U.2. Definitions	
U.2.a. Unjust	The term “unjust” denotes illegality. Examples of unjust punishment include: the act of misconduct for which punishment was imposed was not a punishable offense under the UCMJ; the member was not subject to the jurisdiction of the commanding officer who imposed punishment; the commanding officer who imposed punishment was without power or authority to act in the member’s case; or the punishment exceeded legal limitation based upon the status of the member and/or the commanding officer who imposed the punishment. Similarly, the illegality may result from the denial of a substantial right of the member at any stage of the proceedings (e.g., investigation, preliminary inquiry, interrogation, or mast). Illegality may result from the failure to comply with procedural provisions applicable to mast punishment. Additionally, a member who received a punitive letter of censure may appeal, claiming that a matter raised in the letter is inaccurate or not relevant to the offense committed or the punishment imposed. Finally, illegality may result from a lack of sufficient evidence to establish that it was more likely than not, that the member committed the misconduct.
U.2.b. Disproportionate	The term “disproportionate” indicates that although the punishment imposed was legal, it was excessive or too severe considering all of the circumstances (e.g., the nature of the misconduct involved; the absence of aggravating circumstances; the prior good record of the member; or any other circumstances that tend to lessen the severity of the misconduct or explain it in a light more favorable to the member). Adverse administrative consequences of NJP such as delay in advancement or inability to reenlist are not punishment and are not a proper basis for NJP appeal.
U.3. Who acts on an appeal	<p>Appeals must be submitted through the commanding officer who imposed the NJP and any superiors in the commanding officer’s chain of command to the “superior authority” designated by this Section to act upon that appeal. Unless otherwise specified in this Chapter or required by law or policy, the superior authority empowered to act on an appeal of the imposition of NJP is the first flag officer in the chain of command above the commanding officer who imposed the NJP or under whose authority a principal assistant imposed NJP. An officer who has delegated his NJP powers to a principal assistant may not act on an appeal from punishment imposed by that principal assistant. For example, if a district commander’s principal assistant imposed NJP, the area commander, and not the district commander, is the superior authority who acts on the appeal. The superior authority must consult with his or her servicing legal office prior to taking action on an NJP appeal. Specific exceptions to the general rule that the superior authority is the first flag officer in the chain of command of the commanding officer who imposed the NJP are:</p> <ul style="list-style-type: none"> a. The Deputy Commandant for Mission Support (DCMS) is the superior authority for Area Commanders, the Coast Guard Force Readiness Command (FORCECOM), the Personnel Service Center (PSC), the Director of Operational Logistics (DOL), and the Superintendent, United States Coast Guard Academy, and all service and logistics

centers/commands (except those falling under FORCECOM, PSC, or DOL) or a principal assistant to whom NJP authority has been delegated by any command or unit above;

- b. The Vice Commandant (VCG) is the superior authority for NJP imposed by the Commanding Officer, Coast Guard Headquarters, or the Deputy Commandant for Mission Support, or a principal assistant to whom NJP authority has been delegated by them.

U.4. Delegation of appeal authority

An appeal authority who is an officer of flag rank may delegate the power to respond to NJP appeals under Article 15(e), UCMJ, to a principal assistant. See Subsection 2.B.4.

U.5. Format of appeal

The appeal must be in writing, temperate and factual, and set forth a summary of the prior proceedings in the member's case. It must provide a detailed explanation of the basis for the appeal stating that the punishment imposed was either unjust or disproportionate, or both, and why; and the specific action that the superior officer to whom the appeal is made is requested to take. A template NJP Appeal and CO's Endorsement is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

U.6. Intermediate action

U.6.a. Appeal granted

If upon receipt of an appeal, the commanding officer who imposed the punishment determines that the appeal has merit, he or she may either set aside the punishment or adjust the punishment to that requested by the member making the appeal. If that action is taken, the commanding officer must so advise the member and will not forward the appeal. The unit punishment log and associated personnel record entries must be appropriately corrected.

U.6.b. Appeal denied and forwarded by NJP authority

If upon receipt of an appeal, the commanding officer determines that the requested relief should not be granted in total, the commanding officer must forward the appeal to the next superior commanding officer in the chain of command. Appeals should be forwarded as soon as possible to avoid deferments of punishment. The commanding officer must submit an endorsement when forwarding the appeal. The commanding officer's endorsement must be signed personally by the commanding officer imposing punishment or the acting commanding officer and must contain the following:

1. A statement summarizing the proceedings held in the matter;
2. A statement of the facts found by the commanding officer who imposed punishment based on the information considered by him or her and those facts that formed the basis for the punishment imposed;
3. A statement of the commanding officer's reasons as to why the member's appeal should not be granted;
4. A copy of the applicable Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910. The original Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910 remains in Unit Punishment Log;
5. All written documents relating to the member's case must also be submitted including, but not limited to: any written report by the individual assigned to conduct the preliminary inquiry in the member's case; any written statements of persons appearing at the mast as witnesses; and the report of any investigation or court of inquiry that served as the basis for the imposition of NJP if no mast hearing was held; and
6. A copy of the endorsement to the appeal will be provided to the member.

U.7. Punishment pending decision on appeal

A member who appeals his or her NJP punishment is required to serve any punishment while the appeal is pending. If the appeal authority does not act within 5 calendar days after submission, the member may request any unserved punishment involving restraint or extra duties be deferred until the action on the appeal. See MCM, Part V, Para.7.d.

U.8. Action on appeals	Appeals should be expedited whenever possible.
U.9. Review by a judge advocate	<p>An officer acting on an appeal must refer the appeal to a Judge Advocate for consideration and advice prior to acting on the appeal if any of the punishments below have been imposed, otherwise review by a judge advocate is encouraged but not required:</p> <ol style="list-style-type: none"> 1. Arrest in quarters for more than seven days; 2. Forfeiture of pay for more than seven days; 3. Reduction from pay grade E-4 or higher; 4. Extra duties for more than 14 days; or 5. Restriction for more than 14 days.
U.10 Additional inquiry permitted	The reviewing judge advocate is not limited to an examination of the written material that comprises the record of proceedings and may make such additional inquiry as necessary to resolve all issues.
U.11. Action that may be taken on appeal	The officer acting on an appeal may exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment or his or her successor in command. The superior officer may take this action even if no appeal has been filed. Under no circumstances may the superior official increase either the quality or quantity of punishment.
U.12. Notification	Upon completion of the action by the appeal authority, the member and the commanding officer imposing the punishment and any intermediate commanding officers will be promptly notified of the results of the appeal.
U.13. Effective date of deferred punishment	
U.13.a. Members assigned to shore units	A punishment that has been deferred pending the decision of an appeal takes effect again on the date the member's commanding officer is advised of the appeal decision.
U.13.b. Members attached to or embarked on a vessel	In the case of punishment imposed upon a member attached to or embarked on a vessel and deferred pending resolution of an appeal, unless the appeal authority directs otherwise, the deferred punishment remains deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether "arrival of the vessel in port" occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.
U.14. Attachments to the NJP punishment log	Final action on a member's appeal must be attached to the NJP package in the unit punishment log, input into Direct Access, and a copy provided to the member.

Section V. NJP without a Hearing

V.1. Member afforded the rights of a party	Punishment under Article 15, UCMJ, may be imposed on the basis of the record of a court of inquiry or an investigative body in which the member was afforded the rights of a party with respect to the offense(s) for which punishment is contemplated. See Administrative Investigations Manual, COMDTINST M5830.1 (series). The report of investigation or of the court of inquiry must have recorded that the member being punished was afforded the rights of a party. A member has been "afforded" these rights when he or she has been advised of them, when he or she understands them, and when he or she has either exercised these rights or knowingly and voluntarily waived them (or
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some of them). An example of such a situation would be where the member was designated as a party by a formal investigation into an engine room fire on board a cutter, was represented by counsel for the investigation, and the investigation found the member's actions caused the fire.

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| V.2. Consult servicing legal office | A commanding officer considering imposing NJP based on this Section should consult his or her servicing legal office prior to doing so. |
| V.3. Procedure | The commanding officer may direct the appearance of the member before imposing NJP, but need not do so. Whether or not the member appears before the commanding officer before punishment is imposed, the member must be advised in writing of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal. |
| V.4. Referral to superior commanding officer | If the commanding officer lacks the authority to impose what he or she considers appropriate punishment, the commanding officer will refer the report of the investigative body or court of inquiry to the next superior officer in the chain of command. That officer may then impose punishment under Article 15, UCMJ, with or without the personal appearance of the member. The member must be advised of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal. The senior commanding officer has all the options available to him or her (i.e., dismiss the case, address the matter through administrative measures, address the matter at NJP, refer the matter to court-martial, etc.). |
| V.5. Investigation from prior unit | In some instances, the report of a court of inquiry or investigative body may not be finalized until after a member has been transferred from his or her prior unit to a new unit. If that member was a party to the court of inquiry or investigative body, he or she is considered to be "of the command" of the prior unit even though transferred to a new unit before such a report was finalized or NJP imposed. The commanding officer who had jurisdiction when the member became a party retains jurisdiction for purposes of imposing punishment under Article 15, UCMJ. |
| V.6. Member not afforded the rights of a party | If punishment under Article 15, UCMJ, is contemplated in view of the facts developed at an investigative body or court of inquiry before which the member was not a party, he or she can be punished only after holding mast (a hearing) or, in the alternative, only after the record of the investigative body or court of inquiry has been returned and additional proceedings held to afford the member the rights of a party. |

Section W. Subsequent Court-Martial for Offenses Punished at NJP

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| W.1. Procedure | NJP is not a bar to a subsequent court-martial for a serious offense or pattern of offenses that grew out of an act or omission that was previously punished at NJP. If a member is punished under Article 15, UCMJ, and is later sentenced at court-martial for the same offense, the member may present the prior punishment as a fact in mitigation at the court-martial (See RCM 1001(d)(1)(B)), and, if presented, the sentencing authority must consider the prior punishment under Article 15, UCMJ, when determining the court-martial sentence. Charges that were the subject of NJP that are referred to court-martial are subject to a motion to dismiss under RCM 907(b)(2)(D)(iii) if the offenses were minor. |
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Section X. Effect of Errors

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| X.1. When punishment is invalidated | Failure to comply with these regulations does not invalidate punishment imposed under Article 15, UCMJ, unless the error materially prejudiced a substantial right of the service member on whom the punishment was imposed. |
| X.2. Willful or deliberate failure to | Disciplinary actions may be imposed on service members for willful or deliberate failure to comply with these regulations. Cases where willful or deliberate action is substantiated may form the basis to invalidate Article 15, UCMJ punishment. |

comply with
regulations

Section Y. Reservists: Additional Considerations Prior to NJP

- Y.1 Scheduling of NJP** A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training (IDT), Active Duty for Training (ADT), or other forms of reserve duty status, or active duty. A reservist may not be retained on IDT or ADT solely for the purpose of maintaining NJP authority. If a command intends to impose NJP on a reservist who is not on active duty for an offense committed while that reservist was subject to the UCMJ, and a mast cannot be held during the member's current ADT or IDT, the mast should be held during the member's next scheduled ADT or IDT period.
- Y.2. Involuntary order to active duty** If, due to special circumstances, it is impractical to wait for a member's next scheduled ADT or IDT period, or the member fails to report for his or her next scheduled ADT or IDT period, the commanding officer may request, by message or letter, that OEGCMJ over that reservist order the reservist to involuntary active duty. Whenever practical, the requested period of active duty should coincide with the member's regular IDT schedule (e.g., same day of the week as normal IDT).
- Y.3. Cancellation of orders when NJP is refused** If a reservist notifies the OEGCMJ, in writing, that he or she is exercising a right to demand trial by court-martial in lieu of NJP before the reporting date of the order to active duty, the order to active duty is rescinded.
- Y.4. Conclusion of a period of duty** If a reservist on active duty undergoing punishment involving restraint is released from active duty before the restraint punishment has been fully completed, the release automatically remits the remainder of the punishment. Conclusion of a period of active duty or inactive duty training does not terminate any other punishment. Except as provided above, unserved punishments may be carried over to subsequent periods of inactive duty training or active duty. See MCM, Part V, 5.e and 5.f.

Section Z. Documentation Required Following NJP

- Z.1. Servicing Personnel Office entries** For both active duty and reserve personnel, after completing the Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910, one copy of the completed form must be forwarded to the Servicing Personnel Office (SPO) handling the member's record for appropriate entries in the member's Personnel Data Record and other action required for disciplinary proceedings. If a mast proceeding was held, but no punishment was awarded, then no further action is necessary, regardless of whether the matter was dismissed, dismissed with a warning, dismissed with administrative action taken, referred to courts-martial, or resulted in a recommendation for a court-martial.
- Z.2. Reduction in pay grade** Personnel record entries are required by Ch.10.B.1 of the Personnel, Pay, and Procedures Manual, PPCINST M1000.2 (series) and Ch. 3.A.31.h., Enlistments, Evaluations, and Advancements, COMDTINST M1000.2 (series) when reduction in pay grade is awarded under Article 15, UCMJ, or court-martial.

Chapter 3 Summary Courts-Martial (SCM)

Section A. SCM Function and Jurisdiction

A.1. Function

A SCM is a disciplinary, non-criminal proceeding intended to provide prompt adjudication of minor offenses by a simple procedure. It is designed to inquire thoroughly and impartially into both sides of a matter to ensure the interests of both the government and the accused are safeguarded. The procedures for SCM are contained in Rules for Court-Martial (RCM) 1301-07. While NJP and SCM are both intended for minor offenses, a SCM authorizes more significant punishment than NJP. Thus, SCM can be the appropriate forum when the nature of the offenses or the interests of good order and discipline indicate the more significant punishments available at SCM should be considered. Special courts-martial can also be an appropriate forum for relatively minor offenses. Special court-martial punishments are, however, much more significant than those available at SCM or NJP, including the potential for a bad conduct discharge. A conviction at a Special court-martial is also a federal criminal conviction.

A.1.a. Composition

A SCM consists of a single impartial commissioned officer on active duty. The SCM is responsible for ensuring the case against the accused is presented, the rights of the accused including the right to put on a defense, are effectively afforded, for making findings on the charges based on the available evidence, and finally determining an appropriate sentence when the accused is found guilty. The officer must be a Coast Guard officer unless specific authority for an officer from another service is granted by the Judge Advocate General (CG-094). The officer should be a lieutenant or above, and be designated as a judge advocate whenever practicable. If more than one officer is attached to the command, the convening authority must not be the SCM.

A.1.b. Standard of proof

The standard of proof is beyond a reasonable doubt. SCMs have the independent duty to determine all factual conclusions drawn from the evidence, the guilt or innocence of the accused, and the sentence to be imposed, if any. These decisions are to be made based on the evidence actually received in the presence of the accused.

A.1.c. Legal advice

SCMs should seek legal advice from the convening authority's servicing legal office.

A.2. Jurisdiction

SCMs have the jurisdiction to try all enlisted persons subject to the UCMJ for any non-capital offense made punishable under the UCMJ. See Article 20, UCMJ.

A.2.a. No jurisdiction for sex offenses

SCMs do not have jurisdiction to try certain sexual assault offenses, namely offenses under Articles 120(a), 120(b), 120b, or attempts thereof under Article 80. See Article 18(c), UCMJ.

A.2.b. Cases with concurrent jurisdiction

SCMs may not try an offense that has been or may be prosecuted in a United States federal court. Authorization from the appropriate Area Commander or the Deputy Commandant for Mission Support must be obtained before a SCM may try an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that a state or foreign government has issued an indictment or information or has taken similar steps toward prosecution. Requests for such authorization must be in writing to the Staff Judge Advocate for the Area Commander or Deputy Commandant for Mission Support and provide a thorough justification why SCM should be authorized.

A.2.c. Reservists

In general, the same policies regarding SCM of a reservist apply at a summary court-martial as to other forms of court-martial. A reservist may be tried by SCM either while on active or inactive duty training. A reservist not on active duty may be ordered to active duty for trial by SCM. A SCM conducted during inactive duty training may be in

session only during normal periods of such training. A period of inactive duty training must not be scheduled solely for the purpose of conducting a SCM.

Section B. Convening a SCM

- B.1. Who may convene** Any person who may convene a general or special court-martial may convene a SCM. See Article 24, UCMJ. A convening authority who is also the accuser, victim, or witness in a case must forward the charges to a superior authority for disposition.
- B.2. Restricting authority to convene** The authority to convene a SCM may be restricted by competent superior authority. See RCM 1302(a).

Section C. Right to Refuse SCM

- C.1. Refusal** An accused may refuse to be tried by SCM. This is true even if the person also refused NJP and demanded court-martial for the same offense. See RCM 1303.
- C.2. Acceptance** An accused may accept trial by SCM with or without prior consultation with an attorney. An accused wishing to accept SCM should state in a signed writing that the acceptance is knowing and voluntary. A template Acknowledgment of Rights-Acceptance of SCM is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. The original of such form should be attached to the record of trial (ROT). The absence of the form, however, has no effect on the validity of the SCM itself.

Section D. Right to Counsel

- D.1 Opportunity to consult with a military or civilian attorney prior to accepting SCM** The accused should be afforded the opportunity to consult with a military attorney, certified in accordance with Article 27(b), UCMJ, or a civilian attorney, prior to deciding whether to accept SCM, unless doing so will result in unreasonable delay. The convening authority or his or her designee is responsible for advising the accused of the opportunity to confer with a military or civilian attorney. If an accused waives this opportunity to confer, he or she must do so in writing. A template Acknowledgment of Rights-Acceptance of SCM is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- D.2. Limitations on consultation** A military attorney may be consulted regarding whether to accept trial by SCM at no cost to the accused. A reference explaining how to arrange consultation with a military attorney is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. An accused does not have a right to the consultation with any particular military attorney. See RCM 506(a). The accused may also consult with a civilian attorney at no expense to the government, provided the consultation does not unduly delay the SCM proceeding. A consultation with a military attorney does not create an attorney-client relationship absent further action establishing a relationship.

Section E. Representation for Accused

- E.1. Attorney representation** The accused has no right to be represented by an attorney during the SCM proceeding. However, the convening authority may request that the Office of Member Advocacy & Legal Assistance, Defense Services, (CG-LMA-D) detail a military attorney to represent the accused during the proceeding if extraordinary circumstances require the presence of a military attorney. The convening authority should consult with their servicing legal office before making such a request. A civilian attorney hired by the accused may be allowed to appear to represent the accused at a SCM proceeding, provided the attorney

is qualified under RCM 502(d) and such appearance will not unduly delay the proceeding.

E.2. Non-attorney representation

Although a SCM is charged with safeguarding the rights of the accused, including assisting him or her with the examination of witnesses, the convening authority may in certain cases provide a representative to assist the accused. Whether a representative is to be provided is a matter within the sole discretion of the convening authority. When considering whether one should be appointed, the convening authority should consider the complexity of the case as well as the capability of the individual accused to understand and participate in the court proceedings. Any appointed representative must be an officer or petty officer and should normally be attached to the same unit as the accused. The representative assists the accused in preparing for and participating in the court proceedings including, as necessary and appropriate, questioning witnesses, presenting the accused's case, and acting as a spokesperson for the accused. The relationship between the accused and the appointed representative is privileged in the same manner as is the relationship between an attorney and his or her client.

Section F. SCM Procedure

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| F.1. Consultation | The convening authority must consult with the servicing legal office before referring preferred charges to a SCM. |
| F.2. Charge sheet | Use on the Charge Sheet, Form DD-458. |
| F.3. Convening order | The convening order may consist of an order from the convening authority (a template SCM Convening Order is available on the Office of Military Justice (CG-LMJ) website (https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/), or a notation signed by the convening authority on the charge sheet. See RCM 1302(c). Whether done through separate written order or as a notation on the charge sheet, a written statement will be made as follows: "Designation of this convening authority is Secretarial and pursuant to Article 24, UCMJ." This will satisfy the requirements of RCM 504(d)(2). |
| F.4. Pretrial duties of the SCM | The SCM officer examines the charge sheet, any documents submitted, the service record of the accused if reasonably available, and RCM 1301 through 1306 before trial. Any substantial irregularities noted during this review should be immediately reported to the convening authority. See RCM 1304(a)(1)-(2). |
| F.4.a. Correction of errors | The SCM officer may, subject to RCM 603 (minor v. major changes and when changes may be made), correct errors on the charge sheet by initialing them. See RCM 1304(a)(3). |
| F.4.b. Seek advice | The SCM officer may discuss the case and seek advice on legal matters with the command's servicing legal office. |
| F.4.c. Logistics | The convening authority working with the servicing legal office should arrange logistics, such as a time and place to hold open sessions of court. |
| F.4.d. Evidence from accused | The SCM officer should ask the accused to provide: <ul style="list-style-type: none"> (i) A list of names and contact information of any witnesses; and (ii) A copy of all documentary evidence (or, if the evidence is not in the accused's possession, a description and request for the evidence) which the accused wishes to be presented at the trial. |
| F.5. Scripts and forms | The SCM should follow RCM 1304, and use the script in Appendix 8 to the Manual for Courts-Martial (MCM) (Guide for Summary Courts-Martial). As the accused is read |

each right, the SCM should mark the appropriate block on the Record of Trial by Summary Court-Martial, Form DD-2329.

F.6. Military Rules of Evidence

The Military Rules of Evidence apply to SCM. See RCM 1304(b)(2)(E)(i) and Military Rule Evidence 1101(a). The SCM officer has the duty of ensuring that all relevant and admissible evidence, both for and against the accused, is presented in the case.

F.7. Sentencing Matters

Records of NJP(s) and prior SCM(s) may be considered as evidence of the accused's prior military service if obtained from the accused's personnel records and properly introduced in evidence. See RCM 1001(b)(2) and (3).

F.8. Contempt

When a person's conduct is bordering upon contempt, the SCM will advise that the conduct is improper and that persistence therein may cause the court to hold the person in contempt. Such warning should be made a part of the record of trial in order to show a proper foundation for contempt proceedings. Such proceedings may often be avoided by causing the officer to be removed from the courtroom. See RCM 809.

F.8.a. Contempt proceedings

When the conduct of a person before the court warrants actions under Article 48, UCMJ, the regular proceedings should be suspended as follows:

The proceedings in the case now before the court will be suspended. (State the name of the person), you appear to (have used menacing (words) (signs) (and) (gestures) in the presence of this court) (have disturbed the proceedings of this court by (riotous) (disorderly) conduct (_____)). For example you appear to (have threatened the court with action you will take against it because of its rulings) (have been contemptuous and insolent in you objections and arguments) (_____). In this regard, Article 48 of the Uniform Code of Military Justice provides that any person who (uses any menacing (words) (signs) (and) (gestures) in the presence of a court-martial) (disturbs a court-martial proceedings by (riot) (disorder)), may be punished for contempt.

You now have an opportunity to show cause why you should not be held in contempt.

Note: After giving the offender an opportunity to present pertinent argument and evidence, if any, to show cause why he or she should not be held in contempt, the following ruling will be made as follows:

It is my ruling that you should (not) be held in contempt. (As the court has determined that (state the name of the person) should not be held in contempt, the regular proceedings will resume) (As the court has determined that (state the name of the person) should be held in contempt, the court will be closed and I shall determine an appropriate punishment).

Section G. SCM Punishment

G.1. Maximum punishments: E-4 and below

The following maximum punishment that may be adjudged at a SCM on an E-4 or below:

- a. One month confinement;
- b. Forty-five days hard labor without confinement;
- c. Two months restriction (in accordance with RCM 1304(b)(2)(F)(ii) and RCM 1003(b)(5) and accompanying Discussion, the SCM designates the place of restriction);
- d. Forfeiture of two-thirds of one month's pay (expressed in whole dollar amounts), or a fine not exceeding the amount of two-thirds of one month's pay, or both fine and forfeiture but the combination not to exceed two-thirds of one month's pay;
- e. Reduction to the lowest pay grade; and

f. Reprimand.

G.2. Maximum punishments E-5 and above

The following maximum punishment that may be adjudged at a SCM on an E-5 or above:

- a. Two months restriction;
- b. Forfeiture of two-thirds of one month's pay (expressed in whole dollar amounts), or a fine not exceeding the amount of two-thirds of one month's pay, or both fine and forfeiture but the combination not to exceed two-thirds of one month's pay;
- c. Reduction to the next inferior pay grade; and
- d. Reprimand.

G.3. Awarding punishments

G.3.a. Maximum for each category of punishment may be awarded

The maximum sentence for each permissible category of punishment may be awarded, regardless of what other punishments are adjudged. For example, the maximum forfeiture of pay, and the maximum reduction in pay grade may be adjudged, regardless of whether any other punishment is adjudged.

G.3.b. Limits on punishments for members E-5 and above

A sentence imposed upon enlisted members above the pay grade of E-4 may not include confinement, hard labor without confinement, or reduction in grade more than one grade. This includes an E-5 who is reduced by the SCM to E-4. See RCM 1301(d)(2).

G.3.c. Limits on fines and forfeitures

The forfeiture of pay, fine, or combination of forfeiture and fine may not exceed two-thirds of one month's basic pay. Although based on a single month's pay, a sentence of forfeiture by a SCM may be allocated to occur over a two-month period. A forfeiture or fine is recorded in the exact whole dollar amount. See RCM 1003(b)(2).

G.3.d. Fines

A fine may only be adjudged in an amount equal to or less than the maximum forfeiture that could have been adjudged and is normally only be adjudged when the offense committed resulted in unjust enrichment to the accused.

G.3.e. Combining fines and forfeitures with reduction in pay grade

If a reduction in pay grade is adjudged along with a forfeiture or fine, the maximum amount of the forfeiture, fine, or both, is based upon the pay grade to which the accused is reduced.

G.3.f. Combining restriction and hard labor without confinement

A sentence that includes both restriction and hard labor without confinement may be awarded so long as it does not exceed the maximum limit for each type of punishment. For example: 60 days restriction and 45 days hard labor without confinement would be a proper combination of the two punishments. Note: this is different from the rules for combining restriction and extra duties as non-judicial punishment under Article 15, UCMJ. The combined punishments are served concurrently, unless otherwise suspended or deferred.

G.3.g. Combining restriction and confinement

A sentence that includes a combination of confinement and restriction may be imposed as an appropriate sentence so long as it does not exceed the maximum amount of confinement authorized. Restriction can be substituted for confinement at the rate of two days restriction for each day of confinement. (For example: 15 days confinement and 30 days restriction would be a proper combination of the two punishments.) The combined punishments are served consecutively, unless otherwise suspended or deferred.

G.3.h. Combining confinement and hard labor without confinement

A sentence that includes confinement and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum amount of confinement authorized. Hard labor without confinement can be substituted for confinement at the rate of two days hard labor without confinement for each day of

confinement (e.g., 15 days confinement and 30 days hard labor without confinement would be a proper combination of the two punishments). The combined punishments are served consecutively, unless otherwise suspended or deferred.

G.3.i. Records of SCM	Records of Non-judicial Punishment (NJP) and prior SCM(s) are not “convictions” and must not be noted as convictions in the ROT. See Article 20(b), UCMJ.
G.3.j. Imposing punishment of reservists	Confinement or restriction may not be imposed on a reservist tried by SCM conducted during inactive duty training, or active duty pursuant to an order to duty for purposes of standing trial unless the order was approved by the Director, Reserve and Military Personnel (CG-13). Forfeitures imposed on a reservist at a SCM may be collected from pay received during subsequent periods of service whether active or inactive duty.
G.3.k. Effective date of punishment	Confinement starts on the date announced unless otherwise deferred by the convening authority. All other approved and unsuspended punishments are effective on the date of the convening authority’s action.
G.3.l. Suspension of sentences	A SCM may not suspend any part of a sentence. The SCM may recommend suspension of all or a part of a sentence to the convening authority.

Section H. Post-Trial Matters

H.1. Preparation of Record of Trial	<p>The Record of Trial (ROT) consists of a SCM memorandum prepared by the SCM, with Enclosures. The memorandum must include a summary of all evidence received at trial to prove each element of each offense of which the accused was found guilty. A template SCM Memorandum is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/. The summary memorandum includes the following Enclosures:</p> <ol style="list-style-type: none"> a. Original convening order; b. Charge sheet; c. Record of Trial by Summary Court-Martial, Form DD-2329; d. Acknowledgement of Rights; e. Stipulation of fact (if any); and f. All documentary evidence.
H.2. Service on the accused and delivery to convening authority	<p>After the ROT is assembled, a copy must be served on the accused, and the original must be hand-delivered or mailed to the convening authority by DHS-approved commercial carrier (e.g., FedEx or UPS). After review by the convening authority, and if that authority does not have general court-martial jurisdiction, the ROT must then must be hand-delivered or mailed by DHS-approved commercial carrier to the legal office of the officer exercising general court-martial jurisdiction (OEGCMJ) over the convening authority.</p>
H.3. Submissions by the accused	<p>In accordance with RCM 1106(d)(2), the accused has 7 days from the date the sentence is announced in which to submit matters to the convening authority. The convening authority may extend this period by 20 days for good cause. See RCM 1106(d)(4).</p>
H.4. Submissions by crime victims	<p>A crime victim also has 7 days from the date the sentence is announced to submit matters to the convening authority under RCM 1106A(e)(2). The convening authority may extend this period by 20 days for good cause. See RCM 1106A(e)(3). For the purposes of this Chapter, a crime victim is defined as a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty and on which the convening authority is taking action. Matters submitted by crime victims must be in the form of a written statement signed by the crime victim. Statements may include photographs, but must not include videos, audio,</p>

or other media. The SCM should make reasonable efforts to inform crime victims of their right to submit matters and what matters they may submit.

- H.4.a. Accused's rebuttal In a case where a crime victim submitted matters, the accused shall have 5 days from receipt of the crime victim's matters to submit matters in rebuttal. See RCM 1106(d)(3).

H.5. Action by the convening authority

- H.5.a. When action may be taken The convening authority may not take action until the accused and any crime victims have either submitted matters or waived submission of such matters, or until the expiration of the 7-day period plus any extensions, and after the convening authority consults with the servicing legal office.
- H.5.b. How to take action The convening authority must take action on the record as provided in RCM 1306(b). See RCM 1111(a)(3). The action is written on the Record of Trial by Summary Court-Martial, Form DD-2329, but the language must follow the format for action for all courts-martial, except that the phrase "[i]n the case of ____" may be omitted. Appendix 10 of the MCM provides example actions (the forms of action provided in the Appendix may be used for SCMs referred both before and after 1 January 2019).
- H.5.c. Actions other than approval of sentence Forms for actions other than approval of the sentence can be found in Appendix 10 of the MCM. Convening authorities should consult with the servicing legal office before taking any action other than approving the sentence.
- H.5.d. Acquittal If the accused is acquitted, the convening authority does not take action.
- H.5.e. Promulgating orders not required An order promulgating the results of trial by SCM is not required.
- H.5.f. Vacating a suspension of a sentence The suspension of a summary court-martial sentence may be vacated in accordance with RCM 1108.

Section I. Review and Disposition of the Record, Cases Referred After January 1, 2019
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I.1. Article 64, UCMJ review and disposition of records

- I.1.a. Finding of not guilty or disapproved all findings of guilty For each SCM in which there is a finding of not guilty (including by reason of lack of mental responsibility), or when the convening authority has disapproved all findings of guilty, the ROT must be forwarded by DHS-approved commercial carrier (e.g., FedEx or UPS) to the Office of Military Justice (CG-LMJ) for retention. Also a copy of the DD-2329 with the convening authority's action must be served on the accused.
- I.1.b. Finding of guilty For each SCM in which there is a finding of guilty, the case must be reviewed in accordance with Article 64(a), UCMJ, and RCM 1307, by a judge advocate in the Office of the SJA to the Convening Authority other than the SCM Officer and that was not involved in the case. In an SJA Office that is geographically co-located with another SJA Office, a judge advocate from another SJA Office may conduct the review.
- I.1.c. Corrective action not required If the reviewing judge advocate does not believe corrective action is required as a matter of law, the ROT and the judge advocate's review must be forwarded by DHS-approved commercial carrier (e.g., FedEx or UPS) to the Office of Military Justice (CG-LMJ) for retention. Also, a copy of the DD-2329 with the convening authority's action and the judge advocate's review must be served on the accused. An example of the judge

	<p>advocate's review when corrective action is not required is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/.</p>
I.1.d. Accused application to The Judge Advocate General (TJAG) following judge advocate review	<p>If the reviewing judge advocate does not believe corrective action is required as a matter of law, the accused may submit an application requesting TJAG modify or set aside the findings or sentence in whole or in part. See Subsection 3.I.2.b.</p>
I.1.e. Corrective action required	<p>If the reviewing judge advocate believes corrective action is required as a matter of law, the ROT and the judge advocate's review with that officer's recommendation as to appropriate action must be hand-delivered or forwarded by DHS-approved commercial carrier (e.g., FedEx or UPS) to the OEGCMJ over the accused at the time the court was convened or that officer's successor. An example of the judge advocate's review when corrective action is required is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/. See Article 64(b)(1), UCMJ.</p>
I.1.f. Review by OEGCMJ	<p>When the OEGCMJ receives a recommendation as to appropriate action from the reviewing judge advocate, per 3.I.1.e, he or she: may disapprove the findings or sentence in whole or in part; remit, commute, or suspend the sentence in whole or in part; order a rehearing on the findings or sentence or both; or dismiss the charges. See Article 64(c), UCMJ and RCM 1307(f). An example of the OEGCMJ action is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/.</p>
I.1.g. OEGCMJ takes action that is at least as favorable as recommended	<p>When the OEGCMJ takes action that is at least as favorable to the accused as that recommended by the reviewing judge advocate the OEGCMJ action along with the ROT and the reviewing judge advocate's review and recommendation must be forwarded by DHS-approved commercial carrier (e.g., FedEx or UPS) to the Office of Military Justice (CG-LMJ) for retention. Also, copies of the OEGCMJ's action along with the convening authority's action on the DD-2329, and the reviewing judge advocate's review and recommendation must be served on the accused.</p>
I.1.h. Accused application to The Judge Advocate General (TJAG) following favorable OEGCMJ action	<p>Even if the OEGCMJ takes action that is at least as favorable to the accused as that recommended by the reviewing judge advocate, the accused may submit an application requesting TJAG (via the Office of Military Justice (CG-LMJ)) modify or set aside the findings or sentence in whole or in part. See Subsection 3.I.2.b.</p>
I.1.i. OEGCMJ does not take action that is at least as favorable as recommended	<p>If the OEGCMJ does not take action that is at least as favorable to the accused as that recommended by the reviewing judge advocate, the OEGCMJ action along with the ROT and the reviewing judge advocate's review and recommendation must be forwarded by DHS-approved commercial carrier (e.g., FedEx or UPS) to TJAG, (via the Office of Military Justice (CG-LMJ)). See 3.I.2.a. Also, copies of the OEGCMJ action along with the convening authority's action on the DD-2329, and the reviewing judge advocate's review and recommendation must be served on the accused.</p>
I.1.j. National Instant Criminal Background Check System	<p>When received by the Office of Military Justice (CG-LMJ), the ROT will be reviewed by that office to determine if entry into the National Instant Criminal Background Check System (NICS) is appropriate. If yes, CGIS will be notified and a copy of the notification will be maintained with the SCM memorandum.</p>
I.2. Article 69, UCMJ review	

I.2.a. Accused petitions TJAG	The accused may petition TJAG to modify or set aside the findings or sentence in whole or in part of a final conviction, per Article 69(a), UCMJ. Upon receipt of a properly submitted application, a member of CG-094C shall review the application as an attorney designated by TJAG, and make a recommendation as to what action, if any, should be taken. TJAG may modify or set aside the findings or sentence, in whole or in part. See Article 69(c), UCMJ and RCM 1201(h).
I.2.c. Referral to the Coast Guard Court of Criminal Appeals (CG CCA) following TJAG's action	After TJAG reviews a SCM under either Subsection 3.I.2.a or 3.I.2.b, TJAG may forward his or her action to the CG CCA for review. If TJAG does so, the action, the ROT, and a referral memorandum will be provided to the CG CCA by the Office of Military Justice (CG-LMJ). The accused will be notified by the Office of Military Justice (CG-LMJ) of the action, the referral and his or her right to have appellate defense counsel. See RCM 1201(k)(1)(A).
I.2.d. Copy of TJAG action	When TJAG conducts a review per 3.I.2.a or 3.I.2.b, the accused must receive a copy of TJAG's action. The Office of Military Justice (CG-LMJ) must retain a copy of the action with the ROT.
I.2.e. Accused submits an application to CG CCA to review TJAG's action	The accused may also appeal the action of TJAG via application to the CG CCA. See Article 66(b)(1)(D), UCMJ, Article 69(d)(1)(B), UCMJ and RCM 1201(k). The application must be submitted not later than 60 days after the date the accused is notified of TJAG's decision. The accused does not have the right to appellate defense counsel to assist with the submission. See Article 69(d)(3), UCMJ. Petitions for review are submitted directly to the CG CCA in accordance with court rules. If a petition is submitted, the CG CCA will notify the Office of Military Justice (CG-LMJ), and CG-LMJ will provide the ROT to the CG CCA.
I.2.f. Copy of CG CCA decision	Any decision of the CG CCA will be attached to the ROT.

Chapter 4 Jurisdiction

Section A. Jurisdiction Generally

A.1. Areas of responsibility

The authority to convene general and special courts-martial is universal and is not limited by geography, unit or personnel assignment, unit location, or chain of command. A properly constituted court-martial may try any person subject to the UCMJ, even if the accused is not under the command of the convening authority. See Rule for Court-Martial (RCM) 601(b). Geographic areas of primary responsibility are designated for administrative purposes only and neither create exclusive jurisdiction with any of the individual officers exercising general and special courts-martial jurisdiction nor operate as a limitation on jurisdiction. As a practical matter, however, the accused ordinarily will have to be subject to the orders of the convening authority or otherwise under the convening authority's control to assure appearance of the accused at trial. If the member against whom charges have been preferred is not a member of or under the command of the convening authority, it is strongly recommended that prior to referral of charges the Coast Guard convening authority advise the member's commanding officer of the impending referral. In general, if a member is administratively assigned to another command pending investigation or trial, the original convening authority continues to exercise jurisdiction.

A.2. Primary general court-martial jurisdiction

The Coast Guard general court-martial convening authorities (GCMCA) are listed at Subsection 5.A.1. The chart below illustrates those personnel over which each GCMCA would normally exercise jurisdiction.

GCMCA	Units Subject to Jurisdiction
District Commander	All personnel of the District
Area Commander	All personnel of the Area
Director of Operational Logistics (DOL)	All personnel of DOL units, including bases and DOL staff, as well as the Coast Guard Logistics and Service Centers
Force Readiness Command (FORCECOM)	All personnel of FORCECOM units, including training centers and FORCECOM staff
Personnel Service Center (PSC)	<ul style="list-style-type: none"> • All personnel of PSC units • Coast Guard personnel assigned to all non-Coast Guard commands, such as joint commands, joint task forces, unified commands, and combatant commands, when the service to which the member is assigned forwards the case for disposition • All retried personnel • All personnel on appellate leave
Cyber Command (CGCYBERCOM)	All personnel of CGCYBERCOM, including detached units and staff
Commanding Officer, Coast Guard Headquarters (Note 1)	All personnel assigned to Headquarters, including personnel attending funding advanced education or other full-time duty instruction under the cognizance of Headquarters program managers
Superintendent, Coast Guard Academy	All personnel of the Coast Guard Academy
Note 1: Deputy Commandant for Mission Support Deputy for Personnel Readiness (DCMS-DPR) is designated the Commanding Officer, Coast Guard Headquarters, and is therefore the GCMCA for personnel of this unit.	

A.2.a. Superior convening authorities	In general, the Area Commander is the superior commander for the District Commander. The Deputy Commandant for Mission Support (DCMS) is the superior commander for the DOL, FORECECOM, PSC, Commanding Officer, Coast Guard Headquarters, and the Coast Guard Academy.
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Section B. Certain Sexual Assault Offenses

B.1. General court martial mandatory jurisdiction over certain sexual assault offenses	Only general courts-martial have jurisdiction over offenses under Articles 120(a), 120(b), and 120b, UCMJ, or attempts thereof. See RCM 201(f)(1)(D).
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Section C. Jurisdictional Limitations

C.1. Jurisdiction limited under Articles 2 and 3, UCMJ	Article 2 lists the classes of people subject to the UCMJ and Article 3 lists some specific situations under which jurisdiction under the UCMJ exists.
C.1.a. Retired members	No case of a retiree subject to jurisdiction under Article 2(a)(4) or (5), UCMJ, will be referred for trial by court-martial without the prior authorization of the appropriate Area Commander or DCMS. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense. Specific authorization from the appropriate Area Commander or DCMS must also be obtained for the apprehension, arrest, or confinement of any retired member.
C.1.b. United States Public Health Service members	Prior to taking action under Article 2(a)(8), UCMJ, against an active duty member of the Public Health Service assigned to duty and serving with the Coast Guard, the convening authority should consult with his or her servicing legal office and obtain a copy of the current USCG-USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS officers.
C.1.c. Reservists	The officer exercising general court-martial jurisdiction (OEGCMJ) must consult with the Director, Reserve and Military Personnel (CG-13) if pre-trial confinement or other restraints on liberty are contemplated against a Reservist ordered to active duty for trial. See the Reserve Policy Manual, Ch. 3.B.4.d, COMDTINST M10001.28 (series).
C.1.d. Civilians	No case of a civilian subject to jurisdiction under Article 2(a)(10), UCMJ, will be referred for trial by court-martial without prior consultation with the Office of Military Justice (CG-LMJ).
C.1.e. Jurisdiction to try certain personnel under Article 3, UCMJ	No case in which jurisdiction is based on Article 3(a)-(c), UCMJ, will be referred for trial by court-martial without prior consultation with the Office of Military Justice (CG-LMJ). Specific authorization from the appropriate Area Commander or DCMS must also be obtained for the apprehension, arrest, or confinement of any person amenable to trial by court-martial solely by reason of the provisions of Article 3, UCMJ.

Section D. Cases Adjudicated or Pending Adjudication in State or Foreign Criminal Courts

D.1. Authorization for a second trial	No person in the Coast Guard may be tried for the same acts that constitute an offense against state or foreign law and for which the accused has been tried or is pending trial by the state or foreign country, without first obtaining authorization from the appropriate Area Commander or DCMS. Letter requests for authorization must contain complete justification as to why deviation from the general policy against second trials is appropriate. See RCM 201(d).
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D.1.a. Basis for policy	This policy is based on comity between the federal government and state or foreign governments, and is not intended to confer additional rights upon the accused.
D.1.b. Definition of “pending trial”	“Pending trial” means that an indictment, complaint, information, or other accusatory instrument has been brought against the accused or that the accused is being held over for trial based on a judicial probable cause hearing. Any pretrial diversion or similar program does not amount to being “tried” or “pending trial.”
D.1.c. Coordination with officials in other jurisdictions	In any case, close coordination with officials of other jurisdictions may be necessary to ensure that the policy against second trials is followed, and because many such jurisdictions have laws prohibiting second trials for persons tried in federal courts or courts-martial. This requirement for prior approval from the appropriate Area Commander or DCMS applies also to trial by summary court-martial and nonjudicial punishment.

Section E. International Agreements

E.1. Consultation with servicing legal office	International agreements, such as Status of Forces Agreements (SOFA), may affect the decision of whether to exercise court-martial jurisdiction. For Coast Guard members assigned overseas, Convening Authorities should consult with their servicing legal office to determine whether an international agreement impacts the exercise of court-martial jurisdiction.
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Section F. Capital Offenses

F.1. OEGCMJ consent required	Notwithstanding RCM 201(f)(2)(A), Coast Guard special court-martial convening authorities are not authorized to refer offenses that have a potential maximum punishment of death to special courts-martial without first obtaining the written consent of the appropriate OEGCMJ.
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Section G. Investigation and Prosecution of Crimes with Concurrent Federal Jurisdiction

G.1. Implementing authority	This Chapter implements a memorandum of understanding (MOU), dated October 1967, with the Department of Justice (DOJ) delineating the areas of responsibility for investigating and prosecuting offenses over which the Coast Guard and DOJ have concurrent jurisdiction. See the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ .
G.2. Coordination with the Office of Military Justice (CG-LMJ)	Decisions with respect to the provisions of the MOU will be coordinated between the servicing legal office for the convening authority and the Office of Military Justice (CG-LMJ). Federal civil authorities may have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both federal criminal law and the UCMJ. Coordination between the servicing legal office and the Office of Military Justice (CG-LMJ) should begin as soon as this issue is identified. If during a federal agency investigation, circumstances arise that favor the exercise of jurisdiction by Coast Guard authorities, the OEGCMJ will contact the cognizant U.S. Attorney to coordinate the possibility of trial by court-martial of the member, and inform the Office of Military Justice (CG-LMJ) by e-mail at HQS-DG-LST-CG-LMJ@uscg.mil .
G.3. Requests for immunity in national security cases	Proposed grants of immunity may be e-mailed to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil . After coordination, the proposed grant will be forwarded to the General Counsel, Department of Homeland Security, for consultation with the DOJ in cases involving: <ul style="list-style-type: none"> a. Espionage;

- b. Subversion;
- c. Aiding the enemy;
- d. Sabotage;
- e. Spying; and
- f. Violation of rules or statutes concerning classified information, or the foreign relations of the United States.

Chapter 15 discusses the authority to grant immunity from prosecution.

G.4. Administrative Action

Administrative action, according to paragraph 4 of the MOU will be conducted in such a manner so as not to interfere with or otherwise prejudice the investigation by the responsible DOJ investigative agency.

G.5. Threats against the President

In cases involving persons subject to the UCMJ who have allegedly made threats against the President or successors to the Presidency, in violation of 18 U.S.C. § 871, the U.S. Secret Service has primary investigative responsibility. All investigative agencies will cooperate fully with the Secret Service when called on to do so. After the investigation is completed, the SJA representing the OEGCMJ over the Coast Guard suspect will meet with representatives of the DOJ and the Secret Service to determine whether military authorities or DOJ will exercise further jurisdiction in the case.

Section H. Reporting Requirements for Cases Involving National Security Crimes

H.1. Background

SJAs must e-mail an unclassified executive summary to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil regarding potential court-martial proceedings in cases that have national security implications. In addition to the reporting requirements set forth for cases involving a threat to U.S. national security in which a grant of immunity is being proposed in accordance with Subsection 4.H.3., SJAs will also e-mail the unclassified executive summary to the Office of Information and Intelligence Law (CG-LII). The following are considered national security crimes:

- a. Sedition (Articles 82 and 94, UCMJ) when foreign power involvement is suspected;
- b. Aiding the enemy by giving intelligence to the enemy (UCMJ, Art. 103b);
- c. Spies (UCMJ, Art. 103);
- d. Espionage (UCMJ, Art. 103a);
- e. Suspected or actual unauthorized acquisition of military technology, research and development information, or Coast Guard acquisition program information by—or on behalf of—a foreign power;
- f. Violation of rules or statutes concerning classified information, or the foreign relations of the United States;
- g. Sabotage conducted by or on behalf of a foreign power;
- h. Subversion, treason, domestic terrorism, and known or suspected unauthorized disclosure of classified information or material; and
- i. Attempts (UCMJ, Art. 80), solicitations (UCMJ, Art. 82), or conspiracies (UCMJ, Art. 81) to commit (a) through (h), above.

H.2. Purpose

Staff judge advocate notification is designed to improve force protection and security while at the same time protecting the accused's right to a fair trial, free from unlawful command influence.

Section I. Order to Active Duty of Reservists

I.1 Preliminary hearings

If charges against a reservist not on active duty are to be submitted to an Article 32, UCMJ, preliminary hearing, the reservist will be ordered to active duty for the duration of the hearing. The OEGCMJ who convenes, or approves the convening of the Article 32, UCMJ, preliminary hearing, is responsible for issuing any necessary recall orders. The reservist should be released from active duty within one working day of the close

of the taking of evidence. To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment of the hearing and recalled when the proceedings reconvene.

I.2. Courts-martial

An accused reservist must be on active duty to be tried by a special or general court-martial. The reservist must be recalled before arraignment. See RCM 204(b)(1). If a reservist is not already on active duty, the convening authority must request the cognizant OEGCMJ order the reservist to active duty. Such an order must be approved by the Director, Reserve and Military Personnel (CG-13) if confinement is to be an authorized punishment. See the Reserve Policy Manual, Ch. 3.B.4.d, COMDTINST M1001.28 (series). To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment of the court-martial and recalled when the proceedings reconvene. Such members may not be retained on active duty after service of the confinement or other restriction on liberty. See Art. 2(d)(5), RCM 1003(c)(3). All punishments remaining unserved at the time the reservist is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

Chapter 5 Court-Martial Convening Authorities
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Section A. Court-Martial Convening Authorities

A.1. General courts-martial convening authorities

Under the authority of Article 22(a)(8), UCMJ, the Secretary has designated the following commanding officers of the Coast Guard as general court-martial convening authorities:

- a. Commandant of the Coast Guard;
- b. Commander of any Coast Guard Area;
- c. Commander of any Coast Guard District;
- d. Deputy Commandant for Mission Support (DCMS);
- e. Director of Operational Logistics (DOL);
- f. Commanding Officer, Coast Guard Headquarters;
- g. Superintendent, Coast Guard Academy;
- h. Commander, Coast Guard Personnel Service Center (PSC); and
- i. Commander, Coast Guard Force Readiness Command (FORCECOM).
- j. Commander, Coast Guard Cyber Command (CGCYBERCOM)

A.2. Special courts-martial convening authorities

Under the authority of Article 23(a)(7), UCMJ, the Secretary has designated the following commanding officers of the Coast Guard as special court-martial convening authorities:

- a. Commanding Officers of all Coast Guard units, some of whom have specific statutory authority;
- b. Commander of any Coast Guard Sector;
- c. Commanding Officer, Staff Enlisted Personnel, at each Coast Guard Area;
- d. Commanding Officer, Staff Enlisted Personnel, at each Coast Guard District;
- e. Commanding Officer, Enlisted Personnel, Coast Guard Academy;
- f. Commanding Officer, Enlisted Personnel, Coast Guard Yard;
- g. Commanding Officer, Military Personnel, National Pollution Funds Center;
- h. Commanding Officer, Staff Enlisted Personnel, Coast Guard Force Readiness Command; and
- i. Commanding Officer, Military Personnel, Coast Guard Command, Control, Communications, Computers, and Information Technology Center.

A.3. Training required for those with authority to convene

Per Article 137, UCMJ, those with authority to convene courts-martial must receive periodic training regarding the purpose and administration of the UCMJ. Periodic training will be valid from the time received until the trainee is no longer in a billet with authority to convene courts-martial or 3 years, whichever comes first. Staff Judge Advocates will ensure that those with authority to convene courts-martial, within their area of responsibility, have completed the periodic training. The following courses include training blocks that fulfil the Article 137, UCMJ periodic training requirements:

- g. Prospective Commanding Officer, Officer in Charge, Executive Officer and Executive Petty Officer Afloat Course;
- h. Aviation Prospective Commanding Officer and Executive Officer Course;
- i. Boat Forces Command Cadre Course;
- j. Command Assignment Preparation Training (CAPT) Course;
- k. Sector Commander Course; and
- l. Sector Department Head Course.

The cognizant Staff Judge Advocate's office can document compliance with Article 137, UCMJ in the SJA office files with some form of verification that a member attended one of these courses within six months of arrival in a billet that includes authority to convene courts-martial. When training is provided by a judge advocate, not at a course listed above, the cognizant Staff Judge Advocate's office should be notified in order to document compliance with Article 137, UCMJ in the SJA office's files. Periodic training can take place in forums such as commanding officer

conferences or during unit visits. The Office of Military Justice (CG-LMJ) can provide training tools.

A.4. Article 33, UCMJ disposition guidance

Convening Authorities should consider the non-binding guidance found in Appendix 2.1 of the Manual for Courts-Martial (MCM) when exercising their duties with respect to the disposition of charges and specifications.

Section B. Withholding Exercise of Court-Martial Jurisdiction

B.1. Withholding by superior commander

A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally.

B.1.a. Limitations on discretion not permitted

A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld. See Rule for Court-Martial (RCM) 306.

B.1.b. Consolidated disposition authority

In some cases, such as those that involve multiple subjects from different commands engaged in closely related misconduct, it may be appropriate to designate a single disposition authority. This is done by a superior commander withholding disposition authority from the subordinate commanders who might otherwise be authorized to act. The superior commander must be superior to all of the commanders who would otherwise be authorized to dispose of charges, impose nonjudicial punishment, or convene courts-martial for the subjects involved. The superior commander can retain disposition authority or can designate a subordinate commander to be a consolidated disposition authority. Consultation with the Office of Military Justice (CG-LMJ) is required prior to designating a Consolidated Disposition Authority.

Section C. Withholding Initial Disposition Authority in Sexual Assault Cases

C.1. General

Only GCMCAs, the Commander of Coast Guard Cyber Command, training center commanding officers with an assigned Staff Judge Advocate, the commanding officer of the Coast Guard Yard, and base commanders in paygrade O-6, may initially dispose of charges or allegations of violation of:

- a. Article 120(a), UCMJ, rape;
- b. Article 120(b), UCMJ, sexual assault;
- c. Article 120(c), UCMJ, aggravated sexual contact;
- d. Article 120(d), UCMJ, abusive sexual contact;
- e. Article 120b(a), UCMJ, rape of a child;
- f. Article 120b(b), UCMJ, sexual assault of a child;
- g. Article 120b(c), UCMJ, sexual abuse of a child; and
- h. Article 80, UCMJ, attempts to commit offenses listed in (a)-(g).

Authority is withheld to make initial disposition of charges and allegations of violation of these offenses under RCM 306 and 401 for all other commanding officers.

C.1.a. Sexual Assault initial disposition authority

The officer making the initial disposition determination will be referred to as the Sexual Assault Initial Disposition Authority (SA-IDA). This policy does not preclude initial disposition decisions being made by the general court-martial convening authority that is the superior competent authority to the commanding officer of Coast Guard Cyber Command, a training center commanding officer with an assigned Staff Judge Advocate, or a base commander in paygrade O-6. In fact, in the vast majority of serious sexual assault cases, a Flag Officer will likely be the SA-IDA (e.g. FORCECOM or DOL). This policy also does not preclude any individual Flag Officer exercising general court-martial jurisdiction from exercising their own superior command authority and further withholding and/or limiting disposition this class of cases (or others) to their level in accordance with RCM 306 and 401.

C.1.b. Collateral misconduct	This withholding applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged perpetrator or the crime victim.
C.1.c. Memorialized decisions	SA-IDA determinations to dismiss cases or take no further action under the UCMJ are made only after full and informed consultation with the assigned Staff Judge Advocate and the decision must be memorialized in writing.
C.1.d. Responsibilities of the immediate commander	Immediate commanders of an accused and/or crime victim (with or without SA-IDA) are not restricted by this policy from taking all necessary discretionary actions related to the alleged suspect or crime victim, if otherwise authorized to do so. This would include placing a suspect in pre-trial restraint under RCM 304 or pre-trial confinement under RCM 305 (and conducting a hearing pursuant to RCM 305(h)), issuing military protective orders, issuing probable cause search authorizations, and coordinating investigative assistance. Equally important is that the immediate commander is not relieved by this policy of the obligation to provide and coordinate all required crime victim support and advocacy as required under the Sexual Assault Prevention and Response and Recovery (SAPRR) Program, COMDTINST M1754.10 (series).
C.1.e. No limitations on forwarding	Nothing in this Section limits a commander exercising court-martial jurisdiction from forwarding a matter concerning an offense or charges to a superior competent authority for disposition if warranted.

Section D. Commanding Officer as an Accuser
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D.1. Definition of an accuser	The definition of an “accuser” as used in this Chapter is broader than the individual who swears, or makes charges against another. See Article 1(9) and RCM 307(a) Discussion. An “accuser” means a person who directs that charge be signed and sworn to by another, an individual who was a victim of the alleged offense(s), or whose personal interest outweighs his or her professional responsibilities.
D.2. Commanding officer accuser disqualified from referral	A commanding officer who is an accuser or is otherwise disqualified in a case may not refer the charges in that case to trial by general or special court-martial. If a commanding officer is disqualified, that commanding officer must forward the draft charges and accompanying paperwork to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate. The advice of the command’s servicing legal office should be sought in any case in which a convening authority believes he or she might be disqualified or might be considered an accuser in the broadest sense of that term.

Chapter 6 Pretrial Restraint and Confinement

Section A. Pretrial Restraint

- A.1. Definition** Pretrial restraint is moral or physical restraint on a member's liberty imposed before or during disposition of offenses. No person may be ordered into restraint before trial except for probable cause. Probable cause exists when there is a reasonable belief that:
- a. The member committed an offense under the UCMJ; and
 - b. The restraint is required by the circumstances.
- A.2. Prohibition on using pretrial restraint as punishment** Pretrial restraint may not be used as a form of punishment. The restraint should not be more rigorous than the circumstances require to ensure the presence of the member restrained and to prevent foreseeable serious criminal misconduct. Rule for Court-Martial (RCM) 304 contains specific guidance regarding pretrial restraint including: types of pretrial restraint, who may order pretrial restraint, when a person may be restrained, procedures for ordering pretrial restraint, prohibition against pretrial restraint as punishment, release, and administrative restraint. The officer imposing restraint is responsible for ensuring the member under restraint is notified in writing of the restraint, including its terms and limits.
- A.3. Pretrial restraint of a reservist** Pretrial restraint in the form of restriction or arrest should not be imposed on a reservist who is not on active duty. If it is necessary to confine a reservist who is not on active duty, the reservist should be ordered to active duty as soon as possible. See Subsection 4.C.1.c. A reservist may be retained on active duty until the completion of action in a case where the offense warrants trial by court-martial. See Subsection 4.J. Retaining a reservist on active duty does not constitute pretrial restraint.

Section B. Pretrial Confinement
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- B.1. Definition** Pretrial confinement is physical restraint depriving a member of freedom pending disposition of charges. No person may be ordered into pretrial confinement unless probable cause exists. Probable cause to order pretrial confinement exists when there is a reasonable belief that:
- a. The member committed an offense under the UCMJ;
 - b. Confinement is required by the circumstances; and
 - c. Less severe forms of restraint are inadequate.
- B.2. When is pretrial confinement appropriate** Pretrial confinement is only appropriate in contemplation of disposition at a special or general court-martial. RCM 305 contains specific guidance regarding pretrial confinement, including: who may be confined; who may order confinement; when a member may be confined; advice to the accused upon confinement; military counsel rights; who may direct release from confinement; notification and action required of the commander of the confinee; procedures for review of pretrial confinement; provision for review by the military judge; remedy for noncompliance; and exceptions to the application of the provisions of the rule. Confinees must be afforded facilities and treatment in accordance with Ch. 1.F.3, Discipline and Conduct, COMDTINST M1600.2 (series) and applicable regulations of the confinement facility into which ordered.
- B.3. Pretrial restriction tantamount to confinement** Pretrial confinement includes pretrial restriction that is tantamount to confinement. Pretrial restriction is tantamount to confinement when the restraints on the member's liberty and freedom of movement so closely resemble confinement that their effect upon the accused is the practical equivalent of confinement. The actual nature of the restraint imposed, and not the characterization of it by the officer imposing it, will be the

controlling factor in distinguishing between pretrial restriction and pretrial restriction tantamount to confinement.

B.4. Ordering pretrial confinement

Only the commanding officer or superior commander of an officer may order pretrial confinement of that officer. See RCM 304(b)(1). Any commissioned officer may order any enlisted member into pretrial confinement. See RCM 304(b)(2). A Confinement Order, Form DD-2707 will be used. A template Notification of Pretrial Confinement with acknowledgement of rights is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

B.5. Entitlement to consult with a military attorney

A member ordered into pretrial confinement must be advised he or she is entitled to consult with a military attorney. A member who requests a military attorney must be provided with a detailed military attorney for the purpose of the initial review required by RCM 305(i). The member has no right to an individual military attorney of his or her own selection.

Section C. Review of Pretrial Confinement
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C.1. Responsibilities of commanding officer

The commanding officer should consult his or her servicing legal office before a member is ordered into pretrial confinement.

C.1.a. 48-hour review

The commanding officer must ensure that a neutral and detached officer determines within 48 hours of confinement whether probable cause exists to continue pretrial confinement. See RCM 305(i)(1).

C.1.b. 72-hour review

The commanding officer must personally decide within 72 hours whether pretrial confinement will continue and prepare a written memorandum documenting his or her decision. See RCM 305(h)(2)(C).

C.1.c. Notification to crime victim

The commanding officer must ensure that a victim of a crime, as defined in Article 6b, UCMJ, for which a member is ordered into pre-trial confinement is provided accurate and timely notice of any hearing to review the continuation of pre-trial confinement.

C.1.d. Single determination

The 48-hour determination and 72-hour review may be combined into a single determination and written memorandum completed by the commanding officer within 48 hours of confinement. See RCM 305(h)(2)(A). A commanding officer who ordered pretrial confinement is not precluded from making the 48-hour determination if he or she is otherwise neutral and detached regarding the case. Preparation of the commanding officer's memorandum should be coordinated with the servicing legal office. A template 72-Hour Memorandum is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

C.1.e. Command Visits

The commanding officer must ensure command visits are performed in accordance with Ch.1.F.6.b, Discipline and Conduct, COMDTINST 1600.2 (series).

C.2. Initial Review Officer (IRO)

Under RCM 305(i)(2), a review of the adequacy of probable cause to believe a member in pretrial confinement committed an offense, the necessity for continued pretrial confinement, and the conditions of confinement, must be conducted by a neutral and detached officer within seven days of the imposition of confinement.

C.2.a. Designating IROs

Each Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) is required to designate, in writing, one or more officers of the grade of O-4 or higher to act as the IRO for purposes of RCM 305(i)(2). Officers designated as IRO should be neutral and detached and, if practicable, not within the chain of the command of the OEGCMJ. The OEGCMJ must authorize each IRO to approve continued confinement or order the

immediate release of pretrial confinees whose cases are referred to him or her for initial review.

C.2.b. Using DoD
confinement facility IRO

The OEGCMJ may authorize and accept the RCM 305 initial review conducted by a duly designated IRO assigned to the confinement facility. Most Department of Defense (DoD) confinement facilities have permanently assigned IROs and will conduct an RCM 305 review of the pretrial confinement order independent of a Coast Guard review.

C.2.c. Procedure

The required procedure is as follows.

- i. After a member is ordered into pretrial confinement, the member's commanding officer is required to prepare a memorandum in accordance with RCM 305(h)(2)(C). This memorandum must be forwarded by e-mail to the appropriate servicing legal office. A copy of the memorandum must be forwarded by e-mail to the military attorney assigned to represent the member at the IRO hearing. In addition to the information specifically required by RCM 305(h)(2), the commanding officer must include in the memorandum any other information necessary for the IRO to make a complete and informed review of the commanding officer's confinement decision.
- ii. The servicing legal office must promptly provide the commanding officer's confinement memorandum to the IRO appointed to review the confinement decision.
- iii. Upon receipt of the commanding officer's confinement memorandum, and in any event within seven calendar days of the imposition of confinement, the IRO must review the memorandum submitted by the accused's commanding officer, ensure the accused is notified of his or her rights and may also:
 - Consider additional written matters submitted by the accused; or
 - Hold either a personal or telephonic interview with the accused and the accused's attorney, if any, at which a representative of the accused's command may also appear, the purpose of which is to hear statements made by either or both parties regarding the continued pretrial confinement of the accused; or
 - Consider any information provided by a crime victim or the victim's representative.
- iv. The personal or telephonic interview should be informal and non-adversarial in nature. With the exception of Military Rules of Evidence (MRE), Section V (Privileges), and MRE 302 and 305, the Military Rules of Evidence do not apply to the matters considered. A template IRO Script and a template IRO Acknowledgement of Rights is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- v. RCM 305 authorizes the IRO, for good cause, to extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.
- vi. If the necessity for pretrial confinement is not demonstrated by a preponderance of the evidence, the IRO must promptly order the accused's release and advise the confinement facility and the command ordering the accused into confinement. That command may thereafter impose any form of pretrial restraint, other than confinement, deemed necessary in accordance with the provisions of RCM 304.
- vii. The IRO must also review the conditions of the accused's pretrial confinement. The purpose of this review is to assure that the conditions of confinement do not amount to punishment in violation of Article 13, UCMJ. Conditions that are intended to punish the pretrial confinee violate Article 13, UCMJ, unless they are imposed for infractions of discipline while confined. If the IRO finds that confinement conditions violate Article 13, UCMJ, those conditions must be brought to the attention of the commanding officer who

ordered the accused into pretrial confinement and servicing legal office for the responsible OEGCMJ. The commanding officer, in consultation with the servicing legal office, must review those conditions and assess whether they violate Article 13, UCMJ. If they concur that the conditions violate Article 13, UCMJ, the commanding officer must correct them, move the accused to a facility where such violations do not exist, or release the accused from pretrial confinement.

- viii. Promptly after the conclusion of the informal hearing the IRO must determine whether the accused should remain in confinement. The decision to release the member or continue confinement must be reduced to a written memorandum and include the IRO's conclusions, including the factual findings on which they are based. A template IRO Record and Decision is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. A copy of the decision memorandum must be promptly provided to the accused, the accused's command and servicing legal office for the responsible OEGCMJ. The original memorandum and all documents considered by the IRO must be delivered to the command ordering the accused into pretrial confinement. This command is responsible for maintaining the documents until trial counsel is assigned and takes possession of them.
- ix. Once ordered released by the IRO, the accused may be returned to confinement only as provided by RCM 305(l). If returned to confinement, the provisions of RCM 305 and this Section apply anew.
- x. The decision of the IRO is final except as provided by RCM 305(j). If release from confinement is denied, however, the accused may later petition the IRO for a new consideration of the case. Such a petition must be based on new circumstances that have arisen since the initial determination was made or on new information available concerning the legality or appropriateness of confinement. The IRO may hold a new hearing.
- xi. In the rare case where the IRO to whom the OEGCMJ assigns a case is not neutral and detached with respect to the order into confinement, he or she must promptly advise the OEGCMJ, who must assign the case to another IRO.
- xii. Any OEGCMJ is authorized to empower any IRO of the military service operating a confinement facility in which a Coast Guard member is in pretrial confinement to release a Coast Guard pretrial confinee on the terms of the regulations applicable to the pretrial confinement review system of that service.
- xiii. When Director, Reserve and Military Personnel (CG-13), has authorized pretrial confinement in a civilian facility pursuant to Ch.1.F.4.c, Discipline and Conduct, COMDTINST M1600.2 (series), that authorization must direct the District Commander within whose geographical area of responsibility the civilian facility is located, to provide for review by an IRO in the same manner as prescribed herein for members confined in military confinement facilities.
- xiv. This Section does not apply to cases of Coast Guard members assigned to units of another military service who are placed in pretrial confinement by an officer of that service. The pretrial confinement review program of the military service to which the accused is assigned applies. It is important to note that while a member may be ordered to perform duties with another service, he or she may actually be assigned to a Coast Guard commander and, in that case, the Coast Guard commander is responsible for executing the provisions of this Section.

C.3. Rights of crime victims at pretrial confinement determinations

A victim of an alleged offense committed by the member has the right to reasonable, accurate, and timely notice of the IRO hearing; the right to confer with a representative of the command and counsel for the government, if any; and the right to be reasonably heard during the review. However, the hearing must not be unduly delayed for this purpose. See Art. 6b, UCMJ, and RCM 305(i)(2)(A)(iv). Government counsel from the servicing legal office must notify the crime victim in writing of the time and place of the IRO hearing, and of the crime victim's rights. The crime victim must be permitted to attend in person, if practicable, but is not entitled to funding to travel to such hearings. If in-person attendance is not practicable, alternative testimony in the form of written or telephonic statements is appropriate.

Chapter 7 Pre-Referral Matters

Section A. Detailing of Military Judges and Magistrates for Pre-Referral Matters

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| A.1. Background | A military judge or magistrate detailed by the Chief Trial Judge may conduct certain proceedings before referral of charges and may issue such rulings and orders as necessary to further the purpose of the proceedings. See Article 30a, UCMJ, and Rule for Courts-Martial (RCM) 309. |
| A.2. Requests | Trial counsel or counsel for the Government in connection with an ongoing investigation may request that the Chief Trial Judge detail a military judge or magistrate in accordance with the CG Rules of Court. |

Section B. Stored Communications Act (SCA)

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| B.1. SCA orders and warrants explained | The SCA permits law enforcement to compel disclosure of non-content wire or electronic communication system. See 18 U.S.C. § 2703(a). An order may be issued based on specific and articulable facts showing that there are reasonable grounds to believe that the content sought is relevant and material to an ongoing criminal investigation. See 18 U.S.C. § 2703(d). However, the disclosure of the contents of a wire or electronic communications system may be compelled only pursuant to a probable cause warrant. See 18 U.S.C. § 2703(a). |
| B.1.a. Content defined | The content of a wire or electronic communications system are the actual files stored within the account. For example stored e-mails or voice mails are considered content. |
| B.1.b. Warrants required for content | A warrant should be sought if seeking wire or electronic communications content, regardless of the time period in which the contents of a wire or electronic communications system have been in electronic storage. See <i>United States v. Warshak</i> , 631 F.3d 266 (6th Cir. 2010). |
| B.1.c. Cell-site location information (CSLI) | A warrant must be sought if seeking more than six days of CSLI. See <i>Carpenter v. United States</i> , 138 S.Ct. 2206 (2018). |
| B.1.d. Inability for Coast Guard to use SCA subpoenas | The SCA does not permit the armed forces to use a subpoena under 18 U.S.C. § 2703(c)(2). However, if seeking information that would normally be obtained via a subpoena, an SCA order may be utilized. A pre-referral investigative subpoena discussed in Section 7.C. may not be used to collect information from an electronic communications system. |
| B.2. Issuing SCA orders and warrants | A military judge detailed under Article 30a, UCMJ may issue a pre-referral order or warrant for wire or electronic communications per the SCA. See 18 U.S.C. § 2703 and RCM 309. |
| B.2.a. SCA application | When seeking a SCA order or warrant, trial counsel or counsel for the Government in connection with an ongoing investigation will make a written application under RCM 703A. When seeking a SCA warrant, DD Form 3057, Applications for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703, available via the DoD Forms Management Program should be utilized. The application may include a request to conduct any necessary proceedings <i>ex parte</i> and <i>in camera</i> . See RCM 309(b)(2). Applications for orders may also include a request for delaying subscriber or customer notification per RCM 703A(d)(1). SCA warrants do not require notice to subscribers or customers. See 18 U.S.C. § 2703(b)(1)(A). Application procedures conducted telephonically should follow the procedures outlined in Federal Rule of Criminal Procedure 4.1. |

B.2.b. Warrant form	DD Form 3056, Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703, is available via the DoD Forms Management Program. The form is similar to those used by the Department of Justice and should be utilized for all SCA warrants. The form should be provided to the military judge with the application.
B.2.c. Requests for relief	The detailed military judge will also review requests for relief from a service provider in receipt of an order or warrant. If that military judge is determined to be unavailable by the Chief Trial Judge, he or she will appoint a new military judge. The military judge will either order compliance, or modify or quash the order or warrant as appropriate. See RCM 309(b)(3). Any hearings shall be conducted in accordance with RCM 309(d).
B.2.d. Record of proceedings	The military judge will oversee preparation of a record of any proceedings. The record will be forwarded to the convening authority or commander with authority to dispose of the charges or offenses; and if charges are referred such record shall be included in the record of trial. See RCM 309(e).
B.3. Preservation request	If an order or warrant for wire or electronic communications is contemplated, trial counsel or counsel for the Government in connection with an ongoing CGIS investigation should take steps to have the service provider preserve records or other evidence. See RCM 703A(f). A template of the Preservation Request is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ .
B.4. Reimbursement	When the government actually obtains communication content, records, or other information pursuant to the SCA, the provider may be entitled to reimbursement for its reasonable costs incurred in supplying the information. See 18 U.S.C. § 2706. Trial counsel or counsel for the Government must consult with their funds certifying official before seeking an SCA warrant or order to ensure funds are available in the event a provider seeks reimbursement. If the service provider seeks what appears to be unreasonably high reimbursement costs, the government should demand a detailed accounting of costs incurred by activity. A cost accounting will help ensure that the provider is not seeking reimbursement for indirect costs or activities that were not reasonably necessary to the production.

Section C. Pre-Referral Investigative Subpoena

C.1. Issued by a military judge or magistrate	A military judge or magistrate detailed under Article 30a, UCMJ may issue a pre-referral investigative subpoena. See Article 46(d), UCMJ and RCM 703(g)(3)(C).
C.1.a Application	Trial counsel or counsel for the Government in connection with an ongoing investigation may make a written application for an investigative subpoena under RCM 703(g)(3)(D)(v). A template of the Investigative Subpoena Application is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . The application submitted to the detailed military judge or magistrate may include a request to conduct any necessary proceedings <i>ex parte</i> and <i>in camera</i> . See RCM 309(b)(1).
C.1.b. Requests for relief	The military judge or magistrate that issued the subpoena will also review requests for relief from a person or entity in receipt of an investigative subpoena. If that military judge or magistrate is determined to be unavailable by the Chief Trial Judge, he or she will appoint a new military judge or magistrate. Similarly the Chief Trial Judge will appoint a military judge or magistrate if the challenged subpoena was issued by detailed trial counsel or counsel for the Government per Section 7.C.2. The military judge or magistrate will either order compliance, or modify or quash the subpoena as appropriate.

See RCM 309(b)(3). Any hearings conducted shall be conducted in accordance with RCM 309(d).

C.1.c Record of proceedings

The military judge or magistrate will oversee preparation of a record of the proceedings. The record will be forwarded to the convening authority or commander with authority to dispose of the charges or offenses; and if charges are referred such record shall be included in the record of trial. See RCM 309(e).

C.2. Issued by detailed trial counsel or counsel for the Government

The detailed trial counsel or counsel for the Government may issue an investigative subpoena when authorized by a general court-martial convening authority. See RCM 703(g)(3)(D)(v). Detailed trial counsel or counsel for the Government should seek the general court-martial convening authority's permission to issue a subpoena in those circumstances where time is of the essence because failure to promptly issue a subpoena would likely result in harm or loss of evidence. However, in other instances the preference is for a military judge or magistrate to issue investigative subpoenas.

C.2.a. Preliminary hearing

Prior to a preliminary hearing, if the Government agrees that evidence requested by the defense is relevant, not cumulative, and necessary, trial counsel shall issue an investigative subpoena. See RCM 405(h)(3)(B)(ii). If the government objects to the production of the evidence requested by the defense, the preliminary hearing officer will determine whether the evidence should be produced, and if necessary direct trial counsel to issue an investigative subpoena; however trial counsel can refuse to issue the investigative subpoena per RCM 405(h)(3)(B)(iii).

C.2. Form

The form of the investigative subpoena will be no different than one issued post referral by trial counsel pursuant to RCM 703(g)(3)(A). The subpoena should be provided to the military judge or magistrate along with the application. DD Form 453, Subpoena (Appendix 7 to the Manual for Courts-Martial) is available via the DoD Forms Management Program.

Chapter 8 Evidentiary Matters
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Section A. Psychotherapist-Patient Privilege

A.1. Applicability

Military Rule of Evidence (M.R.E.) 513, the psychotherapist-patient privilege, provides that the privilege applies only to “case[s] arising under the UCMJ.” It extends to all stages of a proceeding under the UCMJ, including law enforcement investigations into suspected offenses, proceedings for search authorizations, subpoenas, nonjudicial punishment proceedings, court-martial actions, and other proceedings enumerated in M.R.E. 1101. M.R.E. 513 is a limited evidentiary privilege that applies only to psychotherapist-patient communications sought for UCMJ proceedings. The privilege does not apply to records sought for other reasons, such as to make a fitness-for-duty determination. Other statutes and regulations may apply when information is sought for reasons unrelated to UCMJ proceedings.

A.2. Handling of psychotherapist-patient communications

A command must not seek mental health records of any person without first consulting with the servicing legal office. If, in a case involving preferred charges, Government counsel believes that there are psychotherapist-patient communications which are necessary for the UCMJ proceedings, and protected by the privilege, Government counsel should not seek to obtain such communications. Rather, the Government counsel may first ask the patient (through the patient’s counsel, if applicable) to waive the privilege in writing. If the patient does not waive the privilege, the Government counsel should, once charges are referred, request the military judge order the records produced for in-camera review under the procedures set out in M.R.E. 513(e). If the military judge orders such records produced, Government counsel should arrange for the records to be provided by the custodian directly to the military judge.

Section B. Confidentiality of Sexual Assault Program Records

B.1 Privilege

In a case arising under the UCMJ, a crime victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the victim and a victim advocate or between the victim and a DoD Safe Helpline staff member, if such communication is made for the purpose of facilitating advice or assistance to the victim. See M.R.E. 514. When communications between a victim of sexual assault and a Sexual Assault Response Coordinator (SARC) or Victim Advocate (VA) are involved, consult the confidential reporting program for victims of sexual assault established by DoDI 6495.01, Sexual Assault Prevention and Response (SAPR) Program and Sexual Assault Prevention and Response, COMDTINST M1754.10(series).

Section C. Personal Data and Character of Prior Service
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C.1. Presentencing materials at sentencing

In accordance with RCM 1001(b)(2), trial counsel may introduce certain evidence from the personnel records of the accused including evidence of prior military or civilian convictions of the accused.

C.2. Personal data

Personnel records of the accused include, but are not limited to, those records that reflect the past military efficiency, conduct, performance, and history of the accused made and maintained in accordance with the Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series); Personnel, Pay and Procedures Manual, PSCINST M1000.2 (series); and the Performance, Training and Education Manual, COMDTINST M1500.10 (series).

Section D. Article 93a, UCMJ Definitions

D.1. Background	Article 93a, UCMJ, Prohibited activities with military recruit or trainee by person in position of special trust, requires evidence of certain definitions, as defined by the Commandant per Secretarial delegation. See DHS Delegation # 0170.1.
D.1.a. Applicant for Military Service	Applicant for Military Service is defined as: a person who expresses a desire to join the Coast Guard or Coast Guard Reserve by completing and signing an application requesting to be examined and evaluated for accession.
D.1.b. Military recruiter	Military recruiter is defined as: any person whose primary duty or assignment is recruiting.
D.1.c. Prohibited sexual activity	<p>Prohibited sexual activity is defined as:</p> <ul style="list-style-type: none"> i. Any sexual act, as defined in Article 120, UCMJ, or ii. Any sexual contact, as defined in Article 120, UCMJ. <p>It is not a prohibited sexual activity under Article 93a, UCMJ when a pre-existing relationship (i.e. marriage) exists prior to the individual becoming an applicant for military service. Additionally, the accused must have actual or constructive knowledge that a person was a “specially protected junior member of the armed forces” or an “applicant for military service.” Knowledge may be proved by circumstantial evidence.</p>

Chapter 9
Classified Matters

Section A. General Concerns Regarding Classified Information

A.1. Policy

All persons involved in the military justice process must protect the security of classified matter and other government information that, if disclosed, would be detrimental to national security. See Rule for Courts-Martial (RCM) 1113. Criminal cases involving classified material must not be referred to a summary court-martial. The Convening Authority will notify the Judge Advocate General through the Office of Military Justice (CG-LMJ) of any case involving classified information. If a court-martial involves classified information, the convening authority, military judge, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of the Classified Information Management Program, COMDTINST M5510.23 (series), RCM 401(d) and 407(b), and M.R.E. 505-506. Only the Secretary of Homeland Security, the Commandant, or the head of a government agency for documents owned by agencies outside the Coast Guard, may claim the privilege from disclosure of classified information. See M.R.E. 505(h)(1)(A). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. E-mail requests for assertion of the privilege to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil. Article 62, UCMJ, provides that the Government may appeal an order or ruling by a military judge that directs the disclosure of classified material, imposes sanctions for the nondisclosure of classified information, or refuses to issue a protective order sought by the Government to prevent the disclosure of classified information. See RCM 908.

A.2. Records of trial containing classified evidence

Special procedures and requirements apply in cases where classified material may be used as evidence. See RCM 1113. In all such cases, contact the Office of Military Justice (CG-LMJ) and Security Policy & Management Division (DCMS-342) as soon as possible for guidance on how to proceed. When a ROT contains classified material, an initial step is to determine what, if any, of the classified material may be declassified. Authority to downgrade or declassify classified information is exercised by the original classification authority through DCMS-34. If it is impossible to declassify the material, the record must be classified. In determining whether a particular ROT must be classified because of its content, consideration should be given to Classified Information Management Program, COMDTINST M5510.23 (series). The military judge must allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the Government, seal exhibits containing classified information in accordance with RCM 1103A for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

Section B. Security Clearance Issues

B.1. Security clearance of personnel

If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Classified Information Management Program, COMDTINST M5510.23 (series) must be held by all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. Civilian defense counsel or civilian court reporting services must likewise be cleared before classified matter may be disclosed to him or her. The necessity for clearing the accused, and the practicability of obtaining such clearance, rests in the sound discretion of the convening authority and may be one of the considerations in the determination to try a

particular case or in determining the appropriate forum. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this Section have not been complied with, the military judge is required to adjourn the court and refer the matter to the convening authority. See M.R.E. 505.

**B.2. Procedures
concerning spectators**

Special considerations and procedures apply to prevent dissemination of classified information to other than authorized persons. See RCM 405 & 806; M.R.E. 505-506.

Chapter 10 Preliminary Hearing under Article 32, UCMJ
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Section A. Procedure

A.1. Background

Prior to referring a case to a general court-martial a preliminary hearing must be conducted to determine whether or not the specification alleges an offense under the UCMJ, whether or not there is probable cause to believe that the accused committed the offense charged, whether the convening authority has court-martial jurisdiction over the offense and the accused, and to make a recommendation as to the disposition that should be made of the case.

A.2. Who may direct a preliminary hearing

When in receipt of charges that may warrant trial by general court-martial, a commanding officer exercising special court-martial jurisdiction may order an Article 32, UCMJ, preliminary hearing, or may request an Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) to order a preliminary hearing under Article 32, UCMJ, and Rule for Court-Martial (RCM) 405. When an OEGCMJ receives a request for a hearing, he or she may order a preliminary hearing in accordance with the provisions of RCM 405 but is not required to do so. The convening of an Article 32, UCMJ, hearing is solely a matter within the discretion of the convening authority.

A.3. Hearing officer

The preliminary hearing officer should be an impartial judge advocate certified under Article 27(b), UCMJ. In exceptional circumstances, the convening authority may request permission from the Judge Advocate General (CG-094) to use a hearing officer who is not a certified judge advocate. In those circumstances, a judge advocate certified under Article 27(b), UCMJ, must be made available to provide advice to the hearing officer. Whenever practicable, the hearing officer must be equal to or senior in rank to the military counsel detailed to represent the accused and the government.

A.3.a. Identifying a preliminary hearing officer

The Staff Judge Advocate of the convening authority may provide the names of qualified individuals to serve as hearing officer to the convening authority. Where practicable, the hearing officer should not be of the command of the convening authority or accused. In circumstances where the Staff Judge Advocate cannot identify an appropriate hearing officer, the convening authority may e-mail a request for request assistance in identifying a judge advocate available to serve as preliminary hearing officer to the Office of Legal Policy and Program Development (CG-LPD), copy to the Office of Military Justice (CG-LMJ). The request must contain the following information:

- i. Case name;
- ii. Tentative convening date;
- iii. Estimated duration of the investigation;
- iv. General nature of the charge(s);
- v. Name of any attorney assigned;
- vi. Whether the accused is in pretrial confinement; and
- vii. The date charges were preferred.

A.4. Reporter

A reporter may be detailed to a hearing under Article 32, UCMJ, to produce a verbatim transcript at the discretion of the convening authority. Normally, reporters are detailed only for unusual or complex cases. A request that a reporter be detailed to the hearing must be forwarded to the convening authority for the preliminary hearing for decision. The convening authority for the Article 32, UCMJ, preliminary hearing should consult with their servicing legal office prior to making a decision on whether to detail a reporter.

A.5. Recording of the hearing

Counsel for the government must ensure that the hearing is recorded by a suitable recording device; the recording will become part of the preliminary hearing report. See RCM 405(1)(2)(B). Upon request, counsel for the government must provide the victim

access to the recording, or at the Government's discretion, a transcription. See RCM 405(j)(5).

A.5.a. Other recordings and broadcast prohibited Any recording or broadcast, not made for purposes of RCM 405(j)(5), is prohibited. See RCM 405(j)(6).

A.6. Guide and script The most current version of the Preliminary Hearing Officer Guide is posted on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

Section B. Rights of the Accused and Crime Victims

B.1. Rights of the accused The rights of the accused are set forth in RCM 405(f).

B.2. Rights of the victims The rights of the victim are set forth in RCM 405(g).

B.3. Inadmissibility of certain evidence in sex-offense cases In a case of an alleged sex-offense as defined in Military Rule of Evidence (M.R.E.) 412(d), evidence offered to prove any alleged victim's sexual predisposition the exclusion of which at trial would violate the accused's constitutional rights is not admissible. However, evidence offered under M.R.E. 412(b)(1) and 412(b)(2) is admissible. See RCM 405(i)(2).

Section C. Claims of Privilege

C.1. General privileges The privileges contained in Manual for Courts-Martial (MCM), Part III, apply to preliminary hearings. See RCM 405(i)(1)(iii).

C.2. Mishap investigations The purpose of a mishap investigation is to determine the facts and causes of accidents in order to prevent future accidents and to determine the most likely organization to initiate corrective actions. The primary purpose of investigating and reporting Coast Guard operational accidents is prevention. A safety investigation cannot normally be used as the basis for disciplinary action, nor can the report be used as evidence or to obtain evidence for disciplinary action. Information sought or obtained from a mishap investigation may be privileged. Chapter 3.F.1, Safety and Environmental Health Manual, COMDTINST M5100.47B, provides policy regarding use of information from mishap investigations.

C.3. Use of investigative material The investigating officer may refer to investigative materials, such as a PIO report or a CGIS Report of Investigation in order to obtain necessary information on preliminary issues, such as which witnesses to question and initial determinations on witness and evidence availability. Such materials will not be considered in making the determinations required in RCM 405(l)(2)(H) unless produced at the investigation in accordance with RCM 405(h).

Section D. Supplemental Information for the Convening Authority

D.1. Procedure Per RCM 405(k), not later than 24 hours from the closure of the preliminary hearing, the counsel for the Government, defense counsel, and any victim named in one of the specifications under consideration (or, if applicable, counsel for such victim) may submit information they deem relevant to the convening authority's disposition of the charges and specifications.

Chapter 11 Referral of Charges to Special or General Courts-Martial
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Section A. Notification

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| A.1. Military Judge | After a determination to refer a case to special or general court-martial, the trial counsel must follow the procedures set forth in Section 13.A to obtain a military judge. |
| A.2. Charges and specification and convening order | When charges are referred to trial by court-martial, a copy of the charges and specifications, and a copy of the convening order must be e-mailed to the trial counsel, defense counsel, Chief Trial Judge (CG-094J), military judge detailed to the court-martial, Special Victims Counsel if one has been detailed, and to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil . |
| A.3. Preliminary hearing report | When trial is to be by general court-martial, a copy of the report of preliminary hearing conducted pursuant to Article 32, UCMJ, and the pretrial advice will be furnished to both trial and defense counsel at or before the time charges are referred to trial. |

Section B. Convening Order

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| B.1. Contents | For convenience in adapting those to Coast Guard format, a template Court-Martial Convening Order is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . Whether done through separate written order or as a notation on the charge sheet, a written statement will be made as follows: "Designation of this convening authority is Secretarial and pursuant to Article 22 (SpCM) or 23 (GCM), UCMJ." This will satisfy the requirements of RCM 504(d)(1). |
| B.2. Distribution | A copy of the convening order and each amending order must be provided to each member named in the order, the military judge, defense counsel and Special Victims' Counsel if one has been detailed. The original must be provided to trial counsel. |

Section C. Rights of Crime Victims to have Timely Notice

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| C.1. Opportunity to express views for victims that have suffered direct physical, emotional, or pecuniary harm as a result of a sex-related offense | Prior to referral of an offense charged under Article 120, 120b, 120c, 130, under the UCMJ or any attempt thereof under Article 80, UCMJ, the victim of the offense must 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. The commander, and if charges are preferred, the convening authority, is required to consider such views as to the victim's preference for jurisdiction prior to making an initial disposition decision. However, this input is not binding. See RCM 306(e). If the input is provided in writing, a copy must be provided to the accused pursuant to RCM 701(a)(1)(A). Normally, the input will be sought and provided by counsel for the Government after consulting directly with the victim, or, if the victim is represented by Special Victims Counsel or other counsel, through contact with the victim's counsel. The victim's preference must be annotated in the Military Justice Case Management System (MJCMS). See Section 23.A. |
| C.2. Victim with a preference for civilian prosecution | If a victim that has suffered direct physical, emotional, or pecuniary harm as the result of a sex-related offense expresses a preference for prosecution of the offense in a civilian court, the commander, and if charges are preferred, the convening authority is required to notify the civilian authority with jurisdiction over the offense. The victim must be notified by the commander, and if charges are preferred, the convening authority of any decision by the civilian authority to prosecute or not prosecute the offense. See Subsection 4.D.1. |

Section D. Higher Level Review of Certain Sex Related Offenses

D.1. Procedure	<p>A higher competent authority will review any decision not to refer a specification for court-martial in cases where a sex-related offense has been preferred as follows:</p> <ol style="list-style-type: none"> a. In any case where the Staff Judge Advocate (SJA), in Article 34, UCMJ, pretrial advice, recommends referring a specification of a sex-related offense for trial by court-martial, but the General Court Martial Convening Authority (GCMCA) declines to refer that specification, the GCMCA must forward the case file to the Commandant of the Coast Guard for review; and b. In any case where the SJA, in Article 34, UCMJ, pretrial advice, recommends that a specification of a sex-related offense should not be referred to trial by court-martial and the convening authority decides not to refer that sex-related specification to a court-martial, the convening authority will forward the case file for review to the next superior commander authorized to convene general courts-martial. If the convening authority is LANT or PAC, DCMS is considered the next superior commander. If DCMS is the convening authority, LANT is considered the next superior commander.
D.2. Applicability	<p>The term "sex-related offense" is defined as any of the following:</p> <ol style="list-style-type: none"> a. Rape or sexual assault under Articles 120(a), or 120(b), UCMJ; b. Rape of sexual assault of a child under Article 120b, UCMJ; c. Attempts to commit an offense under 120(a), 120(b), or 120b, UCMJ.
D.3. Determination	<p>The reviewing authority must determine whether the referral decision was appropriate. The reviewing authority will specifically consider the victim's statement provided during the course of the investigation and whether the victim's statement and views were considered by the convening authority in making the referral decision. The results of the review by the Commandant or the next superior GCMCA, respectively, will be binding and final. Nothing should be read to construe an additional right of review beyond that established in this policy.</p>
D.4. Review by Chief Prosecutor	<p>In any case where the Staff Judge Advocate, in Article 34, UCMJ, pretrial advice, recommends that a specification of a sex-related offense should not be referred to trial by court-martial and the GCMCA declines to refer the specification, the government counsel detailed to the case may petition the Chief Prosecutor, the Office of Military Justice (CG-LMJ), to request that he or she refer the case to the Commandant for higher level review under the procedures set forth in Subsection 11.D.1. A decision by the Chief Prosecutor to not refer the case to the Commandant for higher level review is final and not subject to review.</p>
D.4.1. Timing of review by the Chief Prosecutor	<p>In accordance with Subsection 11.D.1, any decision by a GCMCA, made on the advice of the SJA, not to refer a sex-related specification to court-martial is reviewed by the next higher GCMCA. Therefore, the government counsel's petition to the Chief Prosecutor may only be made after that review is complete.</p>
D.4.2. Chief Prosecutor designation	<p>The term Chief Prosecutor is defined as the individual who has been designated the Chief Prosecutor by the Judge Advocate General in writing.</p>
D.5. Limitations	<p>This policy does not limit the independent discretion of the convening authority to take action deemed appropriate as authorized by the UCMJ and the Rules for Court-Martial, except when such authority has been properly withheld by a superior commander.</p>

Chapter 12

Preparation, Forwarding, Changes to, and Withdrawal of Charges and Specifications

Section A. Preparation and Forwarding of Charge Sheet

A.1. Preparation

Proper preparation of the Charge Sheet, Form DD-458 is the foundation of each trial and describes in precise terms the crime with which an accused is charged and must defend against and also the crime that the government must prove. The servicing legal office should be consulted prior to preparing a charge sheet. Preferral of charges (i.e., signing block 11.d. of the charge sheet) has critical legal ramifications because it will constitute the start of time for speedy trial purposes, unless the time has already begun per RCM 707(a)(2-3). Charges must not be signed and sworn (block 11.d.) without prior consultation with the servicing legal office. Failure to comply with the procedural requirements for preferral and notice of charges under Rules for Courts-Martial 307, 308, and 707 may preclude military justice action.

A.2. Forwarding charges in summary and special courts-martial

When a commanding officer or officer in charge taking action on charges deems trial by special or summary court-martial appropriate, but is not authorized to convene the court-martial, the charges and accompanying paperwork must be forwarded to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate.

A.3. Forwarding charges in general courts-martial

When a commanding officer taking action following a preliminary hearing convened under Article 32, UCMJ, deems trial by general court-martial to be appropriate, but is not authorized to convene such a court-martial or finds the convening of such court-martial impracticable, the charges and accompanying paperwork will be forwarded to the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ), along with the commanding officer's recommendation. But see Subsection 5.C. regarding initial disposition authority for certain sexual assault cases.

A.4. Forwarding with disposition recommendation

A commanding officer may always forward the charges and accompanying paperwork to the next superior in the chain of command with a recommendation for disposition and an explanation why the matter is forwarded for disposition. See RCM 401(c)(2). This may be done, for example, by a special court-martial convening authority who believes that a charge(s) should be investigated at an Article 32, UCMJ, preliminary hearing and, after consulting with the servicing legal office and the superior commander, believes the superior commanding officer has more resources with which to comply with the requirements of Article 32, UCMJ, and RCM 405.

Section B. Disposition of Investigations When a Member has Transferred

B.1. Investigating command

When a member transfers from a command prior to the completion of an investigation into matters that may form the basis for charges against that member, the command from which the member has transferred retains responsibility to determine if an investigation is warranted, and if so, promptly complete an investigation of the matter.

B.2. Disposition

Upon completion of an investigation, the commanding officer of the investigating command should determine an appropriate disposition of the matter. In making this determination, the matter should be discussed with the servicing legal office. The commanding officer may forward the matter with a recommendation for disposition to another appropriate convening authority or to the current command of the member. However, the commanding officer must not include a disposition recommendation when forwarding a case to a commander other than a superior commander. See RCM 401(c)(2)(B). The recommended disposition may be no further action, further investigation by another command, administrative action, NJP, or court-martial. If empowered, the commanding officer of the investigating command may opt to convene

a court-martial. A properly constituted court-martial may try any member subject to the UCMJ, even if the accused is not under the command of the convening authority so long as the member is properly ordered to report before the court-martial. Factors that a convening authority may consider in deciding whether to convene a court-martial of a member not currently under the command of the convening authority include, but are not limited to:

- a. The effect upon discipline at that command;
- b. The effect upon operations;
- c. Location of parties, evidence and witnesses; and
- d. Costs.

B.2.a. Consultation between commands

Consultation between a convening authority not having the member in his or her command and the current commanding officer of the member is essential to ensure all factors are properly considered and to ensure administrative and logistical support. Lack of such consultation, while unwise, will not deprive a properly constituted court-martial of jurisdiction.

B.2.b. Forwarding investigation to another command

The investigating command may take the following actions if the commanding officer decides the matter should be disposed of by another command:

- i. Forward the investigation (e.g., Report of Investigation, Form CG-4608 or Report of Offense and Disposition and Record of Non-judicial Punishment, Form CG-4910) to his or her OEGCMJ and the receiving command's OEGCMJ, and to the receiving command (typically, the commanding officer or officer-in-charge of the member who was the subject of the investigation). If the investigating command and the receiving command have the same OEGCMJ, the investigation must be forwarded through that officer.
- ii. When forwarded to an OEGCMJ who is a superior of the forwarding commander, include with the investigation a recommended disposition of the matter to the OEGCMJ, the reason for the recommended disposition, and the reason why the investigating command forwarded the investigation.
- iii. Include, unless clearly unwarranted, draft and unsigned proposed charges for use by the OEGCMJ or the receiving command. Draft charges will focus the receiving command upon the relevant issues of the case. Charges should not be preferred (signed or sworn to) without consulting the servicing legal office. Charges must not be preferred when an investigating command chooses to forward the investigation unless preferral is coordinated with the receiving command. Preferral of charges has critical legal ramifications because it may constitute the start of time for speedy trial purposes.

B.2.c. Action by the receiving command

When a command receives an investigation and draft charges concerning an attached member, the receiving command will review and analyze the investigation and draft charges to determine appropriate disposition. The receiving command may elect to do nothing, take appropriate administrative action, impose NJP or, if empowered, convene a court-martial. The command should consult with its servicing legal office to determine appropriate disposition. Consultation with the investigating command is strongly recommended. Upon determination of an appropriate disposition, the receiving command must report that determination to its servicing legal office and the reasons for that determination.

Section C. Changes to Charges and Specifications after Referral
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C.1. Procedure

Minor and major changes may be made to charges and/or specifications after referral as authorized and explained in RCM 603. Changes should be made by lining through the material while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel with the permission of the convening authority. Do not use white-out tape or liquid for minor or major changes.

- C.2. Minor changes** Make minor changes to a charge and/or specification on the charge sheet. Initial and date the change. Minor changes may be accomplished without having the charge sworn anew by the accuser. Promptly provide copies of the charge sheet with the changes to the accused and defense counsel. After arraignment, only a military judge may authorize minor changes to the charge sheet.
- C.3. Major changes** Major changes or amendments to a charge and/or specification cannot be made over the objection of the accused, unless the charge and/or specification affected are preferred anew. A new referral will also be necessary and, in the case of a GCM, a new Article 32, UCMJ, preliminary hearing will be required if the charge and/or specification, as changed, was not covered in the prior investigation.
- C.3.a. How to make a major change** Make a major change or amendment to a charge and/or specification on the original charge sheet. Initial and date the change. If the accused objects to the change, a new preferral and referral of the changed or amended charge and/or specification must be accomplished by attaching an endorsement to the original charge sheet containing the following matters: a new preferral, notification to the accused, receipt by court-martial convening authority, referral, and service under RCM 602.
- C.3.b. Objections to major changes** Even if an accused does not object to a major change or amendment, it may be prudent to prefer anew. Re-preferral and re-referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421, 423 (C.M.A. 1990). See also *United States v. Reese*, 76 M.J. 297 (C.A.A.F. 2017).

Section D. Withdrawal of Charges and Specifications
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- D.1. Definition** Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. RCM 604. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Withdrawn charges and/or specifications should be disposed of promptly (e.g., dismissed, re-referred to another court-martial, or forwarded to another convening authority for disposition). An officer authorized to sign referrals or trial counsel may withdraw charges and/or specifications at the direction of the convening authority.
- D.2. Withdrawing all charges and specifications** To withdraw all charges and specifications from a court-martial, trial counsel lines through the referral portion (Part V) of the charge sheet, specifies the disposition and the date, and initials the action taken (e.g., “Withdrawn on 15 Sep 16, [initials]”). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 16, [initials]”).
- D.3. Withdrawing some charges and specifications** To withdraw a specific charge and/or specification from a court-martial, while allowing the other offense(s) to proceed to trial, line through the affected charge and/or specification, specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 15 Sep 16, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 16, [initials]”). The trial counsel must determine whether any remaining charges and/or specifications should be renumbered (and if renumbered, initial the renumbering).
- D.3.a. Before arraignment** When charges and/or specifications are withdrawn before arraignment, the remaining charges and/or specifications must be renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

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| D.3.b. After arraignment before members informed | When charges and/or specifications are withdrawn after arraignment but before the court members are aware of the charges, the remaining charges and/or specifications should, at the direction of the military judge, be renumbered. The new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. If the military judge directs renumbering, withdrawn charges and/or specifications should not be brought to the attention of the members. If the military judge does not direct renumbering, the remaining charges and/or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications. |
| D.3.c. After arraignment and after members informed | When charges and/or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges and/or specifications should not be renumbered. The military judge instructs the members that the withdrawn charges and/or specifications should not be considered for any reason. |

Chapter 13
Courts-Martial Personnel

Section A. Military Judges and Magistrates

A.1. Request for detail of military judges or magistrates to courts-martial

Trial counsel is responsible for requesting that the Chief Trial Judge detail a military judge or magistrate in accordance with the CG Rules of Court. This request must contain the following information:

- a. Convening authority and type of court - if a special court martial note if consisting of judge alone in accordance with Rule for Court-Martial (RCM) 201(f)(2)(E);
- b. Case name;
- c. If a special court martial consisting of judge alone, do the parties consent to the designation of a military magistrate per Article 19(c), UCMJ;
- d. Trial location;
- e. Preferred trial date, and backup date if any;
- f. Estimated trial duration;
- g. General nature of charges or UCMJ Article numbers;
- h. Names, telephone numbers, facsimile numbers, and e-mail addresses of trial, defense counsel and Special Victims' Counsel if one has been detailed;
- i. State whether the accused is in pretrial confinement and date confined; and
- j. Speedy trial deadline under RCM 707.

A.2. Detail pursuant to RCM 503(b)

The Chief Trial Judge details military judges and magistrates to general and special courts-martial accordingly. During periods of unavailability due to leave or illness, the alternate docketing judge, designated by the Chief Trial Judge, may detail judges. If no alternate docketing judge is available, the Judge Advocate General will designate a certified military judge to so act.

A.3. Docket control

The Chief Trial Judge maintains the docket for all general and special court-martial military judges and special court-martial military magistrates. The Chief Trial Judge will provide access to the court-martial docket to the Office of Military Justice (CG-LMJ). The Chief Trial Judge (CG-094J) may establish additional procedures for docketing courts-martial. A copy of the trial docket, redacted as necessary, will be posted to the Judge Advocate General's public web page to ensure public access to information about pending courts-martial. The publicly available trial docket will be updated every time the Chief Trial Judge's docket is updated.

A.4. Restrictions

A special court-martial military judge or magistrate must not be detailed to a special court-martial if he or she is assigned to the staff of the convening authority or the officer exercising general court-martial jurisdiction (OEGCMJ) over the command of the convening authority or is in the performance evaluation or reviewing chain for any participating counsel.

A.5. Continuances

Once detailed, the military judge has sole authority to grant continuances.

Section B. Defense Counsel

B.1. Detailing certified defense counsel

The Office of Member Advocacy and Legal Assistance (CG-LMA) will detail Article 27(b), UCMJ, certified defense counsel in accordance with its established procedures. At the time the charges are preferred, the servicing legal office should contact the Office of Member Advocacy and Legal Assistance (CG-LMA) to arrange for detail of defense counsel. The process for obtaining detailed defense counsel will not be delayed because doing so may delay the court-martial unnecessarily. Detailed defense counsel may be a Coast Guard judge advocate or a military attorney pursuant to an inter-service agreement. The Coast Guard-Navy MOU Regarding Mutual Support in Military Justice

Matters, and the Coast Guard detailing TJAG SOP – 22C, are available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. The accused is not entitled to be represented by more than one military attorney. See RCM 506(a).

B.1.a. Restriction The detailed defense counsel must not have either the SJA to the convening authority or trial counsel in his or her rating chain.

B.1.b. Excusal or withdrawal of detailed defense counsel A detailed defense counsel may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the detailed defense counsel for good cause shown.

B.2. Obtaining individual military counsel (IMC) Article 38, UCMJ, provides that an accused has a right to be represented before a general or special court-martial or at a preliminary hearing under Article 32, UCMJ, by military counsel of the accused's own selection if that counsel is "reasonably available." Counsel serving in the Coast Guard or Department of the Navy are "reasonably available" to represent a Coast Guard accused unless they are unavailable within the meaning of RCM 506, this Section, or under regulations of the Secretary of the Navy.

B.2.a. Categorical determinations of non-availability Under the authority of RCM 506(b)(1) the following Coast Guard personnel, in addition to those listed in RCM 506(b)(1) are, by regulation, deemed not "reasonably available" because of the nature of their assignments:

- a. Persons on terminal leave or not on active duty;
- b. Persons assigned to an out-of-specialty or non-legal billet;
- c. Persons assigned as a full-time military judge or active as a part-time military judge;
- d. Persons assigned to Coast Guard appellate advocacy duties (either government or defense) and their supervisors;
- e. Persons assigned to an organization, activity, or agency other than any of the armed forces of the United States; and
- f. Persons assigned to duty at the departmental level or higher.

B.2.b. Existing attorney-client relationship exception to categorical determinations of "not reasonably availability" If an attorney in one of the categories in Subsection 13.B.2.a. has an existing attorney-client relationship with the accused regarding a charged offense, the attorney's availability must be determined under the procedures in Subsection 13.B.2.i. See RCM 506(b)(2). However, this exception does not apply if the existing attorney-client relationship with the accused was created solely to provide advice to a member pursuant to *United States v. Booker*, 5 MJ 238 (C.M.A. 1977), solely for representation of the accused at a pretrial confinement IRO hearing pursuant to RCM 305(f), or to represent the accused as an appellate counsel pursuant to Article 70, UCMJ. Also, contact with a prospective IMC to discuss the IMC's availability does not create an "existing" attorney-client relationship and the exception does not apply. And, simply discussing the legal and factual issues in the case with the accused, or conducting legal research concerning an issue in the case does not constitute active pretrial preparation and strategy and the exception does not apply.

B.2.c. Attorney-client relationship defined An attorney-client relationship exists between the accused and requested counsel when it has been properly authorized by the responsible authority, the requested counsel and the accused have had a privileged conversation relating to a charge pending before a proceeding (e.g., GCM, SPCM, Article 32, UCMJ), and the requested counsel has engaged in active pretrial preparation and strategy with regard to that charge. A counsel will be deemed to have engaged in active pretrial preparation and strategy if that counsel has taken action on the case that materially limits the range of options available to the accused at the pending proceeding. Examples of active pretrial preparation include, but are not limited to: advising the accused to waive or assert a legal right, other than simply asserting the right to remain silent, where the accused followed such advice by waiving

or asserting that right; representing the accused at an Article 32, UCMJ, preliminary hearing dealing with the same subject matter as any charge pending before the proceeding; submitting evidence for testing or analysis; offering a pretrial or plea agreement on behalf of the accused; submitting a request for an administrative discharge in lieu of trial on behalf of the accused; or interviewing witnesses relative to any charge pending before the proceeding.

B.2.d. Submitting IMC requests

Requests for an IMC may be submitted to the convening authority through the trial counsel and the convening authority's SJA. The request must include any matters to be considered in favor of providing the requested counsel. If the accused has an existing attorney-client relationship with the requested attorney regarding a charged offense, the request must include the general circumstances and authority under which the relationship was established, the approximate dates of the relationship, and the specific charged offenses that were the subject of the relationship, without revealing privileged information. If the requested attorney is one of those not "reasonably available" under Subsection 13.B.2.a. because of the nature of that attorney's current assignment, the request must state whether the attorney is expected to be available at the time of the proceedings, and the reasons therefore.

B.2.e. Action on requests for attorneys categorically deemed not "reasonably available"

If an accused before a general or special court-martial requests an IMC who is deemed not "reasonably available" and the request does not assert the exception of a pre-existing attorney-client relationship, the convening authority must deny the request and state the reasons therefore, citing this Subsection and RCM 506(b)(1).

B.2.f. Action on other cases (i.e. not categorically unavailable)

In other cases, if an accused before a general or special court-martial requests an IMC, the convening authority must forward the request to the commanding officer or head of the organization, activity, or agency to which the requested person is assigned. For attorneys assigned to duty with another military service, the procedures of that service apply. For attorneys assigned to Coast Guard commands, the request must be e-mailed to the commanding officer or office chief of the requested IMC, copying the Office of Member Advocacy and Legal Assistance (CG-LMA) at HQS-DG-LST-CG-LMA-D@uscg.mil, the military judge (if detailed), and other appropriate commands. The IMC's commanding officer or office chief, in consultation with their SJA (if applicable), determines whether the requested IMC is "reasonably available," using the criteria in Subsection 13. B.2.i.

B.2.g. Action on other cases when the IMC's Commanding Officer or Office Chief concludes that the requested IMC is not "reasonably available"

If the IMC's commanding officer or office chief concludes that the requested IMC is not reasonably available, he or she will forward to the accused a written determination that a requested IMC is not "reasonably available" that states the reasons for the determination.

B.2.h. Action on other cases when the IMC's SJA concludes that the requested IMC is "reasonably available"

When counsel is determined to be available, the IMC's SJA notifies the detailing authority, who details the counsel, and may excuse previously detailed counsel, in accordance with RCM 506(b)(3).

B.2.i. Factors for determining availability

In determining the availability of counsel to serve as IMC, all relevant factors may be considered, including, but not limited to, the following:

- i. The existence of an attorney-client relationship between the accused and the requested IMC regarding a charged offense. If the attorney was detailed as counsel to the accused, see RCM 505(d)(2)(B);
- ii. Any disqualifying factors relating to the requested IMC's duty assignment (e.g. any previous involvement with the case as an investigating officer, preliminary

- hearing officer, or a witness; or assignment to the same rating chain of the trial counsel or cognizant SJA, (although rating chain disqualification's ordinarily may be remedied with an express knowing waiver by the accused));
- iii. The requested IMC's duty, position, responsibilities, and workload;
 - iv. Any ethical considerations that might prohibit or limit the participation of the requested IMC;
 - v. Time and distance factors (e.g., travel to and from the sites, anticipated date, length of the trial or hearing, the nature and complexity of the charges and legal issues involved in the case, associated costs and availability of funding). Availability of funding may be determined by consultation with the detailing authority, or arrangements may be made for funding from other sources;
 - vi. The effect of requested IMC's absence on the proper representation of the requested IMC's other clients;
 - vii. Overall impact of the requested IMC's absence on the ability of the requested IMC's office to perform its required mission (e.g., personnel strength, scheduled departures or leaves, and unit training and mission requirements); and
 - viii. The detailing authorities must ensure that neither the SJA detailing trial counsel nor the trial counsel is in the rating chain of the IMC.

B.2.j. Review of determinations that requested IMC is not reasonably available

When a request for IMC is denied, an accused has no right to review of this decision except by motion before a court-martial. Where a determination that an IMC assigned to duty with another service is not reasonably available is based on that service's determination of unavailability, any appeal must be submitted in accordance with that service's regulations. In other cases, an accused may, upon timely request, obtain review for abuse of discretion of a determination of unavailability by an appropriate OEGCMJ. If the OEGCMJ or higher authority made the determination, the next higher authority in the chain of command will conduct the review. An accused is not entitled to such review if the reviewing authority under this Subsection is the Commandant.

B.2.k. Procedure for review of determinations that requested IMC is not reasonably available

Any request for review of a determination of unavailability must be submitted promptly. In the absence of circumstances justifying a longer delay, review may be denied as untimely if the request is submitted more than three working days after the accused's receipt of the adverse determination. Requests for review of a determination that requested IMC is not reasonably available must be made in writing to the appropriate authority, with copies to the other involved commands. The request for review must contain a copy of the determination and articulate why the determination was an abuse of discretion.

B.2.l. Excusal or withdrawal of IMC

Like detailed defense counsel, an approved IMC may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the IMC for good cause shown. See RCM 506(c); Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1(series).

Section C. Trial Counsel

C.1 Detailing trial counsel to courts-martial

The SJA for the convening authority, or the Chief of Military Justice, Coast Guard Legal Service Command, details trial counsel for general and special courts-martial. An SJA, having a deputy staff judge advocate on his or her staff, may delegate this authority to his or her deputy. At least one of the trial counsel detailed to a general or special court martial must be certified in accordance with Article 27(b), UCMJ. The detailing authorities may also detail assistant trial counsel to general and special courts-martial. Assistant trial counsel need not be certified in accordance with Article 27(b), UCMJ.

- C.1.a. Restriction The SJA assigned to an OEGCMJ must not be detailed as trial counsel to a court-martial convened by a unit within the geographical limits of the command to which he or she is assigned.

Section D. Special Victims' Counsel (SVC)

- D.1. Victims of alleged sex-related offenses** An individual eligible for military legal assistance under 10 U.S.C. §1044e who is the victim of an alleged sex-related offense must be offered the option of receiving assistance from a SVC. If at the time of an interview by any military criminal investigator or counsel for the Government, a SVC is not involved, the investigator or counsel for the Government must notify the victim in writing, of their option to receive assistance from a SVC prior to the interview. See Special Victims' Counsel Program, COMDTINST 5801.5 (series).
- D.1.a. Eligibility The assistance of SVC is available to individuals eligible for military legal assistance under 10 U.S. C. §1044e, and other persons authorized by the Judge Advocate General who are the victims of a sex-related offense.
- D.1.b. Excuse or withdrawal of detailed SVC A detailed SVC may be excused only in accordance with SVC program guidance.

Section E. Court Reporters, Interpreters, Bailiffs, and Court Security Personnel

- E.1. Appointment** Appointment of reporters, interpreters, bailiffs, and court security personnel by the convening authority or authority directing the proceedings may be effected personally, or, at his or her discretion, by any other person. Such appointment may be oral or in writing.
- E.2. Disqualification** Reporters, interpreters, bailiffs, and court security personnel are disqualified as provided in RCM 502(e)(2).
- E.3. References** The duties of reporters, interpreters, bailiffs, and court security personnel are prescribed in RCM 502(e)(3), other applicable provisions of this Manual, and by the military judge or trial counsel. A Court Reporter Guide and a Bailiff Guide are available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.
- E.4. Court reporters** In all special and general courts-martial, the convening authority must detail a qualified court reporter. Court reporters detailed to those courts-martial must create a substantially verbatim audio recording of all the proceedings of the court-martial, except sessions closed for deliberations and voting. A reporter must also be detailed to an Article 32, UCMJ preliminary hearing. See RCM 405(j)(5). A reporter may also be detailed, by the appropriate official, to a summary court-martial, or a deposition.
- E.4.a. Qualification and duty Court reporter qualification and duty:
 - i. The term "qualified court reporter" as used in this Section means a professional civilian court reporter from a commercial court reporting service or a Yeoman with competency code YNL1 or YNL2, or any other person having equivalent qualifications.
 - ii. Detail as a reporter under this Section is a full time duty until the record of the proceedings is complete. No other duties will be assigned to the reporter that might interfere with his or her preparation of the record of trial or preliminary hearing in a timely fashion.

- iii. Under the supervision and at the direction of the trial counsel of a general or special court-martial, the reporter must prepare a record of trial in accordance with RCM 1112. A substantially verbatim audio recording created by the court reporter, rather than a transcript, will become part of the record of trial. However, the court reporter must also prepare a verbatim transcript of all special and general courts-martials audio records in any case where the judgment entered into the record includes a sentence of death, dismissal, dishonorable or bad-conduct discharge, or confinement for more than six months, which will be authenticated by the military judge. Trial counsel will ensure the authenticated transcript is forwarded with the record of trial to the Office of Military Justice (CG-LMJ). Additional clerical assistants may be detailed when necessary. See RCM 501(c).

E.5. Interpreters

In each court-martial case, Article 32, UCMJ, preliminary hearing, or deposition the convening authority or the officer directing such proceeding will appoint, when necessary, an interpreter for the proceeding. Interpreters must be qualified under M.R.E 604.

E.6. Bailiffs and court security personnel

The convening authority must appoint a bailiff for every general and special court-martial. The bailiff must be present at every court-martial session unless excused by the military judge. The trial counsel will brief the bailiff as to his or her duties well in advance of trial. Trial counsel must make an initial security risk assessment and determine whether to take special security precautions. Assistance may be obtained from CGIS. Trial counsel will notify the convening authority, military judge and defense counsel before trial of any special security arrangements deemed necessary. The convening authority will appoint court security personnel as necessary. If special security arrangements are deemed necessary, the trial counsel should coordinate the arrangements with the convening authority, bailiff, court security personnel, and CGIS. See Subsection 14.B.2.

E.7. Members

E.7.a. Changes in membership before court has been assembled

A general court-martial or special court-martial convening authority may delegate his or her authority to excuse members under RCM 505(c)(1)(B) to a principal assistant or to the SJA.

E.7.b. Changes in membership after court has been assembled

Article 29(a), UCMJ, and RCM 505(c)(2) provide that no member of a general or special court-martial may be absent or excused after a court-martial has been assembled except for physical disability, as a result of a challenge, or by order of the convening authority for good cause.

E.7.c. Court-martial member questionnaire

Convening authorities may use a court-martial questionnaire to evaluate whether prospective court-martial members are best qualified to serve on the court-martial under Article 25(d)(2), UCMJ. A Court-Martial Member's Questionnaire, available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>, may be used for this purpose. Convening authorities may require additional information in order to perform their duties under Article 25(e)(2), UCMJ. The Court-Martial Questionnaire, and any other materials considered by the convening authority in selecting members must be provided to any party upon request under RCM 912(b)(2). The trial counsel may, and must, upon request of defense counsel, submit a questionnaire to the members before trial, requesting information about any of the matters set out in RCM 912(a)(1) that were not covered in the materials considered by the convening authority in selecting members.

E.7.d. Detailing court-martial members from other commands

Convening authorities are authorized to detail any member under their command by applying the selection criteria of RCM 502(a) and Article 25, UCMJ. The size and geographic location of Coast Guard field units and the constraints of Article 25, UCMJ, often require convening authorities to seek assistance from other local commands. RCM 503(a)(3) allows a convening authority to consider members from outside the convening authority's unit only after they have been "made available by their commander." This request may be done on an ad hoc basis or as part of a pre-existing blanket arrangement, whereby a senior commander memorializes that subordinate unit members are considered to be available to serve on courts-martial panels for cases arising out of other units.

Chapter 14
Courtroom

Section A. Uniform for Trial

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| A.1. Requirement | The military judge must wear a judicial robe. All other military personnel required to be present at sessions of trial must wear the uniform prescribed by the military judge. See CG Rules of Court. |
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Section B. Courtroom and Trial Facilities
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| B.1 Military judge evaluation of facilities | <p>The military judge may refuse to commence trial if the site, facilities, and security provided are not suitable. Among the factors that should be taken into account in determining the appropriateness of the site and facilities of the courtroom are:</p> <ol style="list-style-type: none"> a. Freedom from noise or other disturbing influences; b. Adequacy of the bench; c. Adequacy of seating for the members of the court; d. Adequacy of space for spectators; e. Adequacy of lighting and ventilation; f. Adequacy of counsel tables; g. Adequacy of recording equipment; h. Adequacy of space for the deliberation of court members; i. Availability of separate waiting rooms for government and defense witnesses; j. Adequacy of space for witnesses waiting to testify; and k. Any other factors that create or detract from an appropriate judicial forum. |
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| B.2. Courtroom security | Office of the Judge Advocate General and Naval Legal Service Command Physical Security Program, JAG/COMNAVLEGSVCCOMINST 5530.2D, should be used to the maximum extent possible to determine courtroom security needs. Navy defense counsel use the criteria set out in that Instruction to determine whether they are permitted to appear in a particular courtroom. The Instruction also provides very sound guidance for security for a courtroom conducting a federal criminal proceeding. If a particular courtroom cannot meet the security standards set out in the Command Physical Security Program Instruction, the trial must be moved to a courtroom that does possess, or can be modified, permanently or temporarily, to possess, adequate security measures. |
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B.3. Venue selection

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| B.3.a. Convening Authority's role in venue selection | It is the convening authority's responsibility to ensure an appropriate location and facilities for court-martial are provided. The convening authority designates where the court-martial will meet by specifying the location in the convening order. See RCM 504(e). For motions to change venue, see RCM 906(b)(11). |
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| B.3.b. Military Judge's role in venue selection | The military judge maintains authority as to the appropriateness of the particulars of the actual physical location of a trial. If the facilities are unsuitable for trial, the military judge may refuse to begin trial. The authority to designate the venue of trial remains with the convening authority. |
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Chapter 15 Authority to Grant Immunity from Prosecution
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Section A. Background

A.1. General

In certain cases involving more than one participant in criminal conduct, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying in the investigation and/or the trial of another offender. Transactional immunity, as that term is used in this Chapter, means immunity from criminal prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this Chapter, means immunity from the use in aid of future criminal prosecution, of testimony or other information compelled under an order to testify. Ordinarily, testimonial immunity is all that is required to protect the right against self-incrimination and compel a witness to testify. The authority to grant either transactional or testimonial immunity to a witness is reserved to the cognizant officer exercising general court-martial jurisdiction (OEGCMJ). This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined in this Chapter.

A.2. Procedure

The procedures outlined here are in amplification of RCM 704, and the “Discussion” under that rule. A written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the public interest must be forwarded to the cognizant OEGCMJ by the trial counsel in cases referred for trial, the preliminary hearing officer, the counsel or recorder of any other fact finding body, or the investigator when no charges have been preferred. The recommendation must state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The OEGCMJ must act upon such request after referring it to his or her legal office for consideration and advice.

Section B. Civilian Witness or Military Witness Liable to Federal Prosecution
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B.1. Obtaining Immunity

The OEGCMJ must obtain the approval of the Attorney General for immunity for witnesses liable for Federal prosecution. See 18 U.S.C. § 6004. Requests for immunity should be coordinated with the local United States Attorney's office. See RCM 704(c). When the OEGCMJ seeks approval of the Attorney General through the local U.S. Attorney, the OEGCMJ must notify the Office of Military Justice (CG-LMJ) of such a request. Where the witness is also exposed to possible prosecution in a state court, the OEGCMJ can also facilitate the approval of the State Attorney General by seeking concurrence of the appropriate state authorities in the state in which the witness is exposed to possible prosecution.

B.2. Approval Procedure

If a military witness is liable to prosecution for civilian federal offenses, but is willing to testify under a grant of immunity from court-martial pursuant to RCM 704, the OEGCMJ can grant such immunity only after determining that the cognizant United States Attorney is not interested in pursuing the case. See RCM 704. Pursuant to RCM 704, any proposed grant of immunity, whether for a civilian or military witness, must meet the requirements of 18 U.S.C. §§ 6002 and 6004. If a grant of immunity to a civilian witness, or to a military witness who is liable to prosecution for civilian federal offenses, is necessary, the approval of the Attorney General of the United States, or his or her designee, must be obtained prior to granting immunity by the cognizant OEGCMJ. An application for approval of the immunity request from the Attorney General is made to the Policy and Standards Enforcement Unit, Office of Enforcement

Operations, Criminal Division of the Department of Justice using the following online form: <https://www.justice.gov/usam/file/872951/download> Trial counsel working on an immunity request must familiarize themselves with U.S. Attorney's Manual, USAM 9-23.000, which provides guidance on obtaining approval of witness immunity from the Attorney General. A template for Transactional Immunity and template for Testimonial Immunity are available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

B.3. Post-testimony procedures

After the witness has testified, the following information, together with a substantially verbatim transcript of the witness' testimony, authenticated by the military judge, must be provided to the Office of Military Justice (CG-LMJ) for further transmittal to the United States Department of Justice, Policy and Standards Enforcement Unit, Office of Enforcement Operations:

- a. Name, citation, or other identifying information, of the proceeding in which the order was requested;
- b. Date of the examination of the witness;
- c. Name and residence address of the witness;
- d. Whether the witness invoked the privilege;
- e. Whether the immunity order was used;
- f. Whether the witness testified pursuant to the order; and

If the witness refused to comply with the order, whether contempt proceedings were instituted or contemplated, and, if contempt proceedings were concluded, the result of the contempt proceeding.

Section C. Military Witness Not Liable to Federal Prosecution
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C.1. Approval Procedure

In any case in which a military witness is granted transactional immunity, and is not liable to prosecution in a federal district court, the OEGCMJ should execute a written grant and order to testify substantially in the form provided in the template for Transactional Immunity, available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. In any case in which a military witness is granted testimonial immunity, the OEGCMJ should execute a written grant and order to testify substantially in the form provided in the template for Testimonial Immunity available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. The language of the written grant determines the scope of this immunity. The forms set out in referenced templates should be tailored as necessary to incorporate the terms of the grant of immunity. For example, a grant conditioned on the act of testifying becomes effective only when the witness testifies. If the witness is to be granted immunity to give information during the investigation of a matter, this must be provided for in the grant of immunity.

C.2. Crime victim misconduct

The following applies to offenses other than those sexually-related offenses listed in Subsection 5.C.1. When a crime victim, as defined in Article 6b, UCMJ, is suspected of an offense that occurred at the time of or in conjunction with the alleged offense committed against them, a commanding officer contemplating any action against the crime victim under the UCMJ, and a commanding officer of enlisted or military personnel or an officer in charge contemplating nonjudicial punishment under Article 15, UCMJ, must notify the next superior commander in writing of the intent to dispose of allegations of misconduct against the crime victim under the UCMJ. No action may be taken until the next superior commander informs the commanding officer, commanding officer of enlisted or military personnel or officer in charge in writing whether or not the next superior commander will withhold disposition authority in accordance with RCM 306(a). The commanding officer of enlisted or military personnel is not considered to be a next superior commander. An example of the type of misconduct that requires superior commander notification is a victim of assault

consummated by a battery who was under the influence of illegal drugs at the time of the attack. An example of crime victim misconduct that does not require superior commander notification is drug use that takes place six months after the alleged assault, even if it is asserted that the reason for the drug use was in some manner related to the earlier assault. Commanding officers, commanding officers of enlisted or military personnel and officers in charge should consult with their servicing legal office about whether to proceed with action against an alleged crime victim, and whether to notify a superior commander of the intent to take action against an alleged crime victim.

Chapter 16 Information and Services to be Provided to Victims and Witnesses
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Section A. Rights of Crime Victims

A.1. Background

Personnel directly engaged in the prevention, detection, investigation, and disposition of offenses will ensure that crime victims, as defined in Article 6b(b), UCMJ are afforded their rights in accordance with that Article. This includes courts-martial, including law enforcement and legal personnel, sexual assault response coordinators (SARC), commanding officers and officers-in-charge, health care providers, Special Victims' Counsel (SVC), trial counsel, and staff judge advocates. This policy does not create any entitlement, cause of action, or defense in favor of any person arising out of the failure to accord a crime victim the notice outlined in this policy.

A.2. Victim's rights

A crime victim has the right to:

- a. Be reasonably protected from an alleged offender. when named by the crime victim
- b. Be provided with reasonable, accurate, and timely notice of:
 - i. A public hearing concerning the continuation of an accused's pre-trial confinement, to include proceedings under RCM 305(i);
 - ii. A preliminary hearing pursuant to Article 32, UCMJ, relating to the offense;
 - iii. A court-martial relating to the offense;
 - iv. A public proceeding of the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board hearing relating to the offense; and
 - v. The release or escape of the prisoner, unless such notice may endanger the safety of any person.
- c. Be present at, and not be excluded from any public hearing or proceeding unless the military judge or preliminary hearing officer, after receiving clear and convincing evidence, determines that testimony by the crime victim would be materially affected if the crime victim was present.
- d. Be reasonably heard personally or through counsel at:
 - i. A public hearing concerning the continuation of an accused's pre-trial confinement;
 - ii. A preliminary hearing pursuant to Article 32, UCMJ, and court-martial proceedings relating to the Military Rules of Evidence (M.R.E.) 412, 513, and 514 and regarding other rights provided by statute, regulation, or case law;
 - iii. A public sentencing hearing relating to the offense; and
 - iv. A public hearing before the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board relating to the offense. A crime victim may make a personal appearance before the Department of the Navy Clemency and Parole Board or submit an audio, video, or written statement.
- e. No later than 24 hours from the closure of a preliminary hearing, any victim named in one of the specifications, or counsel for the victim, may submit additional information to the preliminary hearing officer that the victim feels is relevant to the convening authority's disposition of the charges. See RCM 405(k).
- f. Confer with the attorney for the U.S. Government in the case. This includes the right to reasonably confer with this attorney at any proceeding described in this Section (pre-trial confinement, Article 32, UCMJ, hearing, trial by court-martial, and clemency or parole hearing):
 - i. Crime victims who are entitled to legal assistance may consult with a legal assistance attorney;

- ii. Crime victims of an offense under Articles 120, 120a, 120b, or 120c under the UCMJ or attempts to commit such offenses under Article 80, UCMJ, who are entitled to legal assistance in accordance with 10 U.S.C. § 1044, may consult with a SVC. Crime victims of these covered offenses must be informed by a sexual assault response coordinator (SARC), victim advocate, military criminal investigator, trial counsel, or other local responsible official that they have the right to with a SVC as soon as they seek assistance from that individual in accordance with 10 U.S.C. § 1565b, and as otherwise authorized by Coast Guard policy; and
- iii. All crime victims may also elect to seek the advice of a private attorney at their own expense.
- g. Receive restitution as provided in accordance with State and Federal law.
- h. Proceedings free from unreasonable delay.
- i. Be treated with fairness and respect for his or her dignity and privacy at all times after making a crime victim report; and
- j. Express his or her views to the convening authority as to disposition of the case.

A.3. Underage, incompetent, or deceased victims

In the case of a crime victim who is less than 18 years of age and not a member of the armed forces, or who is incompetent, incapacitated, or deceased, the military judge will designate in writing a representative of the crime victim, a family member, or another suitable individual to assume the crime victim's rights under the UCMJ. The crime victim's representative is designated for the sole purpose of assuming the legal rights of the crime victim as they pertain to the person's status as a victim of any offense(s) properly before the court. Under no circumstances will the individual designated as representative have been accused of any crime against the victim. In making a decision to appoint a representative, the military judge should consider:

- a. The age, maturity, and relationship to the victim of the proposed designee;
- b. The physical proximity to the victim;
- c. The costs incurred in effecting the appointment;
- d. The willingness of the proposed designee to serve in such a role;
- e. The previous appointment of a guardian by a court of competent jurisdiction;
- f. The preference of the victim, if known;
- g. Any potential delay in any proceeding that may be caused by a specific appointment; and
- h. Any other relevant information.

The representative, legal guardian, or equivalent of a crime victim of who is eligible, or in the case of a deceased victim was eligible at the time of death, for legal assistance may elect to consult with an SVC on behalf of the victim.

A.4. Special Victims' Counsel

If the victim is entitled to and has elected to consult an SVC, all parties must ensure compliance with the Special Victims' Counsel Program, COMDTINST 5801.5 (series).

A.5. Interview of victims

Any interview by counsel for the accused, or that lawyer's representative, shall take place in the presence of counsel for the Government, counsel for the victim, or if applicable, a victim advocate. See RCM 701(e)(1).

A.6. Checklist and recording information provided to victims regarding rights of SVC and other victim rights

In order to ensure compliance with statutory requirements to notify eligible crime victims of their rights to a Special Victims Counsel, and other crime victim rights, Trial Counsel will fill out the Trial Counsel Crime Victim Rights Checklist. A copy of the checklist is available at the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. The checklist must be retained with the trial counsel's case file until Convening Authority action, if there is a trial, or disposition of the allegations, if the matter does not result in a trial. Trial Counsel is also responsible to ensure timely entry of data regarding informing crime victims of the rights captured on the checklist in the Military Justice Case Management

System (MJCMS). The entries are made in the calendar tab where there are dropdown choices derived from the fields on the Trial Counsel Checklist.

Section B. Information and Services
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B.1. Background

To safeguard the rights of crime victims and provide notice as required, victims must receive timely and accurate information regarding significant military justice matters. Therefore, the government counsel must provide the victim with the information listed in this Section. A request by the victim is not required. If the victim is represented by a SVC or other counsel, all notices required throughout this Chapter will be provided to the victim through counsel.

B.2. Initial information to be provided to crime victims

Immediately after identification of a crime victim or witness, the SARC or, law enforcement officer will explain and provide information to each crime victim and witness including: The CGIS Pamphlet, "Initial Information for Victims and Witnesses of Crime" or computer-generated equivalent will be used as a handout to convey basic information. Specific points of contact will be recorded in the appropriate place. Proper completion of this pamphlet serves as evidence that the SARC or designee, law enforcement officer, or criminal investigative officer notified the victim of his or her rights. The date the form is given to the victim or witness will be recorded on the document along with signed acknowledgement from the victim or witness. This serves as evidence the victim was timely notified of his or her rights under Article 6b, UCMJ.

B.3. General information to be provided during investigation of a crime

SARCs or law enforcement investigators will inform crime victims and witnesses, of the status of the investigation of the crime, to the extent providing such information does not interfere with the investigation.

B.4. Investigation stage

During the investigation stage, and prior to the preferral of charges, a crime victim is entitled to:

- a. A copy of all statements and documentary evidence adopted, produced, or provided by the victim that are in possession of the Trial Counsel or a Staff Judge Advocate. However, subpoenas for personal or confidential information about a victim, issued prior to preferral do not require notice before issuing. See RCM 703(g)(3)(C)(ii).
- b. A copy of all official requests, search authorization, or search warrants issued by military authorities to any third-party custodian for documents or records in which the victim maintains a privacy interest. This includes, but is not limited to, requests for the crime victim's medical or behavioral health records from a military treatment facility or subpoenas issued to a telecommunications carrier for a victim's telephone records. The copy should be provided prior to execution when possible.
- c. The date, time, and location of any pretrial confinement review hearing pursuant to RCM 305(i).

B.5. At preferral of charges

Upon preferral of charges a crime victim is entitled to:

- a. A copy of all statements and documentary evidence adopted, produced, or provided by the victim and of any recordings of interviews of the victim that are in the possession of trial counsel or the Staff Judge Advocate, or other local servicing attorney, unless previously provided;
- b. A copy of all official requests, subpoenas, search authorization, or search warrants issued by military authorities to any third-party custodian for documents or records in which the crime victim maintains a privacy interest, unless previously provided. Copies should be provided prior to execution when possible;

- c. An excerpt of the charge sheet setting forth the preferred specifications pertaining to that victim;
- d. The date, time, and location of any pretrial confinement review pursuant to RCM 305, unless previously provided;
- e. The time, date, and location of the preliminary hearing pursuant to Article 32, UCMJ, and any information necessary to facilitate attendance by the SVC;
- f. A copy of any military protective order issued to protect the crime victim or the victim's family; and
- g. Any request to interview the crime victim.

B.6. Sexual Assault Victim

If the victim of an alleged violation of Article 120, 130 (Article 120a if alleged to have been committed prior to January 1, 2019), 120b, 120c, 125 (if alleged to have been committed prior to January 1, 2019), and 80 (attempts of these offenses) of the Uniform Code of Military Justice

, expresses a preference for prosecution in a civilian court, the commander, or if the charges are preferred, the convening authority, shall ensure the civilian authority with jurisdiction over the offense is notified of that preference. See Subsection 11.C.1. The victim must be notified by trial counsel if the civilian authority with jurisdiction makes a decision to prosecute or not prosecute. See RCM 306(e). Counsel for the Government or trial counsel must ensure that the date notification of the ability to express a preference for civilian versus military prosecution is noted in the MJCMS. If the victim expresses a preference to civilian prosecution Counsel for the Government or trial counsel must ensure that the date the civilian authority is notified is entered in MJCMS as well as the date of a response from the civilian authority, if any, and the date the victim is notified of the civilian authority's response.

A Service member making an unrestricted report of sexual assault must be notified of the following events, and each notification shall be documented and maintained in the Military Justice Case Management System:

- a. Conclusion of an investigation;
- b. The initial disposition decision;
- c. Pretrial confinement hearings;
- d. Preferral of charges;
- e. Article 32 hearings;
- f. Referral of charges;
- g. All court proceedings, including, arraignment, motions hearings, and trial dates;
- h. Withdrawal of charges;
- i. Dismissal of charges;
- j. Post-trial hearings;
- k. Vacation hearings;
- l. Clemency submissions;
- m. Appellate filings;
- n. Appellate hearings; and
- o. Appellate decisions.

The above notifications, except those in which notification is mandated by Article 6b of the Uniform Code of Military Justice, may be limited to avoid endangering the safety of the individual making the report or another witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. However, if notification does not occur for one or more of the aforementioned reasons, that decision must be documented, including the name of the responsible official making the decision, the specific rationale for the decision, and the support for the decision, all of which must be maintained in the MJCMS.

Additionally, when the sexual offense occurs in the United States, the preference of the alleged victim for prosecution of the accused by court-martial or in a civilian court with jurisdiction over the offense must be solicited and maintained in MJCMS.

The responsible commander shall periodically notify all victims of alleged sexual assault of the status of a final determination on any case that does not result in referral to court-martial, including the decision not to take any action. Such notifications shall continue no less frequently than monthly until a final disposition is taken.

B.7. Timely Disposition of Nonprosecutable Sex-Related Offenses in Cases that are Preferred but not Referred

In cases where a specification has been preferred, after which a convening authority determines there is insufficient evidence to support prosecution of an alleged sex-related offense and declines to refer the preferred specification to a general or special court-martial, any decision concerning further disposition of the alleged sex-related offense shall be made in a timely manner.

If the convening authority determines there is insufficient evidence to support the prosecution of a sex-related offense and decides not to refer a preferred sex-related specification to a general or special-court martial, when practicable, any further disposition decision or disposition recommendation including no action must be made within 60 days of the convening authority's non-referral decision. This 60-day timeline includes providing notice of the disposition decision or disposition recommendation to the alleged victim. If it is not practicable for the disposition decision or disposition recommendation to be made within 60 days, at or before the 60-day mark, and for each 30 days until a disposition decision or disposition recommendation is made, the reason for the delay must be explained and memorialized in the notice to the alleged victim.

B.8. Government filings

Upon receipt or filing by the government, a crime victim is entitled to:

- p. A summarized transcript or copy of the recording of the crime victim's testimony at the Article 32, UCMJ, preliminary hearing;
- q. A copy of the charge sheet setting forth the referred specifications, except that the names and personal information of any other crime victims listed in the referred specifications will be redacted;
- r. The time and date of any RCM 802 conferences regarding scheduling a court-martial, docket requests, and docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial;
- s. A copy of any motion or responsive pleadings that may limit a crime victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or private medical information, or involve the victim's right to be heard, except that the names and personal information of any other crime victims will be redacted;
- t. Any request to interview the crime victim received from defense counsel;
- u. Notice of pretrial agreement negotiations and an opportunity to express the views of the crime victim regarding the proposed terms of the agreement; and,
- v. A copy of any approved pretrial agreement.

B.9. Prosecution Stage

Court-Martial Information for Victims and Witnesses of Crime, Form DD-2702, will be used as a handout to convey basic information about the court-martial process. The date it is given to the crime victim or witness must be recorded by the delivering official. If applicable, the following will be explained and provided by the trial counsel, or designee, or Special Victims' Counsel to crime victims and witnesses:

- a. Notification of crime victims' rights, to include a crime victim's right to express views as to disposition of case to the responsible commander and convening authority, in accordance with Rule for Court-Martial 306;
- b. Notification of the crime victim's right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to federal law and Coast

- Guard policy. This includes the right of service members and their dependents to consult a military legal assistance attorney or a SVC;
- c. Consultation concerning the decisions to prefer or not prefer charges against the accused offender and the disposition of the offense if other than a trial by court-martial;
 - d. Consultation concerning the decision to refer or not to refer the charges against the accused offender to trial by court-martial and notification of the decision to pursue or not pursue court-martial charges against the accused offender;
 - e. Notification of the initial appearance of the accused offender before a reviewing officer or military judge at a public pretrial confinement hearing or at a preliminary hearing in accordance with Article 32, UCMJ;
 - f. Notification of the release of the suspected offender from pretrial confinement;
 - g. Explanation of the court-martial process on referral to trial;
 - h. Before any court proceedings (as defined to include preliminary hearings pursuant to Article 32, UCMJ, pretrial hearings pursuant to Article 39(a), UCMJ, trial, and presentencing hearings), assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters that may be necessary to allow the victim to participate in court proceedings;
 - i. During the court proceedings, a private waiting area out of the sight and hearing of the accused and defense witnesses. In the case of proceedings conducted aboard ship or in a deployed environment, provide a private waiting area to the greatest extent practicable;
 - j. Notification of the scheduling, including changes and delays, of a preliminary hearing pursuant to Article 32, UCMJ, and each court proceeding the crime victim is entitled to or required to attend will be made without delay. On request of a crime victim or witness whose absence from work or inability to pay an account is caused by the crime or cooperation in the investigation or prosecution, the employer or creditor of the crime victim or witness will be informed of the reasons for the absence from work or inability to make timely payments on an account. This requirement does not create an independent entitlement to legal assistance or a legal defense against claims of indebtedness;
 - k. Notification of the recommendation of a preliminary hearing officer when an Article 32, UCMJ, preliminary hearing is held;
 - l. Consultation concerning any decision to dismiss charges or to enter into a plea agreement;
 - m. Notification of the disposition of the case, to include the acceptance of a plea of "guilty," the rendering of a verdict, the withdrawal or dismissal of charges, or disposition other than court-martial, to specifically include nonjudicial punishment under Article 15, UCMJ, administrative processing or separation, or other administrative actions;
 - n. Notification to crime victims of the opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the crime victim, including financial, social, psychological, and physical harm suffered by the victim. The right to submit a victim impact statement is limited to the sentencing phase and does not extend to the providence (guilty plea) inquiry before sentencing;
 - o. Notification of the offender's sentence and general information regarding minimum release date, parole, clemency, and mandatory supervised release;
 - p. As soon as trial counsel receives the Statement of Trial Result, trial counsel must e-mail it to any crime victim or victim's counsel in the case, without regard to whether the accused was convicted or acquitted of any offense; and/or
 - q. Notification of the opportunity to receive a copy of proceedings. The convening authority or subsequent responsible official must authorize release

of a copy of the record of trial without cost to a victim as defined in Article 54(e), UCMJ. See Subsection 21.F.3.

B.10. Crime victims access to convening authorities

Staff judge advocates (SJAs) and trial counsel should seek to ensure crime victims and/or their SVC are given meaningful opportunities to consult with convening authorities, either in writing, telephonically, or in person, prior to any decision concerning whether or not to prosecute, pursue a disposition by plea, or dismiss charges involving the victim. In general, commanders and convening authorities may seek input from or engage with crime victims and their counsel. Under ordinary circumstances, SJAs and trial counsel should not dissuade commanders and/or convening authorities from engaging with or seeking input from victims or SVCs.

B.11. Information and services to be provided on conviction

Coast Guard trial counsel, or the Special Victims' Counsel, if one is appointed, will explain and provide services to crime victims and witnesses on the conviction of an offender in a court-martial. Post-Trial Information for Victims and Witnesses of Crime, Form DD-2703, will be used as a handout to convey basic information about the post-trial process. The following will be provided to crime victims and witnesses:

- a. General information regarding convening authority action, the appellate process, the corrections process, information about work release, furlough, probation, parole, mandatory supervised release, or other forms of release from custody, and eligibility for each;
- b. Specific information regarding the election to be notified of further actions in the case, to include the convening authority's action, hearings and decisions on appeal, changes in inmate status, and consideration for parole. Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, will be explained to and used for victims and appropriate witnesses (e.g., those who fear harm by the offender) to elect to be notified of these actions, hearings, decisions, and changes in the offender's status in confinement;
- c. For all cases resulting in a sentence to confinement, Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 will be completed and forwarded to the Office of the Office of Military Justice (CG-LMJ), the gaining confinement facility, the SARC, and the victim or witness, if any, with appropriate redactions made by the delivering official. Incomplete Forms DD-2704 received by the Office of the Office of Military Justice (CG-LMJ) must be accompanied by a signed memorandum from Staff Judge Advocate or the SJA's designee, detailing the reasons for the incomplete information, or they will be returned to the responsible legal office for correction. Do not allow an inmate access to the DD- 2704 or attach copy of the forms to any record to which the confinee has access. Doing so could endanger the crime victim or witness;
- d. For all cases resulting in conviction but no sentence to confinement Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, will be completed and e-mailed to the Office of Military Justice (CG-LMJ), the SARC, and the crime victim or witness, if any;
- e. Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, and Notification to Victim/Witness of Prisoner, Form DD-2705, are exempt from release under the Freedom of Information Act;
- f. Specific information regarding the deadline and method for submitting a written statement to the convening authority for consideration when taking action on the case in accordance with Article 60, UCMJ, and RCM 1106A; and
- g. The Entry of Judgment signed by the military judge.

B.12 Entry into confinement facilities

The victim and witness assistance coordinator at the military confinement facility will:

- a. Upon entry of an offender into post-trial confinement, be provided the Victim/Witness Certification and Election Concerning Prisoner Status, Form

DD-2704, obtained by trial counsel or the SVC to determine crime victim or witness notification requirements.

- b. When a crime victim or witness has requested notification of changes in inmate status on the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, and that status changes, use the Notification to Victim/Witness of Prisoner Status, Form DD-2705 to notify the crime victim or witness.

The date the DD-2705 is given to the crime victim or witness must be recorded by the delivering official. This serves as evidence that the officer notified the crime victim or witness of his or her statutory rights. Do not allow the inmate access to DD-2705 or attach a copy of the forms to any record to which the inmate has access.

- c. Provide the earliest possible notice of:
 - i. The scheduling of a clemency or parole hearing for the inmate;
 - ii. The results of the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board;
 - iii. The transfer of the inmate from one facility to another;
 - iv. The escape, on escape and subsequent return to custody, work release, furlough, or any other form of release from custody of the inmate;
 - v. The release of the inmate to supervision;
 - vi. The death of the inmate while in custody or under supervision; and
 - vii. A change in the scheduled release date of more than 30 days from the last notification due to a disposition or disciplinary and adjustment board.
- d. Make reasonable efforts to notify all crime victims and witnesses who have requested notification of changes in inmate status of any emergency or special temporary home release granted an inmate.
- e. On transfer of an inmate to another military confinement facility, forward the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, to the gaining facility, and e-mail a copy to CG-LMJ at HQS-DG-LST-CG-LMJ@uscg.mil.

B.13. Appeal

When an offender's case is docketed for review by the Coast Guard Court of Criminal Appeals, or is granted review by the Court of Appeals for the Armed Forces (C.A.A.F.) or by the U.S. Supreme Court, the appellate counsel for the Government will ensure that all crime victims who have indicated a desire to be notified receive this information, if applicable:

- a. Notification of the scheduling, including changes and delays, of each public court proceeding that the crime victim is entitled to attend;
- b. Notification of the decision of the court; and
- c. When an offender's case is reviewed by the Office of the Judge Advocate General pursuant to Article 69, UCMJ, and Article 73, UCMJ, the Office of Military Justice (CG-LMJ) will ensure that all victims who have indicated a desire to be notified on the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 receive notification of the outcome of the review.

B.14. Consideration for parole or supervised release

Before the parole or supervised release of a prisoner, DoD Policy requires the military confinement facility staff to review the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 to ensure it has been properly completed. If there is a question concerning named persons or contact information, it should be immediately referred to the appropriate Staff Judge Advocate for correction. When considering a prisoner for release on supervision, DoD policy requires the military confinement facility commander ensure that all victims on the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, indicating a desire to be notified were provided an opportunity to provide information to the Coast

Guard Clemency Board or the Department of the Navy Clemency and Parole Board in advance of its determination, as documented in the confinement file.

B.15. Notice of decisions regarding residual clemency

Crime Victims within the meaning of Article 6B, UCMJ, are entitled to notice of residual clemency decisions under Article 74(a), UCMJ, that offer any form of relief.

B.16 Evidence obtained from crime victims

After court proceedings, Government representatives (SARC, trial counsel, or CGIS) will take appropriate action to ensure that property of a crime victim or witness held as evidence is safeguarded and returned as expeditiously as possible.

B.17 Requests for information from crime victims not released under this policy

Any requests by crime victims or their designated counsel for documents or portions of the report of investigation not provided for under this policy will be processed under the applicable procedures of the Freedom of Information Act (FOIA) or Privacy Act. Information about filing a FOIA request can be found at <http://www.uscg.mil/foia>.

Section C. Complaint Process

C.1. Where to file a complaint

A crime victim may file a complaint with the Coast Guard if that person believes that a Coast Guard employee violated or failed to provide their rights under Article 6b, UCMJ. This right is in addition to the right to petition for extraordinary relief under Article 6b(e), UCMJ.

C.1.a. Against a Coast Guard attorney, judge advocate or military judge

A complaint against a Coast Guard attorney, judge advocate or military judge must be filed with the Office of Legal Policy and Program Development (CG-LPD) in the Office of the Judge Advocate General.

Office of Legal Policy and Program Development (CG-LPD)
Office of the Judge Advocate General
U.S. Coast Guard Stop 7213
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7213

C.1.b. Against a member of the Coast Guard Investigative Service

A complaint against a member of the Coast Guard Investigative Service, must be filed with the Deputy Director of the Coast Guard Investigative Service.

Deputy Director, Coast Guard Investigative Service
Coast Guard Investigative Service Headquarters
U.S. Coast Guard Stop 7301
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7301

C.1.c. Against any other employee of the Coast Guard

A complaint against any other employee of the Coast Guard regarding allegations an employee violated or failed to provide rights under Article 6b, UCMJ, must be filed with the Office of Military Justice (CG-LMJ), Office of the Judge Advocate General.

Office of Military Justice (CG-LMJ)
Office of the Judge Advocate General,
U.S. Coast Guard Stop 7213
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7213

C.2. Time for filing and content

A complaint must be filed within sixty (60) days of a victim's knowledge of a violation by a Coast Guard employee, but not more than one year after the actual violation. The complaint must be signed and dated. If the crime victim is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the complaint may be signed by a legal

guardian of the crime victim or a representative of the crime victim's estate, family member, or any other person appointed by a court.

C.3. Notification of decision

The office that reviews a complaint will provide the crime victim written notification that the complaint has been received. Complaints that contain specific and credible information that demonstrate that one or more rights may have been violated by a Coast Guard employee or office will be investigated. The office which reviews a complaint will notify the crime victim whether or not a violation has been found.

C.4. Request for additional review

If a crime victim disagrees with the determination as to whether a violation of the victim's rights has occurred, the crime victim may request further review of the complaint by the Deputy Commandant for Mission Support. The request for further review must identify the specific error in the initial review. Any request for further review must be made in writing within ten (10) days of notification of the results of the review of the complaint. Determination by the Deputy Commandant for Mission Support is final.

Deputy Commandant for Mission Support (CG-DCMS)
U.S. Coast Guard Stop 7202
Victims' Rights Compliance Review
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7202

Section D. Legal Assistance for Crime Victims
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D.1. Eligibility

Active and retired service members and their dependents are entitled to receive legal assistance pursuant to 10 U.S.C. § 1044.

D.2. Information and services

Legal assistance services for crime victims are protected by the attorney client privilege and may include advice and assistance for crime victims to address:

- a. Rights and benefits afforded to the crime victim under law and Coast Guard policy;
- b. Role of the Victim and Witness Assistance Program coordinator;
- c. Role of the victim advocate;
- d. Privileges existing between the crime victim and victim advocate;
- e. Differences between restricted and unrestricted reporting;
- f. Overview of the military justice system;
- g. Services available from appropriate agencies for emotional and mental health counseling and other medical services;
- h. Advising of rights to expedited transfer; and
- i. Availability of and protections offered by civilian and military protective orders.

Section E. Special Victims' Counsel Programs

E.1. Eligibility

The Coast Guard will provide legal counsel, known as SVC, to assist crime victims who have made allegations of sex-related offenses under Articles 120, 120a, 120b, and 120c under the UCMJ, and attempts to commit such offenses under Article 80 of the UCMJ, or other crimes under the UCMJ as authorized as prescribed by the Coast Guard policies. See Special Victims' Counsel Program, COMDTINST 5801.5 (series) for information about the SVC program. Individuals eligible for SVC representation include any of the following:

- a. Individuals entitled to military legal assistance under 10 U.S.C. §§ 1044 and 1044e, and as further prescribed by Coast Guard policies.
- b. Members of the Coast Guard Reserve, in accordance with Section 533 of NDAA 2015, and as further prescribed by Coast Guard policies.
- c. Coast Guard civilian employees.

Chapter 17
Witness Reimbursement

Section A. Financial Responsibility
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| A.1. Responsibility | Financial responsibility for costs incurred as the result of witnesses called before courts-martial, including Article 32, UCMJ, preliminary hearings, are normally borne by the convening authority. In cases involving excessive costs, funding may be requested from higher authority in the chain of command. |
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Section B. Attendance of Witnesses

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| B.1. Trial counsel responsibilities | Trial counsel is required to take timely and appropriate action to ensure the presence of both prosecution and defense witnesses whose presence is required at trial. The trial counsel must inform the defense counsel of the trial date as soon as it is known. This may be accomplished orally or in writing. |
| B.2. Subpoenas in general | Having ascertained the names of all required witnesses, the trial counsel may issue a subpoena to all civilian witnesses. A template Subpoena is available at Appendix 7 to the Manual for Courts-Martial (MCM) and on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . |
| B.3. Military witnesses | Trial counsel will inform the convening authority of the required military witnesses. Military witnesses attached to local commands other than that of the convening authority must be notified of the time and place of their required attendance by the trial counsel through their commanding officers. This may be done orally, but to ensure no miscommunication as to witnesses, uniforms, times, and locations, written notifications are recommended. Formal requests, usually by message, must be made to commands of military witnesses not within commuting distance of the trial location. Travel order numbers and accounting data must be included in the request. A command receiving a proper request for a military witness must provide that witness as requested or promptly notify the trial counsel that the witness will not be provided so the trial counsel can report the matter to the military judge. Failure to order a military witness to the trial can have significant consequences and may delay the trial. |
| B.4. Warrant of attachment | A military judge may issue a Warrant of Attachment to obtain production of witness or evidence after a proper subpoena was ignored or refused. See RCM 703(g)(3)(H). |
| B.5. Active duty witness reimbursement | Active duty military witnesses are reimbursed Temporary Assigned Duty (TAD) per diem and transportation in accordance with the Joint Travel Regulations (JTR). |
| B.6. Fees, per diem, and transportation for civilian witnesses | Fees for civilian witness travel are paid in accordance with the JTR and the Personnel, Pay and Procedures Manual, PPCINST M1000.2 (series) (PPPM). A Guide to Reimbursement for Civilian Witnesses is available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . |
| B.7. Civilian witnesses at Article 32 preliminary hearing | Reimbursement of per diem allowances, travel expenses and fees to civilians requested to testify at Article 32, UCMJ, preliminary hearings is authorized the same as if the witness testified at a court-martial, provided the preliminary hearing officer certifies that the witness appeared and testified. The preliminary hearing officer's certificate substitutes for a subpoena in support of a claim. Travel is performed and reimbursed under an Invitational Travel Authorization (ITA) governed by Invitational Travel Orders, COMDTINST 12570.3 (series). |
| B.8. Payment of accrued fees | Payments of accrued fees will be made in accordance with PPPM procedures. See Subsection 17.B.6. |

Section C. Expert Witnesses

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| C.1. Expert fees | The provisions of Subsection 17.B.6. are applicable to expert witnesses; however, the expert witness fee prescribed by the convening authority will be paid in lieu of the ordinary attendance fee only on those days the witness is required to attend the court. |
| C.2. Expert expenses | An expert witness employed in accordance with this Section may be paid compensation in advance at the rate authorized by the convening authority. An expert witness' claim for fees and mileage must also contain a certified copy of the convening authority's authorization for the expert's employment. Absent such authorization, only the fees paid to an ordinary (non-expert) witness may be paid. |
| C.3. Convening authority authorization for employment of expert witness | The convening authority may authorize the employment of an expert witness. Such authorization must be in writing and must fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States Attorneys for attendance of a witness of such standing in the United States courts in the area involved. Information concerning such normal compensation may be obtained from the servicing legal office. Convening authorities in the Fourteenth District will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Staff Judge Advocate, Fourteenth Coast Guard District Legal Office. |

Section D. Foreign National Witnesses
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| D.1. Payment | Witnesses who are foreign nationals are reimbursed in accordance with the PPPM. An OEGCMJ in areas other than a state of the United States establishes rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas. Foreign nationals must provide an Individual Tax Identification Number on their travel claim for reimbursement. |
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Section E. Advance Payment of Witnesses
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| E.1. Who may authorize | Travel advances for witnesses may be authorized in accordance with the PPPM and FINCEN SOP. See Subsection 17.B.6. |
| E.2. Process for advance payments | A preferred procedure for the expeditious advance of funds for witness travel is to provide a travel debit card. The travel debit card program is governed by Government Travel Card (GTCC) Program Policies and Procedures, COMDTINST M4600.18 (series), and is used as a tool to obtain a travel advance when someone does not possess a Government Travel Charge Card (GTCC), time does not allow for the use of the routine travel advance process, and non-receipt of a travel advance would cause financial hardship to the witness. Additional information can be found at the GTCC website. https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Personnel-Service-Center-PSC/BOPS/PSC-BOPS-R/GOVTrvl/Travel_Card/ . It is critical that supporting documents by complete and accurate in order for FINCEN to reimburse the bank for the issued debit card. The advanced fees, allowances, and travel expenses that are represented by the witness' debit card must be included on the witness' travel claim as a prior payment. |

Section F. Evidence of Deposition
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| F.1. Certificate of person before whom deposition is taken | The certificate of a person before whom the witness gave a deposition is evidence of the fact and period of attendance of the witness and the place from which summoned. |
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Chapter 18 Oaths, Article 39(a), UCMJ Sessions, Release of Information, and Spectators

Section A. Administered Oaths

A.1. Military judge

A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform all duties faithfully and impartially in all cases to which detailed. This oath may be taken at any time and may be administered by any person authorized by Article 136, UCMJ, to administer oaths. Once such an oath is taken, the military judge need not be sworn again at any court-martial to which subsequently detailed. Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel will administer the oath to the military judge at the appropriate point in the proceedings. The following oath is used for the swearing in of military judges, see RCM 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon you as military judge to this court-martial (, so help you God)?

A.2. Counsel

Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any person authorized by Article 136, UCMJ, to administer oaths. Once such an oath is taken, certified military counsel need not be sworn again at any trial to which he or she is detailed, or in any case in which he or she is serving as individual counsel at the request of the accused. Certified military counsel who have taken one-time oaths administered by armed services other than the Coast Guard need not again be sworn in courts-martial convened in the Coast Guard. Counsel who are not certified in accordance with Article 27(b), UCMJ, including all civilian counsel, must be sworn in each case. The following oath may be used in administering a one-time oath to counsel, see RCM 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully perform the duties of counsel in the case now in hearing (, so help you God)?

A.3. Court members

Court members may be given one oath for all cases that are referred to the court in accordance with the convening order that detailed them as members. In the event the convening order is amended, a new member will be sworn when he or she arrives. This oath may be administered by any officer authorized by Article 136, UCMJ, to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be stated on the record (i.e. captured on the digital audio file of the recording of the court-martial). The oaths used for court members will be those prescribed in the discussion to RCM 807(b)(2).

A.4. Reporters

Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be sworn again at any trial to which assigned. When the court reporter is not sworn at trial, the fact that he or she has been previously sworn will be stated on the record (i.e. captured on the digital audio file of the recording of the court-martial). The following oath may be used in administering a one-time oath to court reporters, see RCM 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully perform the duties of reporter to this court-martial (, so help you God)?

A.5. Interpreters Interpreters will be sworn by trial counsel as provided in the discussion to RCM 807(b)(2).

A.6. Recording one-time oaths of reporters and interpreters The certified counsel who gave the oath prescribed above for reporters and interpreters will transmit a signed copy to the Office of Military Justice (CG-LMJ). When a court reporter is a member of the Coast Guard assigned copy of the oath taken by the court reporter will be filed in the court reporter's official service record. The copies must bear below the signature of the person sworn a statement signed by the person who administered the oath, in a form as follows:

*[Quote the Oath and state purpose why administered; followed by]
The undersigned personally administered the foregoing oath to the above-named
[Person Sworn], this ____ day of _____, 20____, at [Location].*

Signature and Rank

Section B. Matters for Sessions Held Pursuant to Article 39(a), UCMJ

B.1. Arraignment and pleas As authorized under Article 39(a), UCMJ, a session of the court without the presence of the members may be called for the purpose of holding the arraignment and receiving the pleas of the accused. See CG Rules of Court.

B.2. Pretrial motions Pretrial motions will be submitted in accordance with the orders of the military judge assigned to the case, and, unless otherwise permitted or ordered by the military judge assigned to the case, will follow the format prescribed in the CG Rules of Court.

B.3. Custody and restraint of accused Physical restraint must not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge. See RCM 804(e)(3).

B.4. Conditional pleas The accused may enter a conditional plea of guilty in accordance with RCM 910(a)(2). Such plea must be in writing and must set forth the particular pretrial motion(s) to which the right of appeal is reserved. Because conditional guilty pleas subject the government to substantial risks of appellate reversal and the expense of retrial, SJAs should consult with the Chief, Office of Military Justice (CG-LMJ) prior to the government's consent regarding an accused entering a conditional guilty plea at court-martial. Once this coordination is complete, the government's consent to the plea may be given by trial counsel and must be noted on the document over the signature of the trial counsel.

B.5. Remote Article 39(a) sessions The use of audiovisual and teleconferencing technology is authorized by, to the extent and under the conditions allowed for in, RCM 804(b), 805(a), 805(c).

B.5.a. When remote Article 39(a), UCMJ sessions may be authorized Article 39 (a), UCMJ, sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. The military judge of a general or special court-martial may, at an Article 39(a), UCMJ, session, arraign the accused, hear argument and rule on motions, and receive the pleas of the accused during a remote Article 39(a), UCMJ session. If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of the accused's plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately, except when the plea is to a lesser included offense and the prosecution intends to proceed to trial on a greater offense. In a case where the accused pleads guilty, the military judge may hear evidence on sentencing and sentence the accused.

B.5.b. Procedure for remote Article 39(a), UCMJ sessions

Consistent with RCM 804 and 805, the military judge may order the use of audiovisual technology, such as video teleconferencing technology, among the parties and the military judge for purposes of Article 39(a), UCMJ, sessions if all parties consent, or if the benefit of conducting the remote Article 39(a), UCMJ, session significantly outweighs its cost. Use of such audiovisual technology will satisfy the “presence” requirement of the accused only when the accused has a defense counsel physically present at the accused’s location. Such technology may include two or more remote sites as long as all parties can see and hear each other.

B.5.c. Requirements for remote Article 39(a), UCMJ sessions

The audiovisual technology employed must be capable of providing real time, two way communications of video images and sound such that the accused and the military judge can see all participants, and the court reporter is able to record everything said in all locations. A transcript of remote Article 39(a), UCMJ, sessions will be produced verbatim, capturing a written record of all proceedings, transcribing everything said in all locations. Testimony of witnesses during remote Article 39(a), UCMJ, session must not take place in a location other than the location of the accused unless the accused affirmatively waives the right to have the witness present in the same location on the record, or such witness testimony is otherwise permitted under the Military Rules of Evidence or Rules for Court-Martial outside of the presence of the accused.

Section C. Release of Information at Trial

C.1 References

The information contained in this Section is a synopsis of the information provided in the Court-Martial Public Affairs Guide available on the Office of Military Justice (CG-LMJ) website (<https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>) and should be referred to for more complete information than is provided in this Section.

C.2. Generally

The task of striking a fair balance between the protection of members accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the armed forces and the workings of military justice depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused, or the allegations against him or her, is the prohibition against providing statements or information to news media for the purpose of, or which reasonably could have the effect of, influencing the outcome of a trial.

C.3. Applicability

These provisions apply to all persons who may obtain information as the result of duties performed in connection with the processing of an accused, the investigation of suspected offenses, or trials by court-martial. These provisions are applicable from the time of apprehension, the referral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial or disposition of the case without trial. These provisions also prescribe guidelines for the release or dissemination of information to public news agencies, other public media, or other persons or agencies.

C.4. Responsibilities regarding the release of information

As a general matter, Coast Guard employees should not initiate release of information pertaining to an accused. Information of this nature should be released only upon specific request, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

C.4.a. Proactive public affairs stance

Determination of whether a case should be the subject of a proactive public affairs stance should be developed in conjunction with the convening authority, the servicing legal office, and the cognizant public affairs officer. For sexual assault related cases, amplifying guidance should be obtained from the Office of the Judge Advocate General

(CG-094) and the Office of Governmental & Public Affairs (CG-092). A final decision on the release rests with the convening authority.

C.4.b. Procedure

Except in unusual circumstances, information subject to release under these provisions should be reviewed and released by the cognizant public affairs officer, and requests for information received by others from the media should be referred to such officer for action. In high visibility cases a trained attorney should assist the cognizant public affairs officer. When a member is suspected or accused of an offense, care should be taken to indicate that the member is alleged to have committed an offense or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense(s).

C.5. Information subject to release

When deemed appropriate, the following information concerning a member accused or suspected of an offense(s) may generally be released, except as provided in Subsection 18.C.7:

- a. The accused's name, grade, age, unit, and regular assigned duties;
- b. The substance of the offense(s) of which the individual is accused or suspected;
- c. The identity of the apprehending and investigating agency and the identity of the attorney for the accused, if any;
- d. The type and place of custody, if any;
- e. Information that has become a part of the record of proceedings of the court-martial in open session;
- f. The scheduling or result of any stage in the judicial process; and
- g. The denial of the commission of any offense(s) of which he or she may be accused or suspected (when release of such information is approved by the attorney of the accused).

C.6. Information prohibited from release

The following information normally is not released except as provided in Subsection 18.C.7:

- a. Subjective opinions, observations or comments concerning the accused's character, demeanor at any time, or guilt of the offense or offenses involved;
- b. The prior criminal record (including other apprehensions, charges, or trials) or the character or reputation of the accused;
- c. The existence or contents of any confession, admission, statement or alibi given by the accused, or the refusal or failure of the accused to make any statement;
- d. The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test;
- e. The identity, testimony, or credibility of any crime victim;
- f. The identity, testimony, or credibility of possible witnesses;
- g. The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty;
- h. References to confidential sources or investigative techniques or procedures; and
- i. Any other matter when there is reasonable likelihood that its dissemination will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

C.7. Exception cases

The provisions of this Section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, because the purpose of this Section is to prescribe generally applicable guidelines, there may be circumstances that warrant the release of information normally not released in accordance with 18.C.6 above, or the non-release

of information authorized for release under 18.C.5 above. In these cases, the servicing legal office will advise the convening authority on whether such material should be released.

C.8. Sealed materials

Materials ordered sealed in accordance with RCM 1113 may only be disclosed to specific individuals per the procedures of that rule.

C.9. Military judge's authority

The foregoing is in no way to be viewed as in derogation of the authority of the military judge, who, upon being detailed, is, in his or her discretion, empowered to regulate many of the matters discussed in this Section by court order. See RCM 801.

Section D. Spectators

D.1. Preliminary hearings

The sessions of a preliminary hearing convened in accordance with Article 32, UCMJ, should ordinarily be open to the public. See RCM 405(j)(3). A convening authority will consult with the servicing legal office before restricting access to a preliminary hearing.

D.2. Courts-martial

Sessions of courts-martial will be public and, in general, all persons except those who may be required to give evidence will be admitted as spectators. But see Article 6b(a)(3), UCMJ. The trial counsel must post a Notice of Public Trial. A template Notice of Public Trial is available on the Office of Military Justice (CG-LMJ). Spectators or classes of spectators may be excluded only when, in the discretion of the military judge of a general or special court-martial, he or she determines such action to be legally necessary and proper. See RCM 806. Summary courts-martial officers must consult with the servicing legal office before restricting access to a summary court-martial proceeding.

Chapter 19 Government Appeal from Adverse Rulings at Trial and Petitions for Extraordinary Relief
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Section A. Interlocutory Appeals under Article 62, UCMJ
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| A.1. Authority | Article 62, UCMJ, and Rule for Court Martial (RCM) 908 authorize the United States to appeal a ruling or order of the military judge that terminates the proceedings with respect to a charge or specification, excludes evidence that is substantial proof of a fact material to the proceedings, jeopardizes the security of classified material, or a military judge's entry of a finding of not guilty following a finding of guilty by the members. |
| A.2. Procedures for trial counsel | If trial counsel wishes to seek an appeal under Article 62, UCMJ, written notice of the intent to do so must be received by the military judge within 72 hours of the order or decision that gives rise to the appeal pursuant to RCM 908(b)(3). Written notice must contain both the date and time that the notice was served on the military judge. In any case in which trial counsel wishes to file an Article 62, UCMJ, appeal, trial counsel should if practicable confer with appellate government counsel at the Office of Military Justice (CG-LMJ) prior to providing written notice of its intent to appeal. Trial counsel may request a recess from the court in order to do so. Trial counsel must present a summary of the ruling or order, the issue involved, and the evidence in the case and describe the reasons why trial counsel believes the ruling or order is one that should be appealed. After the consultation, appellate government counsel will advise trial counsel on whether to file notice of intent to appeal. If trial counsel cannot confer with appellate government counsel in a reasonable time, trial counsel must file the written notice within 72 hours to preserve the right to appeal, and should contact the Office of Military Justice (CG-LMJ) as soon as practicable thereafter. The 72-hour rule is an inflexible rule and must be strictly adhered to. If trial counsel wishes to seek reconsideration of a ruling, and contemplates that he or she will seek an Article 62, UCMJ, appeal if reconsideration is denied, the request for reconsideration must come within 72 hours of the order or decision. The appellate courts do not have jurisdiction to hear an interlocutory appeal where trial counsel waited longer than 72 hours before seeking reconsideration and then sought to file an Article 62, UCMJ, appeal within 72 hours of the reconsideration denial. |
| A.3. Procedure for appellate government counsel | <p>Once advised of the matter, appellate government counsel will authorize trial counsel to advise the military judge and parties that:</p> <ol style="list-style-type: none"> a. The government will not appeal the ruling, in which case the trial should proceed; or b. The government has decided to appeal. |
| A.4. Forwarding notice of appeal | Trial counsel must e-mail a notice of intent to appeal filed under RCM 908 to appellate government counsel, the Office of Military Justice (CG-LMJ), at HQS-DG-LST-CG-LMJ@uscg.mil as soon as practicable after it is filed. Under RCM 908(b)(6), the trial counsel must also provide a summary of the proceedings and relevant facts, a statement of the error assigned and relief requested, notice of appeal, and the Record of Trial (ROT) in the form described in Section 19.B. |

Section B. Record of Trial

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| B.1 Forwarding to the Office of Military Justice (CG-LMJ) | The authenticated ROT must be received by the Office of Military Justice (CG-LMJ) within 20 days from the date the notice of appeal is filed to comply with the Joint Court of Criminal Appeals rules (See Court of Criminal Appeals Rule 22). The trial counsel must mail the ROT to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier. Only that portion of the ROT involving the alleged error(s) need be transcribed, authenticated, and forwarded. |
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B.1.a. Retention of copy of ROT by trial counsel	Trial counsel should retain a copy of the authenticated ROT, so that trial may resume after the Coast Guard of Criminal Appeals issues a decision, if authorized.
B.2. Extraordinary cases	In extraordinary cases where authentication is expected to take more than 20 days, the Office of Military Justice (CG-LMJ) may request an enlargement of time from the CGCCA in accordance with the United States Coast Guard Court of Criminal Appeals Rules of Practice and Procedure. When delay is expected, trial counsel must inform the Office of Military Justice (CG-LMJ) of the expected delay, and the reasons for the delay, as early as possible. In cases where there is delay, trial counsel must e-mail the matters required under RCM 908(b)(6), and an unauthenticated ROT to the Office of Military Justice (CG-LMJ), HQS-DG-LST-CG-LMJ@uscg.mil , to be followed by the authenticated record as soon as possible.
B.3. Writing the appeal	The Office of Military Justice (CG-LMJ) is responsible for writing and filing the appeal and has final authority on what issues are contained within the brief. Appellate counsel will consult with trial counsel throughout the writing process. Chief, Office of Military Justice (CG-LMJ), is the final authority on whether the appeal will be filed. If at any time after notice of intent to file has been given and before the filing of the appeal, the Chief, Office of Military Justice (CG-LMJ) determines that the appeal is not in the best interest of the Coast Guard, notice will be made to trial counsel in writing of that decision, and the trial will resume.
B.4. Authority to conduct further proceedings	After notice of a decision by the Coast Guard Court of Criminal Appeals or Court of Appeals for the Armed Forces is provided, the trial may proceed, if authorized, in a manner consistent with the decision, unless further proceedings are stayed by order of a higher court.
B.5. Retention of Records	If the trial proceeds, the Office of Military Justice (CG-LMJ) will forward all original appellate motions, briefs, opinions, etc. to the trial counsel to include in the ROT, as an appellate exhibit.

<p>Section C. Petitions for Extraordinary Relief</p>

C.1. References	The process for filing, and responding to, petitions for extraordinary relief, including those under Article 6b(e), UCMJ, is outlined in the United States Coast Guard Court of Criminal Appeals Rule of Practice and Procedure 19.
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Chapter 20 Sentencing Matters

Section A. Sentencing System

A.1. Applicable sentencing system

Only one system applies in a court-martial. If any charged offenses occurred before the implementation of the Military Justice Act of 2016 (January 1, 2019) the previous unitary sentencing system will apply unless the accused opts into the new system under RCM 902A(b). Under the Military Justice Act of 2016, the following UCMJ Articles are applicable to sentencing:

- Articles 16(c)(2) and 19(b), UCMJ (a special court-martial consisting of judge alone);
- Article 25(d), UCMJ (sentencing by members);
- Article 39(a)(4), UCMJ (sentencing within a 39(a) session);
- Article 52(b)(2), UCMJ (votes required for sentencing);
- Article 53, UCMJ (findings and sentencing);
- Article 56(a), UCMJ (sentence maximums);
- Article 56(b), UCMJ (sentence minimums for certain offenses);
- Article 56(c), UCMJ (imposition of sentence, including segmented sentencing by military judge versus unitary sentencing by members);
- Article 58a, UCMJ (reduction in enlisted grade upon approval).

Section B. Court-Martial Punishment Limitations

B.1. No automatic reduction

As a matter of policy, administrative action of automatic reduction to the lowest enlisted pay grade as provided under Article 58a, UCMJ, is not authorized in the Coast Guard. This policy does not preclude reduction to the lowest enlisted pay grade being adjudged and approved as part of a lawful sentence.

B.2. Hard labor without confinement

Hard labor without confinement is performed in accordance with the same regulations applicable to extra duties imposed as NJP under Article 15, UCMJ. See Subsection 2.M.5.

Section C. Reservists Ordered to Active Duty

C.1. Approved by Director, Reserve and Military Personnel (CG-13)

A reservist tried by court-martial after an order approved by Director, Reserve and Military Personnel (CG-13) to active duty pursuant to Subsection 4.J.2 may receive any punishment otherwise authorized by the court-martial.

C.2. Not approved by Director, Reserve and Military Personnel (CG-13)

Unless the order to active duty is approved by the Director, Reserve and Military Personnel (CG-13), confinement is not an authorized punishment for a reservist ordered to active duty at court-martial. In addition, the reservist accused may not be retained on active duty to serve any other punishment, see discussion to RCM 1003(c)(3). Imposed forfeitures may be collected, and imposed restrictions on liberty may be served during subsequent periods of inactive duty training or active duty.

Section D. Sentences Including Reprimands

D.1. Distinguished from administrative non-punitive measures

Reprimands issued in execution of court-martial sentences are punitive reprimands (and to be distinguished from administrative non-punitive reprimands) and are required to be in writing and detailed in the member's PDR.

D.1.a. Issuance	Punitive letters of reprimand adjudged by a court-martial are issued by the convening authority and are contained within the entry of judgment under RCM 1111(b)(3)(D). See 1003(b)(1).
D.1.b. Content	<p>The punitive letter of reprimand must include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It must also contain the following paragraph:</p> <p><i>A copy of this letter will be placed in your official record at Coast Guard Headquarters. You may forward to Coast Guard Personnel Service Center (PSC-psd-mr) within 15 days after receipt of this action such statement concerning this letter as you may desire for inclusion in your record. In connection with your statement, you are advised that any statement submitted must be couched in temperate language and must be confined to pertinent facts. Opinions must not be expressed nor the motives of other personnel impugned. Your statement must not contain countercharges.</i></p>
D.1.c. SJA responsibility	If a punitive letter of reprimand is adjudged, the SJA must ensure completion and submit the letter to the convening authority for approval at the of time action.
D.1.d. Delivery to the accused	The original letter must be delivered to the accused personally or by First Class Certified Mail or a DHS-approved commercial carrier that provides a delivery receipt or tracking number. If personally delivered, the accused must acknowledge receipt of the punitive letter of reprimand on Personnel Service Center's copy of the letter to be filed in the member's official record.
D.1.e. Procedure	<p>A copy of the letter will be appended to the convening authority action. The action should refer to the letter in the following tenor:</p> <p><i>Pursuant to the sentence of the court a letter of reprimand is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.</i></p>
D.1.d. Forwarding copy to Coast Guard Personnel Service Center	Forwarding Copy to Coast Guard Personnel Service Center. A copy of the letter of reprimand, with either the accused's acknowledgment of receipt or the signed return receipt attached, will be forwarded to Coast Guard Personnel Service Center (CG PSC-bops-mr).
D.1.e. Appeals	Review, including appellate review, of letters of reprimand issued as part of an approved court-martial sentence will be accomplished as provided for by the UCMJ, the Manual for Courts-Martial (MCM), and this Manual with respect to the proceedings of the particular court-martial that imposed the sentence. No separate appeal from these letters will be considered.

Section E. Effective Date of Court-Martial Sentences

E.1. Generally	Unless deferred a sentence of confinement begins to run on the date the sentence is adjudged. See RCM 1102(b)(2). Any adjudged reduction in pay grade and/or adjudged or automatic forfeiture of pay and allowances will take effect in accordance with Articles 57(a)(1) and 58b, UCMJ. Those approved portions of the sentence that do not extend to death, dismissal, or dishonorable or bad conduct discharge will normally be ordered executed in the initial convening authority action, unless suspended or deferred in that action.
E.2. Death or dismissal	Sentences to death may be approved only by the President. A sentence of dismissal may be approved only by the Secretary of the Department of Homeland Security, or the Secretary of the Navy if the Coast Guard is operating as a service under the Navy. Only the Secretary can order executed an approved death sentence or dismissal.

E.3. Confinement

Unless deferred, any period of confinement included in a court-martial sentence begins on the date the sentence is adjudged, regardless of whether the accused is already confined. See Art 57(b), UCMJ.

E.3.a Deferment of sentence of confinement

If requested by the accused, a sentence to confinement may be deferred by the Convening authority or by the officer exercising general court-martial jurisdiction (OEGCMJ) over the accused if the accused is no longer in the Convening authority's command. This request must originate with the accused and must be in writing. Deferment will end in accordance with RCM 1103(f). Any request for deferment of confinement and the written action on the request must be included in the Record of Trial (ROT).

E.4. Punitive discharge**E.4.a. Punitive discharge when accused waives appellate review**

No dishonorable or bad conduct discharge may be ordered executed until the conviction is final under RCM 1209. The OEGCMJ may order the sentence executed in all cases where the accused has waived appellate review and review under RCM 1201 is final. The OEGCMJ must inform the Coast Guard Personnel Service Center thru the Office of Military Justice (CG-LMJ). See Subsection 20.E.4.c.

E.4.b. Punitive discharge when accused has not waived appellate review

In all other cases, even after the conviction is final, the punitive discharge may not be ordered executed until the ROT has been reviewed for clemency in accordance with Ch.1.F.6.d(4), Discipline and Conduct, COMDTINST M1600.2 (series), and the discharge approved by Commandant. When clemency review is completed the Office of Military Justice (CG-LMJ) will advise whether clemency was granted or denied pursuant to Article 74(a), UCMJ, and notify the Coast Guard Personnel Service Center of the type of discharge to be issued.

E.4.c. Procedure

If a punitive discharge is approved in the initial action, the discharge is self-executing in accordance with RCM 1102(b)(3) when the Office of Military Justice (CG-LMJ) notifies the Coast Guard Personnel Service Center of the type of discharge to be issued.

E.5. Reductions in pay grade

Article 57(a), UCMJ, makes reductions in pay grade effective 14 days after being adjudged. Upon application of the accused the convening authority or the OEGCMJ over the accused may defer the effective date of reduction in pay grade at any time until entry of judgment or in the case of a summary court-martial, when the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered. The Coast Guard by policy does not authorize the administrative reduction in pay grade authorized under Article 58a, UCMJ. See Subsection 20.B.1.

E.6. Effective date of adjudged forfeitures

Article 57(a), UCMJ, makes adjudged forfeitures of pay and allowances effective 14 days after being adjudged. Upon application of the accused, the convening authority or the OEGCMJ over the accused may defer the effective date of forfeitures at any time until entry of judgment or in the case of a summary court-martial, when the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered.

E.7. Statutory forfeitures pursuant to Article 58b, UCMJ

Article 58b, UCMJ, provides for administrative forfeiture of pay and allowances during confinement for a member sentenced by a court-martial to a period of confinement exceeding 6 months or any period of confinement accompanied by a punitive discharge. Forfeitures under Article 58b, UCMJ, are not an adjudged court-martial sentence.

- E.7.a. Amounts If Article 58b, UCMJ, administrative forfeitures apply in the case of a general court-martial, all pay and allowances are automatically forfeited during the period of confinement. In the case of a special court-martial, two-thirds of pay is automatically forfeited during the period of confinement. The amount forfeited by operation of Article 58b, UCMJ, is that amount above any adjudged and approved fines or forfeitures. The total adjudged fines and forfeitures and administrative forfeitures may not exceed the jurisdictional limit of the court-martial. Article 58b, UCMJ, administrative forfeitures automatically take effect, but may be deferred.
- E.7.b. Waiver when paid directly to dependents In cases where a member subject to Article 58b, UCMJ, administrative forfeitures has dependents, all or part of the forfeiture may be waived by the convening authority any time after sentencing for a period not to exceed 6 months, provided that the amounts waived are paid directly to the accused's dependents.
- E.7.c. When member is not entitled to pay Administrative forfeiture under Article 58b, UCMJ, is a congressionally required administrative (not a courts-martial sentencing or punitive) action applicable only if a prisoner is otherwise entitled to pay. There are circumstances in which a member is convicted and sentenced to confinement and is not entitled to, or loses entitlement to military pay. Notable is the loss of entitlement to pay when a prisoner's enlistment expires while in confinement (e.g., a prior extension does not become effective if the member is confined and a prisoner is precluded from reenlisting) or if a member's enlistment has expired but he or she is involuntarily extended for purposes of courts-martial (the member is automatically released from active duty and assumes a non-pay status upon announcement of the sentence).

E.8. Deferring and waiving forfeitures

- E.8.a. An order deferring any forfeitures or reduction in pay grade An order deferring any forfeitures or reduction in pay grade should be signed by the convening authority and worded substantially as follows:
- The (forfeitures/reduction in pay grade) adjudged on (date sentence adjudged) in the case of (accused's name, EMPLID, and unit) by the (Special/General) Court-Martial convened by my order number (convening order number) dated (date) are hereby deferred from (effective date of deferral) until (end date of deferral/date action is taken on the sentence).*
- E.8.b. An order waving administrative forfeitures An order waiving administrative forfeitures should be signed by the convening authority or person acting under Article 60, UCMJ, and RCM 1103 and worded substantially as follows:
- Any forfeitures arising by operation of Article 58b, UCMJ, as a result of the sentence adjudged (date sentence imposed) in the case of (accused's name, EMPLID, and unit) by my (Special/General) Court-Martial Order (CM Order Number) dated (date) are hereby waived as follows: Effective date of waiver, (date); End date of waiver, (date -- not to exceed 6 months from start date); Amount of forfeitures waived per month (stated in whole dollar amounts). This waiver applies only to forfeitures arising by operation of Article 58b, UCMJ, and does not apply to adjudged forfeitures. All amounts waived are to be paid to the accused's dependents. (If applicable -- This waiver is granted at the request of (the accused, defense counsel, the accused's spouse, etc.). (Attach copy of any request.))*
- E.8.c. Procedure Deferral and waiver orders may be combined in a single document. This document may be the convening authority's action; however, deferral decisions may be made prior to the action. A certified copy of any order waiving administrative forfeitures, or deferring forfeitures or reductions in pay grade, must be provided immediately to the

Servicing Personnel Office responsible for the accused's service record. Orders denying deferral requests should include the reasons for denial. See RCM 1103(d)(2) All original orders must be attached to the ROT.

E.9. Effective date of other punishment

All other punishments adjudged by a court-martial take effect on the date ordered executed. See Article 57, UCMJ.

Section F. Payment of Fines and Restitution
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F.1. Payment of fines

The accused must pay fines by mailing or delivering a check or money order payable to the U.S. Treasury to the Pay and Personnel Center (PPC), Topeka, Kansas:

Commanding Officer (SES)
USCG Pay and Personnel Center
444 SE Quincy Street
Topeka, KS 66683-3591

F.2. Payment of restitution

The Coast Guard utilizes a lockbox facility to receive payment for restitution as part of a pretrial or plea agreement (i.e. the repayment of misused or stolen funds by an accused). To make restitution, the accused must mail a check or money order payable to "The United States of America" to:

USCG Accounts Receivable
PO Box 979119
St. Louis, MO 63197-9001

Express Mail (Street Address for Courier) Lockbox No. 979119 U.S. Bank
Government Lockbox
ATTN: GOVERNMENT LOCKBOX, SL-MOC1 GL
1005 Convention Plaza
St. Louis, MO 63101-1229

A copy of associated paperwork (promulgating order and when appropriate of the plea agreement) should be sent with the check so that the receiver will know what it is for and a copy should go to the trial counsel as proof of payment.

Section G. Appellate Rights Advisement

G.1. Appellate rights notification

Each convicted accused must be advised of his or her appellate rights, prior to adjourning the court-martial. A completed appellate rights notification must be included as an appellate exhibit in the record of trial. See RCM 1010. A template Appellate Rights Notice is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

Chapter 21

Post-Trial Processing in General and Special Courts-Martial, Cases Referred After January 1, 2019

Section A. Statement of Trial Results (STR)

- A.1. Generally** After final adjournment of a general or special court-martial, the military judge must sign a STR in accordance with Rule for Courts-Martial (RCM) 1101. The military judge may direct the trial counsel to prepare a draft STR for the military judge's signature. The Statement of Trial Results available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/> may be used. The original STR will be maintained with the record of trial (ROT).
- A.2. National Instant Criminal Background Check System (NICS)** In addition to the requirements of RCM 1101, the STR, or an attachment to the STR, must affirmatively state if the conviction requires or does not require entry of the accused into the National Instant Criminal Background Check System in accordance with 18 U.S.C. § 922. Entry is required if the trial results in a conviction:
- a. At a general court-martial for any offense punishable by a sentence to confinement exceeding one year, regardless of the sentence imposed;
 - b. In which the accused receives a dishonorable discharge or, for officers, a dismissal;
 - c. For an offense of domestic violence, Article 128b, UCMJ; and
 - d. For a violation of Article 112a, UCMJ.
- The Office of Military Justice (CG-LMJ) will review all STR's to ensure compliance with this subsection.
- A.3. DNA collection** In addition to the requirements of RCM 1101, the STR, or an attachment to the STR, must affirmatively state if the conviction requires DNA collection. In accordance with 10 U.S.C. § 1565, DNA samples are required for each person who is convicted of any offense under the UCMJ punishable by a sentence to confinement for more than one year, regardless of the punishment imposed.

Section B. Trial Counsel Responsibilities after Trial

- B.1. Distribution** When trial counsel receives the STR, trial counsel must promptly e-mail, or otherwise provide, a copy to the following personnel:
- a. The accused's commanding officer or immediate commander;
 - b. The Convening Authority (CA);
 - c. The Office of Military Justice (CG-LMJ);
 - d. Defense counsel;
 - e. The servicing personnel office for the accused;
 - f. The Office of Member Advocacy and Legal Assistance (CG-LMA);
 - g. The servicing CGIS office, regardless of whether that office was involved in investigating the case;
 - h. Any crime victim or victim's counsel in the case, without regard to whether the accused was convicted or acquitted of any offense;
 - i. The military judge; and
 - j. The officer in charge of the confinement facility (if applicable).
- B.2. Confinement order** If the accused is sentenced to confinement, trial counsel is responsible for preparing a Confinement Order, using the DD Form 2707, and making arrangements for the accused to be taken immediately to the confinement facility after adjournment.
- B.3. Notice to crime victims of right to submit matters under RCM 1106A** Immediately after final adjournment, trial counsel must provide crime victims, through counsel, if applicable, a notice of the victims' right to submit matters under RCM 1106A, and the procedures for doing so. A template Victim Notification is available on the Office of Military Justice (CG-LMJ) website,

<https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. For the purpose of this notice, “crime victim” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty, and on which the CA may take action under RCM 1109 or 1110, or that person’s representative.

B.4. RCM 1106 and 1106A matters

Upon request from the accused, any crime victim, and/or their counsel pursuant to RCM 1106 and 1106A, trial counsel shall provide: (1) a copy of the recordings of all open sessions of the court-martial; and (2) copies of or access to the evidence admitted at the court-martial, and appellate exhibits. Such access shall not include sealed or classified material or recordings unless authorized by the military judge upon a showing of good cause. Per the United States Coast Guard – Courts-Martial System of Records, the recordings, evidence, and appellate exhibits may be released to these parties or their counsel without redactions. The court reporter, under supervision of trial counsel, must prepare electronic copies for access by removing all sealed or classified matters and closed portions of the trial, unless such access has been authorized by the military judge. The recordings of all open sessions of the court-martial will be sent to the accused or crime victim (or their counsel) electronically. Copies of or access to the evidence admitted at the court-martial, and appellate exhibits will be coordinated by trial counsel. See RCMs 1106(c) and 1106A(d).

Section C. Exercise of Convening Authority’s (CA’s) Powers

C.1. Applicability

If the accused is found guilty of a specification alleging the commission of one or more offenses before January 1, 2019, Article 60 UCMJ, as in effect on the date of the earliest offense of which the accused was found guilty shall apply to the CA, to the extent that the applicable Article 60, UCMJ:

- a. Requires action by the CA on the sentence;
- b. Permits action by the CA on findings;
- c. Authorizes the CA to modify the findings and sentence of a court-martial;
- d. Authorizes the CA to dismiss any charge or specification by setting aside a finding of guilty thereto;
- e. Authorizes the CA to change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense;
- f. Authorizes the CA to order a proceeding in revision or rehearing; or
- g. Authorizes the convening authority to approve, disapprove, commute, or suspend a sentence in whole or in part.

Additionally, Article 60a(c), UCMJ as enacted by the Military Justice Act of 2016, which permits the suspension of certain sentences upon recommendation of the military judge, applies in all cases regardless of the date of the offense(s).

C.2. Legal advice required

The requirement that the SJA or servicing legal officer make a recommendation to the CA has been eliminated from the RCM. However, prior to taking action as described in Subsection 21.C.1, the CA must consult with the CA’s SJA or servicing legal officer. The SJA or servicing legal officer should document the consultation in a memo to file, which is not included in the ROT.

C.3. When it is impracticable for CA to exercise powers

C.3.a. Special courts-martial

When it is impracticable for the special court-martial convening authority (SPCMCA) to act as described in Subsection 21.C.1, the case will be forwarded to the officer exercising general court-martial jurisdiction (OEGCMJ) with a statement of the reason why the SPCMCA did not act. The OEGCMJ may take action or, in that officer’s discretion, refer the case to any other subordinate SPCMCA for action.

C.3.b. General courts-martial	When it is impracticable for the general court-martial convening authority (GCMCA) to act as described in 21.C.1, the GCMCA's servicing legal office must submit a request to the Office of Military Justice (CG-LMJ) to designate another GCMCA to take action. Once the Office of Military Justice (CG-LMJ) has designated an alternate GCMCA to act, the servicing legal office will send the case to the designated officer, along with a statement of the reason why the original GCMCA did not act.
C.3.c. Matters forwarded for action	When a case is forwarded to another CA, the original CA's servicing legal office will provide the alternate CA the matters set out in RCM 1107(d)(3).
C.3.d. Matters added to the ROT	The statement explaining why the original CA did not act, along with the Office of Military Justice's (CG-LMJ's) designation of an alternate convening authority, will be made part of the ROT.
C.4. Form	The CA Action and Entry of Judgment form available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ may be used.
C.5. Notification of military judge	Immediately after the CA takes action or decides to take no action, the SJA or servicing legal officer will notify the military judge and provide any required matters as described in RCM 1109(g) or 1110(e).

Section D. Entry of Judgment

D.1. Generally	Within five working days of receipt of the notification in 21.C.4, or, in cases of acquittal, within five working days of final adjournment of the court-martial, the military judge must enter judgment as provided in RCM 1111. The military judge may direct trial counsel or the servicing legal office to prepare a draft entry of judgment.
D.2. Form	The CA Action and Entry of Judgment form available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ may be used. The original CA Action and Entry of Judgment form will be maintained with the record of trial (ROT).
D.3. Distribution	<p>Upon receipt of the Entry of Judgment from the military judge, trial counsel will e-mail a copy to the following:</p> <ol style="list-style-type: none"> a. The accused's commanding officer; b. The CA; c. The Office of Military Justice (CG-LMJ) (as part of the ROT); d. Defense counsel; e. The servicing CGIS office; f. CG-LMA; g. Any crime victim or victim's counsel in the case; h. The Servicing Personnel Office maintaining the service record of the accused for appropriate service record entries (or, in the case of a retired member, the Pay and Personnel Center); i. PSC (adm-3) j. The place of confinement (if the accused is still in confinement); and k. The military judge.
D.4. Publication	The commander of the accused or the convening authority may publish the Entry of Judgment to their respective commands.

Section E. Preparation of Records of Trial (ROT)

E.1. Audio recording required	All special and general courts-martial proceedings must be recorded. See RCM 1112(a). The preferred method for recording trial proceedings is by a multi-channel redundant digital recording device operated by a qualified Coast Guard court reporter, civilian contractor court-reporter, or qualified court-reporter from another armed service. Do not use any other method without prior authorization from the Office of Military Justice (CG-LMJ).
E.2. Sealed recordings	Those portions of the recorded trial proceedings that are required to be sealed must be separated. See Subsection 21.E.7.a.
E.3. Contents of ROT	<p>The ROT in each general and special court-martial must contain the following materials, in the following order:</p> <ol style="list-style-type: none"> a. Cover and chronology sheets; b. The STR; c. Any action by the convening authority under RCM 1109 or 1110; d. The judgment entered into the record by the military judge; e. A digital audio file of the substantially verbatim recording of the court-martial; f. If necessary, a digital audio file of sealed proceedings; g. If necessary, an annotation with a time stamp of the sealed audio proceedings; h. The charge sheet; i. The convening order and any amendments, in order from oldest to most recent; j. The request, if any, for trial by military judge alone; k. The accused's election, if any, of members under RCM 903, and, when applicable, any statement by the convening authority required under RCM 503(a)(2); l. The accused's election, if any for sentencing under the post-January 1, 2019 sentencing rules under RCM 902A; m. The accused's election, if any, for sentencing by members in lieu of sentencing by a military judge under RCM 1002(b); n. All prosecution exhibits; o. All defense exhibits; and p. All appellate exhibits.
E.4. Certification	
E.4.a. Certification by the Court Reporter	Within five days of entry of judgment into the record or receipt of the certified verbatim transcript per Subsection 21.E.5. (whichever is later), the court reporter must certify that the ROT includes all of the items described in 21.E.3, using the template certificate found on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . The court reporter, in coordination with the trial counsel, is ultimately responsible for the accuracy and completeness of the ROT. Once the ROT has been certified for completeness and accuracy, the court reporter will then send electronically the certified ROT with certified transcript to the military judge.
E.4.a. Verification by the military judge	Upon receipt, from the court reporter, the military judge will verify that the ROT is a complete record of the proceedings. Any missing items will be noted and if necessary the ROT will be returned to the court reporter for correction. Once the completeness of the ROT has been verified, the military judge will note his or her verification to the ROT and return it to the court reporter.
E.5. Verbatim transcript of the audio recording	A verbatim transcript of the audio recording contained in the ROT per RCM 1112(b)(1) is required in any case where the judgment entered into the record includes a sentence of death, dismissal, dishonorable or bad-conduct discharge, or confinement for more

than six months. See RCM 1114(a)(1). In such cases, the servicing legal office is responsible for sending a copy of the audio recording to a contracted transcriptionist as soon as practicable after final adjournment, to be completed in no more than 30 days from receipt. Alternatively, the servicing legal office may prepare an in-house transcription, as long as that transcription is completed no more than 30 days after final adjournment. The person who prepared the verbatim transcript should attach a document attesting that it is a true, accurate, and complete transcript of the audio recording of the court-martial proceeding. If a separate digital recording exists for sealed materials, a separate transcript shall be prepared and sealed. A filler page referencing the sealed or closed portions of the court-martial proceedings will be inserted in the appropriate place in each transcript.

E.6. Attachments for appellate review

Unless the accused was found not guilty of all charges and specifications, the following must be attached to each general or special court-martial certified ROT before it is sent to the Office of Military Justice (CG-LMJ) for review under Article 65 or 66, UCMJ:

- a. Any transcription of the court-martial proceedings created pursuant to RCM 1114 and Subsection 21.E.5;
- b. The preliminary hearing report under Article 32, UCMJ, if any;
- c. Waiver of preliminary hearing under Article 32, UCMJ, if any;
- d. The pretrial advice under Article 34, UCMJ, if any;
- e. The record of any former hearings, if the trial was a rehearing or new or other trial of the case;
- f. Written special findings, if any, of the military judge;
- g. Exhibits, or, with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record, but not received in evidence;
- h. Any matter filed by the accused or victim under RCM 1106 or 1106A, or any written waiver of the right to submit such matters;
- i. Any deferment request and the action on it;
- j. Conditions of suspension, if any, and proof of service on probationer under RCM 1107;
- k. Any waiver or withdrawal of appellate review under RCM 1115;
- l. Records of any proceeding in connection with a vacation of suspension of the sentence under RCM 1108;
- m. Modification of judgment;
- n. Any redacted materials; and
- o. Any post-trial motions and record of proceedings (prepared and certified).

E.7. Format

Checklists for arrangement and formatting of the ROT, verbatim transcript, and attachments for appellate review can be found on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

E.7.a. Recording format

All court-martial proceedings, except those that are sealed or closed, must be included in an audio file. All sealed or closed portions should be included in a separate audio file, and must be password protected. In each case other than one in which the accused was acquitted of all charges and specifications, the court reporter or transcriptionist must create an index showing time-stamps indicating where each session of court or trial testimony begins in the audio recording.

E.7.b. Digital portions of the record

Any portion of the ROT, such as a video or audio recording of an interview, should be indicated in a filler page within the ROT.

E.7.c. Marking

Mark all exhibits with an exhibit number, and in the case of multiple exhibit pages, the page number. Prosecution exhibits are labeled with Arabic numerals, defense exhibits are labeled with capital letters, and appellate exhibits are labeled with Roman numerals.

Draw a line through parts of the marking that do not apply. Sealed exhibits must be marked prior to sealing.

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| E.7.d. Sealed exhibits | Except as noted in Subsection 21.E.7.e for exhibits containing child pornography, exhibits that have been sealed by the military judge must be included in the ROT. The pages of a sealed exhibit must be marked in the same way as other exhibits prior to being sealed. The sealed items must be removed by the court reporter or by the Office of Military Justice (CG-LMJ) and examination and disclosure must be in accordance with RCM 1113. |
| E.7.e. Child pornography sealed exhibits | In order to ensure compliance with the Adam Walsh Act, 18 U.S.C. § 3509(m), sealed exhibits containing child pornography must not be copied, and the actual child pornography material must not be included with the original ROT. At the conclusion of trial, the original sealed exhibit containing child pornography must be turned over to the servicing Coast Guard Investigative Service office. A one-page memorandum explaining these procedures and where the sealed exhibit is located will be inserted in place of the exhibit. Once the ROT is complete and received by the Office of Military Justice (CG-LMJ) the original sealed exhibit containing child pornography will be sent from the servicing CGIS office to CGIS Headquarters, in accordance with CGIS policy and requirements for transportation of such contraband, where it will be held pending appellate review. When a case is final in accordance with RCM 1209, the Office of Military Justice (CG-LMJ) will inform CGIS Headquarters and the child pornography exhibits may then be destroyed. |
| E.8. Additional post-trial instructions | For more detailed instructions on how to conduct post-trial processing, please review the LMJ Post-Trial Processing Guide on the LMJ Portal Page. Please use the included checklists to ensure a timely completion of post-trial processing. |

Section F. Disposition of ROT

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| F.1 Forwarding to the Office of Military Justice (CG-LMJ) | Each special or general court-martial certified ROT must be sent electronically by the court reporter to the Office of Military Justice (CG-LMJ) as soon as possible upon receipt of military judge's verification. Unless the accused was found not guilty of all charges and specifications, the attachments in Subsection 21.E.6 must be included. The hard-copy original ROT and attachments in Subsection 21.E.6. (if applicable) must be sent to the Office of Military Justice (CG-LMJ) by a DHS-approved commercial carrier (e.g., FedEx or UPS). Digital copies must be retained by the office preparing the ROT, either on a server, removable media, or both. |
| F.1.a. Forwarding to CG-CCA and appellate defense counsel | The Office of Military Justice (CG-LMJ) records custodian shall forward the ROT with the attachments in Subsection 21.E.6 to the CG CCA and appellate defense counsel for all cases eligible for automatic appellate review and when the accused exercises his or her right to direct appeal. See RCM 1116. |
| F.2. Distribution to accused | At the same time the ROT and attachments for appellate review (if applicable) are forwarded to the Office of Military Justice (CG-LMJ), the court reporter must send the ROT (see Subsection 21.E.3.) to the accused, either personally or through counsel, according to the preferences and information provided by the accused in the post-trial election of rights form. Per the United States Coast Guard – Courts Martial System of Records, the ROT may be released to the accused or their counsel without redactions. Sealed exhibits may only be distributed in accordance with RCM 1113. |
| F.3. Distribution to victims | Per the United States Coast Guard – Courts Martial System of Records, the ROT may be released to a victim or their counsel without redactions. However, to protect the privacy interests of any person other than the victim, personally identifiable information within the ROT must be redacted. See RCM 1112(e)(4). A redacted transcript of the |

substantially verbatim recording of the court-martial may be provided in place of a redacted recording of the court-martial. Sealed exhibits may only be distributed in accordance with RCM 1113.

F.3.a. Victims of an offense of which the accused was charged in the victim testified during the proceedings	When the record is forwarded to the Office of Military Justice (CG-LMJ), the court reporter must notify any victim who testified (regardless of the findings as to the specification(s) concerning that victim), of the opportunity to receive the ROT. If the victim requests the ROT, the Office of Military Justice (CG-LMJ) must provide a copy per Subsection 21.F.3.
F.3.b. Victims named in a specification of which the accused was charged	If a named victim requests the ROT, the Office of Military Justice (CG-LMJ) must provide a copy, per Subsection 21.F.3.
F.3.c. Content	The attachments for appellate review described in Subsection 21.E.6 are not part of the ROT and are not distributed to victims.
F.4. Distribution to CA and OEGCMJ	At the same time the record is forwarded to the Office of Military Justice (CG-LMJ), the court reporter must send an electronic copy of the ROT to the CA and to the OEGCMJ, if different from the convening authority.
F.5. Distribution to Navy Clemency & Parole Board	At the same time the record is forwarded to the Office of Military Justice (CG-LMJ), in cases where the confinement entered into the judgment is 12 months or more, the court reporter provide a complete copy of the ROT directly to the Naval Clemency and Parole Board in accordance with Department of the Navy Clemency and Parole System, SECNAVINST 5815.3H, paragraph 304. The address of the Naval Clemency and Parole Board is: President Naval Clemency and Parole Board 720 Kennon Street SE, Room 322 Washington Naval Yard Washington, DC. 20374-5106
F.6. Retention of documents	Original documents and the electronic ROT will be retained and disposed of in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

Section G. Additional National Instant Background Check System (NICS) Requirements

G.1. Generally	In accordance with Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series), CGIS enters, and, as appropriate, requests removal of, information in NICS, the National Crime Information Center (NCIC) database, and the Interstate Identification Index (III or “triple-eye”).
G.2. Upon referral to general court-martial	Trial counsel will forward a copy of the charge sheet in any case where a convening authority refers charges for trial by a general court-martial to the servicing CGIS office that handled the investigation or would provide investigative services to the convening authority for the case for entry in the National Instant Background Check System (NICS). The copy must be sent as soon as practicable after referral.
G.3. If accused is found not competent to stand trial	If an accused is found not competent to stand trial under Article 76B, UCMJ, or not guilty due to lack of mental responsibility under Article 50a UCMJ, trial counsel shall forward a copy of the finding to the servicing CGIS office and inform the servicing CGIS office that the finding requires entry in NICS.

G.4. STR Each STR will note if entry into NICS is required and will be forwarded to CGIS. See Subsection 21.A.2.

<p align="center">Section H. Coast Guard Policy on National Sex Offender Registry Notification and Registration Requirements</p>

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| H.1. Generally | If a member of the Coast Guard has been convicted of a sexually violent offense or certain offenses against a minor, the Coast Guard is required to provide notice to federal, state, and local officials prior to the member's release from confinement, and the member may be required to register as a sex offender under state law. |
| H.2. Notification upon Conviction | State sex offender registry and United States Marshals Service National Sex Offender Targeting Center notifications for service members convicted as sex offenders under the UCMJ who are incarcerated in a DoD Component confinement facility will be carried out in accordance with procedures in DoDI 1325.07, <i>Administration of Military Correctional Facilities and Clemency and Parole Authority</i> . Confinement facilities are notified that a member is subject to this notification requirement by a required annotation on the Report of Results of Trial Memorandum or Statement of Trial Results, which is distributed to the confinement facility upon completion of trial. |
| H.3. Statement of Trial Results and Entry of Judgment | If a Coast Guard member is convicted of an offense referred to trial on or after 1 January 2019, the appropriate information must be included in the Statement of Trial Results and the Entry of Judgment. |
| H.4 Qualifying Offenses | DoDI 1325.07 includes a list of offenses that trigger sex offender notification requirements. Note: Sex offender registration requirements vary by state and may be triggered by offenses not listed in DoDI 1325.07. A member convicted of an offense that does not trigger sex offender notification requirements under DoDI 1325.07 may still be required to register as a sex offender under state law. |
| H.5. Questions Regarding Registration | When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from CG-LMJ. |
| H.6 Confinement Facility Responsibilities | The Confinement Officer, or designee responsible for custody of the inmate, ensures compliance with federal and state laws with regards to sex offender registration and notifications to civilian agencies, in accordance with the requirements detailed in DoDI 5525.20, <i>Registered Sex Offender (RSO) Management in Department of Defense</i> , which is applicable to the Coast Guard. For those Coast Guard members convicted at a court-martial of an offense listed in Enclosure 2 of 1325.07, <i>Administration of Military Correctional Facilities and Clemency and Parole Authority</i> who are confined, the confinement facility is responsible for ensuring the DD Forms 2707-1 and 2791 are filled out and filed appropriately. |
| H.7. No Post-trial Confinement | <p>When compliance with this direction is required, but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit completely offsets the term of confinement imposed at trial):</p> <ol style="list-style-type: none"> a. SJA Responsibilities. The SJA shall notify the Special Agent in Charge (SAC) of the Coast Guard Investigative Service Region in writing, within twenty-four hours of the member's conviction. This notification occurs via distribution of the Statement of Trial Results for charges and specifications referred to court-martial on or after 1 January 2019, Report of Results of Trial for charges and specifications referred to court-martial prior to 1 January 2019. It also occurs via filling out the DD Form 2707-1 and DD Form 2791. b. CGIS Responsibilities. The SAC will ensure that the DD Form 2707-1 and 2791 are distributed as required, and appropriate criminal database entries |

made, for those cases where the member is convicted on an offense listed in enclosure (2) of 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*, but not sentenced to confinement or pretrial confinement credit offsets the period of confinement to which the member was sentenced.

Chapter 22 Review of Courts-Martial, Cases Referred After January 1, 2019
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Section A. Review of Certain Special and General Courts-Martial Not Eligible for Direct or Automatic Appeal
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| A.1. Background | For Special and General Courts-martial where there is a finding of guilt and the sentence does not include confinement for six months or more or a punitive discharge, initial review of the record is performed under Article 65(d), UCMJ. After initial review under Article 65(d), UCMJ, an accused may petition TJAG to modify or set aside the findings or sentence under Article 69(a), UCMJ. |
| A.2. Article 65(d), UCMJ review of cases not eligible for direct appeal | |
| A.2.a. Review by Judge Advocate | The staff judge advocate (SJA) of the officer exercising general court-martial jurisdiction (OEGCMJ) will assign a judge advocate on his or her staff to complete the mandatory review of the certified ROT of all courts-martial under this Section. If no judge advocate is available per Rule for Court-Martial (RCM) 1201(c)(2), the SJA will request that the Office of Military Justice (CG-LMJ) review the ROT. See Article 65(d)(2), UCMJ and RCM 1201(a)-(d). |
| A.2.b. Procedure | Upon receiving the certified record of trial for a court-martial, the reviewing judge advocate assigned will conduct a review per RCM 1201(d). A template RCM 1201 review memorandum can be found on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . |
| A.2.c. Corrective action not required | If the reviewing judge advocate assigned believes no corrective action is required, the review memorandum stating a written conclusion as to each matter set out in RCM 1201(d) must be attached to the record of trial. The review is then considered final and the ROT must be sent to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS) for retention. |
| A.2.d. Corrective action required | If the reviewing judge advocate assigned believes corrective action may be required, the certified ROT must be sent to The Judge Advocate General (TJAG) thru the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS) with the review memorandum stating a written conclusion as to each matter set out in RCM 1201(d). TJAG may set aside the findings and sentence in whole or in part in accordance with Article 65(e), UCMJ and RCM 1201(f). If TJAG takes action, the action will be documented on a separate memorandum, and returned with the record to the Office of Military Justice (CG-LMJ) for retention. Conversely, if TJAG declines to take the recommended corrective action, the review is complete, and the record is returned to the Office of Military Justice (CG-LMJ) for retention. The review is considered final upon return of the record to the Office of Military Justice (CG-LMJ). |
| A.2.e. Processing by the Office of Military Justice (CG-LMJ) after review is final | The Office of Military Justice (CG-LMJ) must provide a copy of the results of the review and TJAG's action, if any, to the accused in accordance with RCM 1201(g) and the notification procedures outlined in Subsection 22.E.1. |
| A.2.f. Personnel ineligible to conduct Article 65(d), UCMJ review | Per RCM 1201(c)(2), any personnel who has acted in the same case as an accuser, preliminary hearing officer, member of the court-martial, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. |

A.3. Article 69, UCMJ review

A.3.a. Accused submits an application to TJAG	When Article 65(d), UCMJ review is final, the accused may submit an application requesting TJAG to modify or set aside, in whole or in part, the findings and sentence. See Article 69(a), UCMJ. A member of Commandant (CG-094C) shall review the application as an attorney designated by TJAG, and make a recommendation as to what action, if any, should be taken.
A.3.b. Timing of application	The accused must submit an application to TJAG via the Office of Military Justice (CG-LMJ), not later than one year after receiving a copy of the results of the Article 65(d), UCMJ review and TJAG's action on that review, if any, by the Office of Military Justice (CG-LMJ). See Article 69(b), UCMJ and RCM 1201(h)(2). TJAG may, for good cause shown, extend the period for submission of an application for a time period not to exceed two additional years. See Article 69(b), UCMJ and RCM 1201(h)(3).
A.3.c. Submission by a person other than the accused	If the application is submitted by a person other than the accused, that applicant must show authority to act on behalf of the accused. See RCM 1201(h)(5).
A.3.d. Action by TJAG	TJAG may set aside the findings or sentence, in whole or in part in accordance with Article 69(c), UCMJ and RCM 1201(h)(4)(A). TJAG's action, or decision not to take any action, will be documented in a separate memorandum. The ROT and memorandum will be returned to the Office of Military Justice (CG-LMJ).
A.3.e. Processing by the Office of Military Justice (CG-LMJ) after action by TJAG	<p>The Office of Military Justice (CG-LMJ) must send TJAG's action, or notification of TJAG's decision to not take action, to:</p> <ol style="list-style-type: none"> i. The accused; ii. Trial counsel; iii. Personnel Service Center SJA or the accused's SPO (if necessary to correct service record and Direct Access court-martial report); iv. PPC (if the sentence was affected by the action); v. Trial defense counsel; vi. Crime victim within the meaning of Article 6b, UCMJ and Special Victims Counsel (if applicable); vii. Counsel filing the petition if different from Trial defense counsel; viii. SJA to the Convening Authority; and ix. Military Judge. <p>The original copy of the action will be kept with the ROT. The notification will be made pursuant to the procedures outlined in Subsection 22.E.1. See Subsection 22.A.3.f. for processing when TJAG refers his or her action to the Coast Guard Court of Criminal Appeals (CG CCA) for review.</p>
A.3.f. Referral to the CG CCA following TJAG action	TJAG may forward his or her action to the CG CCA for review. If TJAG does so, the action, the record of trial, and a referral memorandum will be provided to the CG CCA by the Office of Military Justice (CG-LMJ). The accused will be notified of TJAG's action, the referral, and his or her right to have appellate defense counsel by the Office of Military Justice (CG-LMJ); see the notification procedures outlined in Subsection 22.E.1. See also RCM 1201(k)(1)(A).
A.3.g. Accused submits an application to CG CCA to review TJAG's action	The accused may also appeal the action of TJAG via application to the CG CCA. See Article 66(b)(1)(D), UCMJ, Article 69(d)(1)(B), UCMJ and RCM 1201(k). The application must be submitted not later than 60 days after the date the accused is notified of TJAG's decision. The accused does not have the right to appellate defense counsel to assist with the submission. See Article 69(d)(3), UCMJ. Petitions for review are submitted directly to the CG CCA in accordance with court rules. If a petition is

submitted, the CG CCA will notify the Office of Military Justice (CG-LMJ), and CG-LMJ will provide the ROT to the CG CCA.

A.3.h. Notification of CG CCA's decision or opinion The Office of Military Justice (CG-LMJ) must notify the accused of any decision of the CG CCA (e.g., rejecting the petition, or accepting the petition and issuing an opinion) as per Subsection 22.E.1., and retain a copy of the CG CCA decision or opinion with the ROT.

Section B. Direct Appeal of Certain Special and General Courts-Martial

B.1. Background Pursuant to Article 66(b)(1)(A-D), UCMJ the accused may directly appeal cases to CG CCA when:

- a. The sentence includes confinement for more than six months and the case is not subject to automatic review;
- b. The Government previously filed an appeal in the case under Article 62, UCMJ;
- c. TJAG sent the case to the CG CCA for review of the sentence under Article 56(d), UCMJ; or
- d. An application for review was submitted under Article 69(d)(1)(B), UCMJ was granted by CG CCA. See Section 22.A.3.g.

For sentences including confinement for two years or more or a punitive discharge see Section 22.C.

B.1.a. Notice of right to appeal In any courts-martial under this Section, where the accused has not waived or withdrawn his or her right to an appeal under Article 61, UCMJ, the Office of Military Justice (CG-LMJ) must, as soon as practicable after receipt of the certified ROT, provide notice to the accused or counsel of the right to appeal in accordance with Subsection 22.E.1. See Article 65(c), UCMJ and RCM 1116(b)(2). CG-LMA will be provided a copy of the notification. The notification will be attached to the ROT.

B.1.b. Forwarding of ROT If the accused has not waived or withdrawn his or her right to appeal under Article 61, UCMJ and appellate defense counsel has been detailed, CG-LMA must inform the Office of Military Justice (CG-LMJ). Per Article 65(b)(2)(A)(i), UCMJ, the Office of Military Justice (CG-LMJ) must promptly forward a copy of the ROT and attachments for appellate review to appellate defense counsel and the CG CCA.

B.1.c. Timeline for filing For an appeal to be timely, it must be filed in accordance with the timeline detailed in Article 66(c), UCMJ.

B.1.d. Disposition of cases after CG CCA completes review After the CG CCA completes its review and issues an opinion, the ROT, together with the opinion, will be returned to the Office of Military Justice (CG-LMJ). The Office of Military Justice (CG-LMJ) will provide the accused with a copy of the opinion. If the accused has the right to petition CAAF, the accused must also be notified of that right, and the applicable timelines for petitioning CAAF, in writing. See RCM 1203(f)(2). Procedures for providing CG CCA opinions to the accused are described in Subsection 22.E.1.

B.1.e. Review when Appellate does not appeal If the accused fails to submit a timely appeal, his or her case will be reviewed by a judge advocate at The Office of Military Justice (CG-LMJ). See Article 65(d)(3), UCMJ and RCM 1201(e).

Section C. Automatic Review of Certain Special and General Courts-Martial
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C.1. Background	Unless the accused waives appellate review under RCM 1115, each case in which the judgment includes a sentence of dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more is reviewed by the CGCCA under Article 66(b)(3), UCMJ.
C.2. Forwarding cases for automatic review	Upon receipt of a ROT and attachments for appellate review, the Office of Military Justice (CG-LMJ) will forward the ROT and attachments to the CG CCA and detailed appellate defense counsel.
C.3. Withdrawal from appellate review	Withdrawal from appellate review may be filed with the Office of Military Justice (CG-LMJ). If the accused withdraws his or her case from appellate review under RCM 1115, the Office of Military Justice (CG-LMJ) will send a copy of the withdrawal to the CG CCA. Upon return of the ROT, the Office of Military Justice (CG-LMJ) will attach the withdrawal to the ROT, and review the case under Subsection 22.E.1.
C.4. Processing upon decision by the CG CCA	After the CG CCA completes its review and issues an opinion, the ROT, together with the opinion, will be returned to the Office of Military Justice (CG-LMJ). The Office of Military Justice (CG-LMJ) will provide the accused with a copy of the opinion. If the accused has the right to petition the CAAF, the Office of Military Justice (CG-LMJ) must also notify the accused of that right, and the applicable timelines for petitioning CAAF. See RCM 1203(f)(2). Procedures for serving CG CCA opinions on the accused are described in Subsection 22.E.1.

Section D. Review When the Accused Waives, Withdraws, or Has Not Filed an Article 66(b), UCMJ Appeal

D.1. Review under Article 65(d)(3), UCMJ	When the accused waives his or her Article 66(b), UCMJ, appeal, an attorney within the Office of the SJA to the Convening Authority shall review the case under Article 65(d)(3), UCMJ and RCM 1201(e). When the accused withdraws his or her Article 66(b), UCMJ, appeal, or when the accused fails to file a timely appeal under Article 66(b), UCMJ, a member of CG-094C shall review the application as an attorney designated by TJAG under Article 65(d)(3), UCMJ and RCM 1201(e). If after review, the reviewing attorney believes corrective action may be required, the reviewing attorney must prepare a memorandum for TJAG documenting the review and recommending an appropriate corrective action.
D.1.a. Processing	<p>An accused shall submit his notice of withdrawal from appellate review to the Office of Military Justice (CG-LMJ). CG-LMJ shall review the notice of withdrawal for compliance with RCM 1115(d). After review, CG-LMJ shall transmit the notice of withdrawal to the Chief Judge of the CGCCA. The Chief Judge, or another Judge the Chief Judge designates, will then review the withdrawal for compliance with RCM 1115, and conduct the Article 65 review.</p> <p>If corrective action is recommended and TJAG concurs that such action is required, he or she can set aside the findings and sentence in whole or in part. See Article 65(e), UCMJ. TJAG must provide notice and a copy of the results of the review and any action he or she has taken to the accused per RCM 1201(g) and the notification procedures outlined in Subsection 22.E.1. CG-LMJ must retain the review with the ROT.</p>
D.2. Petitions under Article 69(c)(2), UCMJ	After review under Article 65(d)(3), UCMJ is complete, the accused may submit an application to TJAG in accordance with Article 69(b), UCMJ and RCM 1201(h). TJAG's review under Article 69, UCMJ is limited to the issue of whether the accused's waiver, withdrawal, or failure to file was invalid under the law. See RCM 1201(h)(4)(B).

D.2.a. Timing of application	The accused must submit an application to TJAG via the Office of Military Justice (CG-LMJ), not later than one year after receiving a copy of the results of the Article 65, UCMJ review and TJAG's action on that review, if any, by the Office of Military Justice (CG-LMJ). See Article 69(b), UCMJ and RCM 1201(h)(2). TJAG may, for good cause shown, extend the period for submission of an application for a time period not to exceed two additional years. See Article 69(b), UCMJ and RCM 1201(h)(3).
D.2.b. Submission by a person other than the accused	If the application is submitted by a person other than the accused, that applicant must show authority to act on behalf of the accused. See RCM 1201(h)(5).
D.2.c. Processing	<p>The Office of Military Justice (CG-LMJ) will send the TJAG's review to:</p> <ul style="list-style-type: none"> i. The accused; ii. Trial counsel; iii. Personnel Service Center SJA or the accused's SPO (if necessary to correct service record and Direct Access court-martial report); iv. PPC (if the sentence was affected by the action); v. Trial defense counsel; vi. Crime victim within the meaning of Article 6b, UCMJ and Special Victims Counsel (if applicable); vii. Counsel filing the petition if different from Trial defense counsel; viii. SJA to the Convening Authority; ix. Military Judge. <p>The Office of Military Justice (CG-LMJ) will place the original of the action with the ROT. Notification procedures are outlined in Subsection 22.E.1.</p>

Section E. Service of Notices and CG CCA Decisions

E.1. Service of notices and opinions on accused

E.1.a. Accused serving in an active duty status	Where the accused is serving on active duty, the Office of Military Justice (CG-LMJ) must e-mail a copy of the notification or opinions to the SJA for the OEGCMJ over the accused. The SJA must forward the matters to the accused's immediate commanding officer, who must serve the accused, procure the accused's signature on the provided receipt as evidence of service, and return the executed form to the Office of Military Justice (CG-LMJ) through the chain of command, including the OEGCMJ.
E.1.b. Accused discharges, released from active duty, or on appellate leave	Where accused has been placed on appellate leave, released from active duty, or discharged, the Office of Military Justice (CG-LMJ) must send notification of the opinion directly to the accused by First Class Certified Mail, return receipt requested.
E.1.c. Accused cannot be served	If the attempted service of the decision is unsuccessful, a certificate of attempted service will be prepared by the officer attempting service. The certificate will detail all attempts at service, and will be returned, along with the undelivered decision, to the Office of Military Justice (CG-LMJ) through the chain of command, including the OEGCMJ.

E.2. Service of CG CCA decisions on crime victim and Special Victims' Counsel (SVC)

Upon request of a crime victim as defined in Article 6b, UCMJ, or of SVC on the victim's behalf, the Office of Military Justice (CG-LMJ) will provide a copy of the CG CCA decision to the crime victim.

E.3. Service of decisions following government

Following a decision of the CG CCA or the CAAF on a government appeal or a petition for extraordinary relief, the Office of Military Justice (CG-LMJ) will provide a copy of the decision to the trial counsel, defense counsel, CA, and military judge. Upon receipt

appeal or petition for extraordinary relief	of a copy of the decision, trial may proceed, if authorized, consistent with the decision of the appellate court unless the trial is stayed by order of a higher court.
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Section F. Retention of Appellate Records
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F.1 Records produced for/at the CG CCA	Upon completion of the CG CCA's review and transmittal of the ROT back to CG LMJ, the Office of Military Justice (CG-LMJ) records custodian will ensure that all original appellate petitions, motions, supplements, briefs, orders, and opinions are included with the ROT.
F.2. Records produced for/at CAAF	The Office of Military Justice (CG-LMJ) records custodian will ensure that copies of appellate petitions, supplements, motions, briefs, orders, and opinions are included with the ROT.

Section G. Petition for a New Trial under Article 73, UCMJ

G.1. Time limitations	At any time within three years after the date of entry of judgment under Article 60c, UCMJ, an accused may petition TJAG for a new trial on grounds of newly discovered evidence or fraud on the court.
G.2. Submission procedures	The accused must file the petition with TJAG through the Office of Military Justice (CG-LMJ). If the accused is still on active duty, he or she may file the petition through the chain of command. Filing the petition with any military authority tolls the time limitation.
G.3. Content of petition	The form and contents of petitions for new trial are specified in RCM 1210(c). Crime Victims within the meaning of Article 6b, UCMJ, must be provided notice of an application for a new trial.
G.4. Action on the petition in cases pending appeal	If the case is pending before the CG CCA or the CAAF, the petition will be referred for action to that court. If referred for action to the Coast Guard Court of Criminal Appeals, that Court takes action in accordance with Courts of Criminal Appeals Rules of Practice and Procedure.
G.5. Action on the petition in cases not pending appeal	In cases not pending appellate review, TJAG must take action in accordance with RCM 1210.

Section H. Residual Clemency under Article 74(a), UCMJ

H.1. Authority	Residual clemency authority is derived from Article 74(a), UCMJ. Except for adjudged dismissals, the Secretary, Department of Homeland Security, delegated residual clemency authority to the Commandant, U.S. Coast Guard. See Department of Homeland Security Delegation Number 0170.1, available on the Office of Military Justice (CG-LMJ) website, https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/ . The Commandant has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except those unexecuted sentences that must be approved by the President or the Secretary, Department of Homeland Security.
H.2. Requirement for completion of appeal	Residual clemency may not be granted while a case is being reviewed by the Coast Guard Criminal Court of Appeals, U.S. Court of Appeals for the Armed Force, or the U.S. Supreme Court.
H.3. Notice of decisions regarding residual clemency	Crime Victims within the meaning of Article 6b, UCMJ, are entitled to notice of residual clemency decisions under Article 74(a), UCMJ, that offer any form of relief.

H.4. Procedure

For guidance on the residual clemency implementation procedures, see Coast Guard Clemency Board, COMDTINST 5814.1 (series) and paragraph 1.F.6.d(4), Discipline and Conduct, COMDTINST M1600.2 (series).

Chapter 23
Article 140a, UCMJ Implementation

Section A. Uniform Standards and Criteria Required by Article 140a

A.1. Purpose

This section outlines uniform standards and criteria for the military justice system pursuant to Article 140a, UCMJ, 10 U.S.C. § 940a. Pursuant to Article 140a, the Secretary of Defense, in consultation with the Secretary of Homeland Security, prescribed uniform standards and criteria for the military justice system. The Judge Advocate General of the Coast Guard adopted these standards and criteria in full.

A.2 Requirements and Responsibilities

The data points and uniform definitions for collection by the services listed in the Table of Section A.3 shall be utilized when entering data into the Military Justice Case Management System. These data points shall be entered for all cases preferred on or after December 23, 2020.

The Judge Advocate General of the Coast Guard has designated the Military Justice Case Management System as the official source for capturing, maintaining, tracking, and managing Coast Guard military justice data.

The Servicing Legal Office responsible for a given case is also responsible for entering the data points required by Article 140a. It is the responsibility of the trial counsel, supervised by the supported Staff Judge Advocate to ensure that the data is accurately entered on a monthly basis.

In appellate cases, the Senior Appellate Counsel, Office of Military Justice (CG-LMJ) is responsible for entering the data points required by Article 140a.

A.3 Table of Data Points & Uniform Definitions for Collection

Data Points & Uniform Definitions for Collection by the Services		
Data Point	Uniform Definition	
Basic Data (Subject/Accused)		
1. Last name	• n/a	
2. First name	• n/a	
3. Middle initial	• n/a	
4. Pay grade	<ul style="list-style-type: none">• E1• E2• E3• E4• E5• E6• E7• E8• E9• W1• W2• W3• W4• W5	<ul style="list-style-type: none">• O1E• O2E• O3E• O1• O2• O3• O4• O5• O6• O7+• Cadet• Midshipman• Civilian
5. USCG Emplid No. or DOD ID No.	• #####	
6. Date of birth	• (MM/DD/YYYY)	
7. Sex	<ul style="list-style-type: none">• M• F	

8. Ethnicity	<ul style="list-style-type: none"> • Hispanic or Latino • Not Hispanic or Latino 		
9. Race	<ul style="list-style-type: none"> • American Indian/Alaska Native • Asian • Black or African American • Native Hawaiian or • Other Pacific Islander • White • Other 		
10. Branch of Service	<table border="0"> <tr> <td> <ul style="list-style-type: none"> • Army • Air Force • Marine Corps • Navy • Coast Guard • Army Natl Guard • Air Natl Guard </td><td> <ul style="list-style-type: none"> • USAR • USNR • USAFR • USMCR • USCGR • Other • N/A </td></tr> </table>	<ul style="list-style-type: none"> • Army • Air Force • Marine Corps • Navy • Coast Guard • Army Natl Guard • Air Natl Guard 	<ul style="list-style-type: none"> • USAR • USNR • USAFR • USMCR • USCGR • Other • N/A
<ul style="list-style-type: none"> • Army • Air Force • Marine Corps • Navy • Coast Guard • Army Natl Guard • Air Natl Guard 	<ul style="list-style-type: none"> • USAR • USNR • USAFR • USMCR • USCGR • Other • N/A 		
11. Pay entry date/Pay date	<ul style="list-style-type: none"> • (MM/DD/YYYY) 		
Investigation			
12. Investigating entity	<ul style="list-style-type: none"> • Chain of command • Military Criminal Investigative Organization • Military police • Civilian • Foreign • N/A 		
13. Investigation number	<ul style="list-style-type: none"> • Service dependent 		
14. Date investigation opened	<ul style="list-style-type: none"> • (MM/DD/YYYY) 		
15. Date of earliest offense	<ul style="list-style-type: none"> • (MM/DD/YYYY) 		
16. Date earliest offense reported/discovered	<ul style="list-style-type: none"> • (MM/DD/YYYY) 		
17. Offenses investigated related to the accused	<ul style="list-style-type: none"> • DIBRS code (DODM 7730.47 vol 2) 		
Victim of Sexual Assault & Domestic Violence			
18. Does any charged offense involve a victim as defined by DoD Directive 1030.1?	<ul style="list-style-type: none"> • Yes • No 		
19. Number of victims:[questions 20-27 should be captured for each victim]	<ul style="list-style-type: none"> • ## 		
20. Identification of victim	<ul style="list-style-type: none"> • Initials of first & last names 		
21. Sex of victim:	<ul style="list-style-type: none"> • M • F 		
22. Status of victim:	<ul style="list-style-type: none"> • Military • Military-spouse • Civilian-spouse • Civilian-dependent • Civilian-Department/Service employee • Civilian-non-Department/Service employee • Other • Unknown 		

23. Is victim a victim of domestic violence, as defined by Enclosure 2 of DoDI 6400.06?	<ul style="list-style-type: none"> • Yes • No
a. If “Yes,” the victim’s relation to the accused is:	<ul style="list-style-type: none"> • Current spouse • Former spouse • Person with whom the accused shares a child in common • Current intimate partner with whom the accused shares a common domicile • Former intimate partner with whom the accused shared a common domicile
24. VWAP notifications & elections (captured for each qualifying victim)	<ul style="list-style-type: none"> • Date served and explained
a. DD Form 2701 – Initial Information for Victims and Witnesses of Crime	<ul style="list-style-type: none"> • (MM/DD/YYYY)
b. DD Form 2702 – Court-martial Information for Victims and Witnesses of Crime	<ul style="list-style-type: none"> • (MM/DD/YYYY)
c. DD Form 2703 – Post-trial Information for Victims and Witnesses of Crime	<ul style="list-style-type: none"> • (MM/DD/YYYY)
d. DD Form 2704 – Victim/Witness Certification and Election Concerning Prisoner Status	<ul style="list-style-type: none"> • (MM/DD/YYYY)
e. Victim election to be notified under DD Form 2704	<ul style="list-style-type: none"> • Yes • No
f. DD Form 27041 – Victim Election of Post-trial Rights	<ul style="list-style-type: none"> • (MM/DD/YYYY)
g. Victim election to be notified under DD Form 27041	<ul style="list-style-type: none"> • Yes • No
25. Was the victim notified of the opportunity for SVC services?	<ul style="list-style-type: none"> • Yes • No
a. Has an SVC been provided?	<ul style="list-style-type: none"> • Yes • No, victim declined • No, victim requested SVC • N/A
26. Did the victim request an expedited transfer?	<ul style="list-style-type: none"> • Yes • No
a. If “Yes,” action on the expedited transfer:	<ul style="list-style-type: none"> • Approved • Disapproved
27. Was the victim advised, in accordance with Section 534(b), FY15 NDAA, of victim’s right to submit a preference regarding exercise of civilian or military jurisdiction over offenses allegedly committed in the United States?	<ul style="list-style-type: none"> • Yes • No
a. Victim jurisdiction preference:	<ul style="list-style-type: none"> • Military • Civilian • N/A

<u>Pretrial</u>	
<u>Pretrial restraint/confinement</u>	
28. Has pretrial restraint/confinement of the accused been imposed?	<ul style="list-style-type: none"> • Yes • No
a. Type of pretrial restraint/confinement imposed:	<ul style="list-style-type: none"> • Conditions on liberty • Restriction in lieu of arrest • Arrest • Confinement
b. If “yes,” date imposed:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
c. Date pretrial restraint/confinement terminated:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Preferral of Charges</i>	
29. Earliest preferral date	<ul style="list-style-type: none"> • (MM/DD/YYYY)
30. Was there an additional preferral?	<ul style="list-style-type: none"> • Yes • No
a. If “yes,” date of additional preferral:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
31. Offense(s) charged:	<ul style="list-style-type: none"> • DIBRS code DODM 7730.47 vol 2)
32. Does any offense involve alcohol and/or illegal use of drugs by the accused?	<ul style="list-style-type: none"> • N/A • Alcohol only • Illegal use of drugs only • Alcohol AND illegal use of drugs
33. Does any offense involve alcohol and/or illegal use of drugs by a victim?	<ul style="list-style-type: none"> • N/A • Alcohol only • Illegal use of drugs only • Alcohol AND illegal use of drugs
34. Was a firearm utilized in the commission of an offense?	<ul style="list-style-type: none"> • Yes • No
<i>Pre-referral judicial proceedings (R.C.M. 309)</i>	
35. Was a pre-referral investigative subpoena requested? If yes, then	<ul style="list-style-type: none"> • Yes • No
a. Was request granted?	<ul style="list-style-type: none"> • Yes • No
b. Action by individual subject to subpoena:	<ul style="list-style-type: none"> • Comply • Seek relief
c. Judge action on a request for relief:	<ul style="list-style-type: none"> • Ordered to comply • Modify • Quash subpoena
36. Was a pre-referral warrant or order for wire or electronic communications requested?	<ul style="list-style-type: none"> • Yes • No
a. Was request granted?	<ul style="list-style-type: none"> • Yes • No
b. Action by individual/service provider subject to warrant or order	<ul style="list-style-type: none"> • Comply • Seek relief
c. Judge action on request for relief:	<ul style="list-style-type: none"> • Order to comply • Modify • Quash subpoena
<i>Action by Chain of Command</i>	
37. Action by commander not authorized to convene courts-martial (R.C.M. 402). If	<ul style="list-style-type: none"> • N/A • Dismissed

commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	<ul style="list-style-type: none"> • Forwarded to superior commander for disposition • Non-judicial punishment • N/A
a. Date of action	• (MM/DD/YYYY)
38. Action by commander exercising summary court-martial jurisdiction (R.C.M. 403). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	<ul style="list-style-type: none"> • N/A • Dismissed • Dismissed and forwarded to subordinate commander for disposition • Forwarded to subordinate commander for disposition • Referred to summary court-martial • Preliminary hearing directed under R.C.M. 405 and Article 32 • Nonjudicial punishment
a. Date of action	• (MM/DD/YYYY)
39. Action by commander exercising special court-martial jurisdiction (R.C.M. 404). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	<ul style="list-style-type: none"> • N/A • Dismissed • Dismissed and forwarded to subordinate commander for disposition • Forwarded to subordinate commander for disposition • Forwarded to superior commander for disposition • Referred to summary court-martial • Referral to an Article 16(c)(2)(A) Special Court-martial • Referral to Special Court-martial • Preliminary hearing directed under R.C.M. 405 and Article 32 • Nonjudicial punishment
<i>Article 32 Preliminary Hearing (R.C.M. 405)</i>	
40. Date of action:	• (MM/DD/YYYY)
41. Was an Article 32 preliminary hearing ordered?	<ul style="list-style-type: none"> • Yes • No
42. Did appointing authority grant waiver of Article 32 preliminary hearing?	<ul style="list-style-type: none"> • Yes • No • N/A
a. Date appointing authority acted on waiver request:	• (MM/DD/YYYY)
43. Date of Article 32 hearing:	<ul style="list-style-type: none"> • (MM/DD/YYYY) • N/A
44. Were all victims, as defined by R.C.M. 405(g)(1), provided notice of the preliminary hearing?	<ul style="list-style-type: none"> • Yes • No • N/A
45. Did any victim, as defined by R.C.M. 405(g)(1), testify at the Article 32 preliminary hearing?	<ul style="list-style-type: none"> • Yes • No • N/A

46. Did any victim file a petition for writ of mandamus with the Court of Criminal Appeals pursuant to Article 6(b), UCMJ?	<ul style="list-style-type: none"> • Yes • No
47. Action by Court of Criminal Appeals:	<ul style="list-style-type: none"> • Relief Granted • Relief Denied
48. Date report submitted by Preliminary Hearing Officer (PHO):	<ul style="list-style-type: none"> • (MM/DD/YYYY)
49. PHO determination of whether convening authority has court-martial jurisdiction over the accused:	<ul style="list-style-type: none"> • Yes • No
50. For each Specification, PHO determination of the following:	<ul style="list-style-type: none"> •
a. Is there a recommendation to modify the Specification?	<ul style="list-style-type: none"> • Yes • No
b. Does the convening authority have court-martial jurisdiction over the offense?	<ul style="list-style-type: none"> • Yes • No
c. Does the Specification allege an offense?	<ul style="list-style-type: none"> • Yes • No
d. Does probable cause exist to believe the accused committed the offense?	<ul style="list-style-type: none"> • Yes • No
51. Did the PHO determine probable cause existed to believe the accused committed additional, uncharged offenses?	<ul style="list-style-type: none"> • Yes • No
a. If yes, provide offense(s)	<ul style="list-style-type: none"> • DIBRS code
52. Recommendation as to disposition of the case:	<ul style="list-style-type: none"> • No action • Administrative action • Non-judicial punishment • Referral to Summary Court-martial • Referral to an Article 16(c)(2)(A) Special Court-martial • Referral to Special Court-martial • Referral to General Court-martial
<i>SJA Pretrial Advice (R.C.M. 406)</i>	
53. Is Article 34, UCMJ, SJA advice required? If "yes," system must capture the following conclusions by the SJA for each Specification:	<ul style="list-style-type: none"> • Yes • No
a. Does the Specification allege an offense under the UCMJ?	<ul style="list-style-type: none"> • Yes • No
b. Is there probable cause to believe the accused committed the offense?	<ul style="list-style-type: none"> • Yes • No
c. Did the SJA recommend dismissal of the specification?	<ul style="list-style-type: none"> • Yes • No
d. Does the convening authority have court-martial jurisdiction over the offense?	<ul style="list-style-type: none"> • Yes • No

54. SJA conclusion of whether the convening authority has court-martial jurisdiction over the accused:	<ul style="list-style-type: none"> • Yes • No
55. SJA disposition recommendation	<ul style="list-style-type: none"> • No action • Administrative action • Non-judicial punishment • Referral to court-martial
56. Date of Article 34, UCMJ, SJA advice	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Referral – Action by the GCMCA</i>	
57. Name of Command/GCMCA	<ul style="list-style-type: none"> • Look up by Unit Identification Code
58. Disposition of each Charge and Specification (R.C.M. 407)	<ul style="list-style-type: none"> • Dismissed • Dismissed and forwarded to subordinate commander for disposition • Forwarded to subordinate commander for disposition • Forwarded to superior commander for disposition • Referred to court-martial
59. When referred to court-martial:	
a. Level of court-martial to which charges were referred:	<ul style="list-style-type: none"> • Summary Court-martial • Article 16(c)(2)(A) Special Court-martial • Special Court-martial • General Court-martial • Non-judicial punishment
b. If referral is to a Special Court-Martial, did the convening authority consult with a judge advocate, iaw R.C.M. 406A?	<ul style="list-style-type: none"> • Yes • No
60. Was elevated review by the next higher GCMCA triggered? (A situation in which the SJA and GCMCA both concur that a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA, should not be referred to trial)	<ul style="list-style-type: none"> • Yes • No
a. If yes, decision by reviewing GCMCA:	<ul style="list-style-type: none"> • Referred charges to court-martial • The decision of the subordinate GCMCA was upheld
b. Date of decision by reviewing GCMCA:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
61. Was elevated review by the Secretary of the Military Department/Commandant of the USCG triggered? (Either: 1. The SJA recommends referral and the GCMCA declines referral; OR 2. The SJA and GCMCA both concur with non-referral, but the Service	<ul style="list-style-type: none"> • Yes • No

Chief Prosecutor seeks Secretarial/Commandant of USCG review when the non-referral decision involves a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA)	
a. Decision by Secretary of the Military Department/Commandant of the USCG:	<ul style="list-style-type: none"> • Referred charges to court-martial • The decision of the subordinate GCMCA was upheld
b. Date of decision by Secretary of the Military Department/Commandant of the USCG:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Plea Agreement (R.C.M. 705)</i>	
62. Is there a plea agreement?	<ul style="list-style-type: none"> • Yes • No
63. Date plea agreement approved:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
64. Does the plea agreement contain an Offer to Plead Guilty? If yes, the following shall be answered for each Charge and Specification referred to court-martial	<ul style="list-style-type: none"> • Yes • No
a. Plea of the accused	<ul style="list-style-type: none"> • Plea of Guilty • Plea of Guilty to LIO or other offense • Plea of Not Guilty • Withdrawn and/or Dismissed
b. LIO or other offense– Article, UCMJ	<ul style="list-style-type: none"> • DIBRS code
65. If applicable, was the victim, as defined by R.C.M. 705(e)(3)(B), provided the opportunity to submit views concerning the plea agreement?	<ul style="list-style-type: none"> • Yes • No • N/A
a. Did victim submit views concerning plea agreement?	<ul style="list-style-type: none"> • Yes • No
b. Date victim submitted views concerning plea agreement:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
66. Is there an agreed upon composition for sentencing?	<ul style="list-style-type: none"> • Members • Judge • Magistrate judge • No forum agreed upon
67. Is there an agreement to refer to a particular forum?	<ul style="list-style-type: none"> • Summary Court-martial • Article 16(c)(2)(A) Special Court-martial • Special Court-martial • None
<i>Enlisted Separation/Officer Resignation in Lieu of Court-martial</i>	
68. Was a request for Separation/Resignation in Lieu of Court-martial submitted?	<ul style="list-style-type: none"> • Yes • No
69. Was request approved?	<ul style="list-style-type: none"> • Yes

	<ul style="list-style-type: none"> • No
a. Date request approved/denied:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
70. Characterization of Service	<ul style="list-style-type: none"> • Honorable • General, Under Honorable Conditions • Other than Honorable
<i>Inquiry Into Mental Capacity/Mental Responsibility of the Accused (R.C.M. 706)</i>	
71. R.C.M. 706 inquiry requested?	<ul style="list-style-type: none"> • Yes • No
72. R.C.M. 706 inquiry request approved?	<ul style="list-style-type: none"> • Yes • No
a. Date R.C.M. 706 inquiry request approved/denied:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
73. R.C.M. 706 inquiry completed date:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
74. Determination of the R.C.M. 706 inquiry:	
a. As a result of the accused suffering from a severe mental disease or defect, was the accused unable to appreciate the nature and quality or wrongfulness of his or her conduct?	<ul style="list-style-type: none"> • Yes • No
b. As a result of a present mental disease or defect, is the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently with the defense?	<ul style="list-style-type: none"> • Yes • No
75. The court found the accused incompetent to stand trial pursuant to R.C.M. 909	<ul style="list-style-type: none"> • Yes • No • N/A
Trial	
<i>Forum (R.C.M. 903)</i>	
76. Composition of the Court for merits phase:	<ul style="list-style-type: none"> • Members • Officer members at the accused's election • Members with 1/3 enlisted representation at the accused's election • Military Judge alone • Magistrate judge
<i>Pleas (R.C.M. 910)</i>	
77. Plea(s) of the accused to each Charge and Specification:	<ul style="list-style-type: none"> • Guilty • Not guilty of an offense as charged, but guilty of a named lesser included offense (LIO) or other offense • Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any • Not guilty

a. In the case of guilty of LIO or other offense:	<ul style="list-style-type: none"> • DIBRS Code
<i>Findings (R.C.M. 918)</i>	
78. Prior to findings, whether the convening authority caused any of the Charges or Specifications to be withdrawn and or dismissed. For each Charge and Specification, as applicable:	<ul style="list-style-type: none"> • Withdrawn • Withdrawn and dismissed
79. Mistrial (R.C.M. 915):	<ul style="list-style-type: none"> • Yes • No
a. If mistrial, date of mistrial:	• (MM/DD/YYYY)
80. Finding as to each Specification:	<ul style="list-style-type: none"> • Guilty • Not guilty of an offense as charged, but guilty of a named LIO or other offense • Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any • Not guilty only by reason of lack of mental responsibility • Not guilty • Not guilty pursuant to R.C.M. 917 • Withdrawn and dismissed
81. In the case of guilty of LIO or other offense:	• DIBRS code
82. Finding as to each Charge:	<ul style="list-style-type: none"> • Guilty • Not guilty, but guilty of violation of Article ____ • Not guilty by reason of lack of mental responsibility • Not guilty
83. Date of Findings:	• (MM/DD/YYYY)
<i>Sentence (if applicable)</i>	
84. Composition of court for sentencing phase:	<ul style="list-style-type: none"> • Members • Officer members at the accused's election • Members with 1/3 enlisted representation at the accused's election • Military Judge alone • Magistrate judge
85. Did a crime victim of an offense of which the accused has been found guilty exercise his/her right to be heard at the presentencing (R.C.M. 1001(c)) relating to that offense? System must capture victim who exercised right.	<ul style="list-style-type: none"> • Yes • No • N/A
86. Date sentence adjudged:	• (MM/DD/YYYY)
87. Sentence adjudged (if sentenced by military judge, for most offenses committed on or after 01 Jan 2019,	•

those parts of the sentence adjudging a fine or confinement, subparagraphs e. and h. below, must be included for each Specification in which there was a finding of guilty). System must capture whether part of sentence was impacted by plea agreement.			
a. No punishment	<ul style="list-style-type: none"> • No punishment adjudged 		
b. Reprimand:	<ul style="list-style-type: none"> • None adjudged; • Adjudged 		
c. Reduction to the grade of:	<table border="1"> <tr> <td> <ul style="list-style-type: none"> • None adjudged • E1 • E2 • E3 • E4 </td><td> <ul style="list-style-type: none"> • E5 • E6 • E7 • E8 </td></tr> </table>	<ul style="list-style-type: none"> • None adjudged • E1 • E2 • E3 • E4 	<ul style="list-style-type: none"> • E5 • E6 • E7 • E8
<ul style="list-style-type: none"> • None adjudged • E1 • E2 • E3 • E4 	<ul style="list-style-type: none"> • E5 • E6 • E7 • E8 		
d. Forfeitures:	<ul style="list-style-type: none"> • None adjudged • \$ #####.## per month for ## months 		
e. Fine:	<ul style="list-style-type: none"> • None adjudged • \$ #####.## 		
f. Restriction to specific limits:	<ul style="list-style-type: none"> • None adjudged • ## months • ## days 		
g. Hard labor w/out confinement:	<ul style="list-style-type: none"> • None adjudged • ## months • ## days 		
h. Confinement:	<ul style="list-style-type: none"> • None adjudged • Life without eligibility for parole • Life • ## years • ## months • ## days • FOR JUDGE ALONE: must include "To be served: consecutively or concurrently" if sentence is imposed for more than one specification 		
i. Punitive discharge:	<ul style="list-style-type: none"> • None adjudged • Bad Conduct Discharge • Bad Conduct Discharge (mandated) • Dishonorable Discharge • Dishonorable Discharge (mandated) • Dismissal 		
j. Death	<ul style="list-style-type: none"> • Yes • No 		
88. Days of pretrial confinement credit:	<ul style="list-style-type: none"> • ## days 		
89. Days of judicially ordered credit	<ul style="list-style-type: none"> • ## days 		
90. Total days of credit	<ul style="list-style-type: none"> • ## days 		
91. Did the military judge recommend a suspension of any portion of the sentence?	<ul style="list-style-type: none"> • Yes • No 		
92. Did the Government submit a request to The Judge Advocate	<ul style="list-style-type: none"> • Yes • No 		

General to appeal the sentence either because it violates the law or is plainly unreasonable (Article 56(d), UCMJ, and R.C.M 1117)?	
a. Did any victim, as defined in R.C.M. 1001, submit matters for consideration to The Judge Advocate General	<ul style="list-style-type: none"> • Yes • No
b. Action by The Judge Advocate General on the Government's request to appeal the sentence:	<ul style="list-style-type: none"> • Denied • Approved
c. Decision by the Court of Criminal Appeals on Government's appeal of sentence:	<ul style="list-style-type: none"> • Denied • Set aside and remanded, sentence as adjudged is unlawful • Set aside and remanded, sentence as adjudged is plainly unreasonable
Post-trial	
<i>Processing Related to Conviction and Sentence</i>	
93. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	<ul style="list-style-type: none"> • Yes • No
94. Is sex offender registration reporting required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	<ul style="list-style-type: none"> • Yes • No
95. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	<ul style="list-style-type: none"> • Yes • No
96. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	<ul style="list-style-type: none"> • Yes • No
97. Date confinement ordered:	• (MM/DD/YYYY)
98. Law enforcement agency notified of disposition for criminal indexing purposes:	<ul style="list-style-type: none"> • Yes • No
<i>Deferment and Waiver (R.C.M 1103)</i>	
99. Deferment:	<ul style="list-style-type: none"> • N/A • Deferment requested by accused, approved • Deferment requested by accused, denied • Deferment of confinement ordered without request from accused
100. Date of action on deferment:	(MM/DD/YYYY)
101. Did the convening authority waive automatic forfeitures by operation of Article 58(b), UCMJ?	<ul style="list-style-type: none"> • Yes • No
<i>Post-trial Motions and Proceedings (R.C.M. 1104)</i>	
102. Did any post-trial Article 39(a) sessions occur?	<ul style="list-style-type: none"> • Yes • No
103. Did any post-trial Article 39(a) impact any part of the findings or sentence?	<ul style="list-style-type: none"> • Yes • No
<i>Post-trial Action by the Convening Authority</i>	

104. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided, upon request, to the accused or accused's counsel (R.C.M. 1106)?	<ul style="list-style-type: none"> • Yes • No
105. Accused action regarding submission of matters pursuant to R.C.M. 1106:	<ul style="list-style-type: none"> • Submitted • Expressly waived right to submit matters • Failed to submit matters
106. Was notice provided to all qualifying crime victims of their right to submit matters pursuant to R.C.M. 1106A (DD Form 2703)? Must capture by victim.	<ul style="list-style-type: none"> • N/A • Yes • No
107. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided, upon request, to any qualifying victim (R.C.M. 1106A)? System must capture each victim provided.	<ul style="list-style-type: none"> • Yes • No
108. Were matters submitted by crime victims pursuant to R.C.M. 1106A? System must capture each victim who submitted matters.	<ul style="list-style-type: none"> • N/A • Yes • No
109. Was any portion of the sentence suspended or remitted by the convening authority prior to the entry of judgment (R.C.M. 1107)?	<ul style="list-style-type: none"> • Yes • No
a. If the convening authority suspended any portion of the sentence, was that suspension later vacated (R.C.M. 1108)?	<ul style="list-style-type: none"> • Yes • No
b. Were any victims of the underlying offense(s) for which the probationer received a suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, provided notice of the vacation hearing?	<ul style="list-style-type: none"> • N/A • Yes • No
110. Did the convening authority take any action impacting a finding of guilty, pursuant to R.C.M. 1110?	<ul style="list-style-type: none"> • Yes • No
111. Did the convening authority take any action impacting a portion of the sentence, pursuant to R.C.M. 1109 and/or 1110?	<ul style="list-style-type: none"> • Yes • No
<i>Entry of Judgment (R.C.M. 1111)</i>	
112. Date of Entry of Judgment:	<ul style="list-style-type: none"> • (MM/DD/YYYY)

113. Date copy of Entry of Judgment provided to accused:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
114. Was a copy of the Entry of Judgment provided to any crime victim or crime victim's counsel, upon request?	<ul style="list-style-type: none"> • N/A • Yes • No
<i>Preparation and Forwarding to Court of Criminal Appeals</i>	
115. Type of Transcript Prepared (R.C.M. 1114):	<ul style="list-style-type: none"> • Transcript not prepared • Verbatim • Summarized
116. Date record of trial certified as containing all required contents pursuant to R.C.M. 1112(b):	<ul style="list-style-type: none"> • (MM/DD/YYYY)
117. Date copy of certified record of trial was provided to accused or counsel (R.C.M. 1112(e)):	<ul style="list-style-type: none"> • (MM/DD/YYYY)
118. Date copy of certified record of trial was provided to victim, or counsel for the victim, of an offense of which the accused was charged if the victim testified during the proceedings (R.C.M. 1112(e)):	<ul style="list-style-type: none"> • (MM/DD/YYYY)
119. Date copy of certified record of trial was provided to any victim, or counsel for any victim, named in a Specification of which the accused was charged, upon request, without regard to the findings of the court-martial (R.C.M. 1112(e)):	<ul style="list-style-type: none"> • (MM/DD/YYYY)
120. Date certified record of trial forwarded to appropriate reviewing authority:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Waiver or Withdrawal of Appellate Review (R.C.M. 1115)</i>	
121. Date waiver or withdrawal submitted by accused:	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
122. Determination of review in cases in which the accused has waived or withdrawn appellate review (R.C.M. 1201):	<ul style="list-style-type: none"> •
a. Whether the court had jurisdiction over the accused and the offense	<ul style="list-style-type: none"> • Yes • No
b. Whether each charge and specification stated an offense	<ul style="list-style-type: none"> • Yes • No
c. Whether the sentence was within the limits prescribed as a matter of law	<ul style="list-style-type: none"> • Yes • No
d. Date of review:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Review by The Judge Advocate General</i>	
123. For each certified record of trial received by The Judge Advocate General pursuant to R.C.M. 1201 and Article 69, UCMJ, the	

following determinations will be made:	
a. Whether the court had jurisdiction over the accused and the offense	<ul style="list-style-type: none"> • Yes • No
b. Whether each charge and specification stated an offense	<ul style="list-style-type: none"> • Yes • No
c. Whether the sentence was within the limits prescribed as a matter of law	<ul style="list-style-type: none"> • Yes • No
d. Whether the response contained any response to an allegation of error made in writing by the accused	<ul style="list-style-type: none"> • Yes • No
124. Was a remedy granted by The Judge Advocate General?	<ul style="list-style-type: none"> • Yes • No
125. Date accused notified of results of review conducted by The Judge Advocate General:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
a. Date application submitted for relief to The Judge Advocate General after final review (R.C.M. 1201(h))	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
126. Action by The Judge Advocate General upon an application for relief	<ul style="list-style-type: none"> • N/A • Relief granted • Relief denied
127. Was any remission or suspension of any unexecuted portion of any sentence by The Judge Advocate General pursuant to R.C.M. 1201(i) and Article 74, UCMJ?	<ul style="list-style-type: none"> • Yes • No
128. Date action taken by The Judge Advocate General under R.C.M. 1201(h) or (j) referred or submitted to or requested by the Court of Criminal Appeals (R.C.M. 1201(k)):	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
129. Action taken by the Court of Criminal Appeals upon such a referral or submission:	<ul style="list-style-type: none"> • Affirmed • Reversed
a. Date of Action by the Court of Criminal Appeals:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Review by Court of Criminal Appeals (R.C.M. 1203)</i>	
130. Court of Criminal Appeals determined accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings:	<ul style="list-style-type: none"> • Yes • No
131. Action on findings of guilty, by Charge and its Specification(s)	<ul style="list-style-type: none"> • Affirmed • Affirmed in part, remanded • Affirmed in part, dismissed • Reversed
132. Action on sentence	<ul style="list-style-type: none"> • Affirmed • Affirmed in part, remanded

	<ul style="list-style-type: none"> • Affirmed in part, reassessed • Set aside, remanded • Set aside, reassessed
133. Date of opinion of the Criminal Court of Appeals	<ul style="list-style-type: none"> • (MM/DD/YYYY)
134. Date accused notified of opinion of the Criminal Court of Appeals	<ul style="list-style-type: none"> • (MM/DD/YYYY)
135. Decision of the Criminal Court of Appeals upon a request for reconsideration	<ul style="list-style-type: none"> • N/A • Denied • Granted
136. Decision upon reconsideration:	<ul style="list-style-type: none"> • N/A • Relief denied • Relief granted
137. Date of certification by The Judge Advocate General to the Court of Appeals for the Armed Forces (C.A.A.F.):	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
138. Date of petition by accused to C.A.A.F.:	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
139. Date record of trial forwarded to C.A.A.F.:	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
<i>Review by the Court of Appeals for the Armed Forces (R.C.M. 1204)</i>	
140. Action on petition by the accused for review:	<ul style="list-style-type: none"> • Denied • Granted
141. Date of action on petition:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
142. Opinion of the Court of Appeals for the Armed Forces (C.A.A.F.) regarding findings and sentence:	<ul style="list-style-type: none"> • Affirmed • Affirmed in part, remanded • Affirmed in part, dismissed • Reversed
143. Date of opinion of C.A.A.F.	<ul style="list-style-type: none"> • (MM/DD/YYYY)
144. Decision of C.A.A.F. upon a request for reconsideration	<ul style="list-style-type: none"> • N/A • Denied • Granted
a. Date of decision on request for reconsideration	<ul style="list-style-type: none"> • (MM/DD/YYYY)
145. Decision of C.A.A.F. upon reconsideration	<ul style="list-style-type: none"> • Relief denied • Relief granted
a. Date of reconsideration decision:	<ul style="list-style-type: none"> • (MM/DD/YYYY)
<i>Review by the Supreme Court of the United States (R.C.M. 1205)</i>	
146. Date petition for writ of certiorari filed:	<ul style="list-style-type: none"> • N/A • (MM/DD/YYYY)
147. Petition for writ of certiorari filed by:	<ul style="list-style-type: none"> • United States • Accused
148. Action on petition for writ of certiorari:	<ul style="list-style-type: none"> • N/A • Denied • Granted
149. Date of action on petition for writ of certiorari	<ul style="list-style-type: none"> • (MM/DD/YYYY)
150. If certiorari was granted, was the C.A.A.F. opinion summarily vacated and remanded?	<ul style="list-style-type: none"> • Yes • No
151. If certiorari was granted, was briefing ordered?	<ul style="list-style-type: none"> • Yes • No

152. If certiorari was granted, was oral argument held?	<ul style="list-style-type: none"> • Yes • No
153. If certiorari was granted, the outcome was:	<ul style="list-style-type: none"> • Dismissed as improvidently granted • Affirmed • Affirmed in part, reversed in part • Reversed • Other
<i>Action by the Service Secretary</i>	
154. Upon final judgment involving the dismissal of a commissioned officer, cadet, or midshipmen, action by the Service Secretary or designee	<ul style="list-style-type: none"> • Approved and ordered executed • Substituted, for good cause, for an administrative form of discharge • Remitted • Suspended
a. Date of action on the dismissal	• (DD/MM/YYYY)
<i>Action by the President of the United States</i>	
155. Action upon a sentence to death by the President	<ul style="list-style-type: none"> • Approved • Commuted to life without eligibility for parole • Commuted to life • Commuted to confinement for a term of years
a. Date of action by the President	• (MM/DD/YYYY)

Section B. Public Access to Court-martial Dockets, Filings, and Records Pursuant to Article 140a

B.1. Purpose

Article 140a, UCMJ and the Secretary of Defense's Uniform Standards for Article 140a require that the public have access to military justice docket information, filings, and records to the greatest extent practicable. All court-martial documents (dockets, filings, and court records) shall be redacted to comply with the Privacy Act, 5 U.S.C. § 552a, prior to being made accessible to the public. Docket information will be provided and updated on an ongoing basis. Court filings and records will be made available in accordance with the instructions below.

The processes and procedures directed by this chapter will ensure release of court-martial information is conducted in accordance with appropriate statutory and regulatory provisions. Section 23.C provides a complete list of information that must be redacted from all documents prior to posting on a public website. A list of court filings or records that must be made available to the public is contained in Section 23.D.

Records of trial, docket information, filings, and other records made publicly accessible shall restrict access to the Personally Identifiable Information (PII) of minors and victims of crime, as practicable to the extent such information is restricted in electronic filing systems of Federal and State Courts. Federal courts require the following to be redacted from all filings: (1) social security numbers; (2) dates of birth; (3) names of minor children; (4) financial account numbers; and (5) home addresses.

The release of court-martial records is also governed by the Privacy Act. The Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3 (series), provides implementing guidance that further restricts the release of certain additional categories of PII.

The Coast Guard shall use redaction guidelines applicable under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The FOIA requires the Coast Guard to disclose

information unless there is an exemption. The Coast Guard will apply FOIA redaction guidelines to prevent the release of certain sensitive information and protect personal privacy.

Section C. Items to be Redacted
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C.1. Items to be Redacted

The following shall be redacted from all filings or court-martial documents to be made publicly accessible:

- a. Social Security Numbers
- b. Tax Identification Numbers.
- c. Home Addresses.
- d. Telephone Numbers.
- e. Email Addresses.
- f. Date of Birth.
- g. Financial Account Numbers.
- h. Names of minors—completely redact or utilize court-approved pseudonyms.
- i. Crime victim names—completely redact, or utilize court-approved pseudonyms.
- j. Coast Guard Employee ID number and DoD ID number.
- k. The name of any unit and any other identifying information referencing attachment to a unit overseas, a deployable unit (ship), or a special operations unit.
- l. Evidence or uncharged misconduct deemed irrelevant or inadmissible by a military judge under M.R.E 404(b).
- m. Evidence related to a victim's or witness' ancillary misconduct deemed irrelevant or inadmissible by a military judge.
- n. "Wet" (manual) signatures of all personnel.
- o. Law-enforcement names (5 U.S.C. § 552(b)(7)(C)). If a Coast Guard Trial Judge or the Coast Guard Court of Criminal Appeals (CGCCA) determines publishing the names of law enforcement personnel is in the interest of justice, such information must be provided to the Office of Military Justice (CG-LMJ), and to Military Justice Information Division (Code 41).
- p. All third-party names, including witnesses or other persons named in any filing or record (replace with initials, court-approved pseudonyms, or completely redact). Also redact the unit name and any other identifying information, if the person is attached to a unit overseas, a deployable unit (ship or deployable specialized forces), or special forces. (5 U.S.C. § 552(b)(3), (b)(6), and (b)(7)). Leave the rank of the military members unredacted. If the Coast Guard Trial Judge and CGCCA determines publishing the names of witnesses (other than victims or minors) is in the interest of justice, such information must be provided to the Office of Military Justice (CG-LMJ).

- q. All panel members' names, including excused members and members who sat on the court-martial, and alternate members (5 U.S.C. § 552(b)(6) and (b)(7)). Leave the rank of the military members unredacted.
- r. All court-martial support personnel names, including the court reporter and bailiff. (5 U.S.C. § 552(b)(7)(C)). Leave the rank of the military members unredacted. Do NOT redact the name of the counsel or military judge.
- s. Information that could identify a confidential source or undercover law-enforcement officer or operation. (5 U.S.C. § 552(b)(7)(D)).
- t. Information that would reveal non-obvious law-enforcement techniques and procedures or guidelines for law-enforcement investigations or prosecutions. (5 U.S.C. § 552(b)(7)(E))
- u. Information considered privileged in civil litigation. Specific privileged information protected from release includes:
 - i. Deliberative Process Privilege/Judicial Privilege
 - ii. Attorney-Client Privilege
 - iii. Information Subject to the Attorney Work-Product Doctrine
 - iv. Government Trade Secret Privilege
 - v. Safety Investigation Privilege
 - vi. Presidential Communications Privilege
- v. Any other information about a person if disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552(b)(6).
- w. Any other information about a person compiled for law enforcement purposes, to the extent that its disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552(b)(7)(C).

C.2. Items That Will Not Be Made Available The following items will **not** be made publicly available:

- a. Any filings or court records in a case that results in a full acquittal
- b. Any matter sealed by the court
- c. Any matter where the court granted a request for a protective order that remains in effect post trial
- d. Member questionnaires

Section D. Court-Martial Documents to be Made Publicly Accessible
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D.1 Documents to be Made Publicly Accessible

Pursuant to Article 140a, UCMJ the documents and records listed in this paragraph shall be made accessible to the public after redaction in accordance with Section 23.c. No other documents will be released under Article 140a, UCMJ.

Current dockets shall be accessible by the public for all the Coast Guard Trial Judiciary

and the Coast Guard Court of Criminal Appeals (CGCCA). Schedules of CGCCA oral arguments and associated audio may be posted at the discretion of CGCCA.

All motions and responses filed with the trial court, including bench briefs. The motion, response, or bench brief does not include the supporting evidence offered by a party in support of the motion or response. All supporting evidence shall be filed as separate appellate exhibits, which shall not be released under Article 140a, UCMJ.

Formal notices provided to the trial court. Formal notices do not include emails sent to the trial court or notices submitted between counsel. Formal notices to the trial court that will be made available to the public if submitted as a formal notice rather than an informal email include, but are not limited to, the following:

1. Notice of appearance of civilian defense counsel or special victims' counsel
2. Government's notice of appeal (R.C.M. 908)
3. Parties' notice of plea agreement (R.C.M. 910)
4. Notice of pleas

Requests submitted by counsel to the trial court as a formal, written filing. This does not include informal requests submitted to the trial court to address logistics (e.g. requests for RCM 802 conferences) or informal email requests. Requests submitted by counsel to the trial court include, but are not limited to:

1. Requests for relief from subpoena or other process (R.C.M. 309)
2. Requests for forum composition (R.C.M. 503, 903)
3. Requests for deposition (R.C.M. 702)
4. Requests for R.C.M. 706 exam and the short-form report provided to the court, if applicable. (Apply 5 U.S.C. § 552(b)(6) when determining information to redact from these documents).
5. Requests for closed court-martial proceedings (R.C.M. 806)
6. Requests to issue or amend protective orders (R.C.M. 701; M.R.E. 505, 506)
7. Requests for instructions (R.C.M. 920, 1005)
8. Requests for supplemental information from members, including *voir dire* (R.C.M. 912)
9. Requests for special findings (but not the special findings, see below) (R.C.M. 918).

The following court records shall be made accessible to the public:

1. Entry of Judgment
2. Convening Authority's Action including a punitive letter of reprimand, if applicable
3. Statement of Trial Results
4. Convening order(s)

5. Charge sheet
6. Court rulings and orders.
 - a. A court ruling and any accompanying order that is a written determination by a military judge on an interlocutory question and all questions of law raised during the court-martial, after charges have been referred. Questions of law and interlocutory questions include all issues which arise during trial other than the findings (that is, guilty or not guilty), sentence, and administrative matters such as declaring recesses and adjournments. (See R.C.M. 801(e)).
 - b. "Ruling" does not include Article 30a orders, protective orders and seals, subpoenas, warrants, court notices (i.e., contempt notices), special findings made pursuant to R.C.M. 918(b), trial management orders, or instructions.

The following filings and records submitted at CGCCA shall be made publicly accessible:

1. All petitions and requests submitted by a party, other petitioner, or amicus curiae to the CGCCA. "Petitions and requests" include initial and responsive briefs, merits submissions, and motions.
2. All appellate court orders and opinions issued by CGCCA.

**D.2. Documents that
Shall Not be made
Publically Available**

The following documents created during the court-martial process **shall not** be made publically accessible pursuant to Article 140a, UCMJ:

1. All matters sealed by the military judge pursuant to R.C.M. 1113.
2. The recording of any court session.
3. The transcript of any proceedings.
4. Article 32 Preliminary Hearing Report
5. Prosecution Exhibits.
6. Defense exhibits.
7. Pre-trial matters, including: Pre-Trial Information Report (PTIR), proposed Trial Management Orders, witness lists, request for instructions, request for judicial notice, proposed *voir dire*, findings worksheet, and sentencing worksheet.
8. Victim impact statement.
9. Special findings.
10. Findings instructions or sentencing instructions.
11. Plea Agreements.
12. The following court orders:
 - a. Article 30a orders.

- b. Protective orders and sealing orders.
 - c. Subpoenas.
 - d. Warrants.
 - e. Trial Management Orders.
13. Member questionnaires.
14. Evidence offered for consideration on motions, bench briefs, notices, or requests
15. Contempt findings/orders.

Section E. Redaction of Dockets, Filings, and Court Records at the Trial Judiciary

E.1 Dockets, Filings, and Court Records at the Trial Judiciary

The following applies to the dockets, filings, and court records in the Coast Guard Trial Judiciary:

1. Trial counsel, defense counsel, and special victims' counsel shall minimize the use of PII and information exempt from release, as provided in this manual, to the maximum extent possible in all filings and court records. Omit enclosures or attachments in all filings. Any documentary evidence offered by the parties for consideration on a filing, will be submitted as a separate appellate exhibit, as directed by the military judge, and referenced as such in the filing, notice, request, or motion. All supporting evidence filed as a separate appellate exhibit shall not be released under Article 140a, UCMJ.
2. Upon certification of the record of trial, personnel responsible for post-trial processing shall transmit all certified records of trial to the Office of Military Justice (CG-LMJ).
3. All trial court dockets must include the following information concerning each docketed case: (a) name of the case; (b) location of the hearing; (c) forum (e.g., GCM or SPCM); (d) type of hearing (e.g., arraignment, Article 39(a), or trial); (e) the charges referred to the court-martial; and (f) when appropriate, the military judge presiding over the hearing and the lead trial counsel and defense counsel assigned to the case. While the name of the case, the location of the hearing, and the type of case will be updated on an ongoing basis, the military judge presiding over the hearing and the counsel assigned to the case may be updated and made accessible to the public at a reasonable time following the hearing. No docket will include any pre-referral hearings, such as Article 30a or Article 32 hearings.
4. The Military Justice Information Division (Code 41), by agreement with CGJAG, will:
 - a. Not publish any court filings or records in cases that result in a full acquittal (not guilty to all charges and specifications.)
 - b. Review each digital record of trial and compile all filings and court records that will be made available to the public.
 - c. Redact all filings and court records to ensure each document is redacted in accordance with Section 23.c.

- d. If a military judge concludes evidence of prior criminal activity is inadmissible at trial, unless otherwise ordered by the military judge, redact information that discusses the inadmissible evidence.
 - e. Make the approved filings and court records publicly accessible. The files will be uploaded onto the public facing website.
 - f. Trial court filings and records will be made publically accessible within 60 days of CG-LMJ's receipt of the certified record of trial absent extraordinary circumstances. This approval shall be documented using the Article 140a, UCMJ, Approval for Public Release document. A completed copy of the Article 140a, UCMJ, Approval for Public Release document shall be uploaded to the Military Justice Case Management System.
5. The Director, Military Justice Information Division (Code 41), is the release authority for all trial-level filings and court records. The release authority is responsible for ensuring trial-level filings and court records have been properly redacted and may approve publication of the trial-level filings and court records.

**E.2. Dockets, Filings,
and Court Records at
the Criminal Appeals**

The following applies to the docket, filings, and court records at the Coast Guard Court of Criminal Appeals (CGCCA).

- 1. All appellate counsel (appellate government counsel, appellate defense counsel, and special victims' counsel) shall:
 - a. Minimize the use of PII and information exempt from release to the maximum extent possible from all pleadings submitted to the court.
 - b. Omit enclosures or attachments in pleadings, to include briefs, answers, replies, and petitions. Omit enclosures and attachments from motions – with the exception of motions to attach. Should appellate counsel desire to reference a document from outside the record in a pleading, such a document may be submitted to the court only pursuant to a motion to attach.
- 2. The Clerk of Court, CGCCA is the release authority for all CGCCA pleadings, orders, and opinions. The Clerk shall notify Office of Military Justice (CG-LMJ) and the Military Justice Information Division (Code 41) of the Navy's Office of the Judge Advocate General when pleadings, orders, and opinions are ready for redaction and public release.
- 3. The Military Justice Information Division (Code 41), by agreement with CGJAG, will:
 - a. Upon receipt from the Clerk of Court, redact all pleadings, orders, and opinions in accordance with enclosure (2), and make the redacted materials publicly accessible.
 - b. Trial-level and appellate-level case information will be co-located to facilitate public access.

A completed copy of the Article 140a, UCMJ Approval for Public Release document shall be uploaded to the Military Justice Case Management System for each case in which public disclosure is required under Article 140a, UCMJ.

Section F. Preservation of Court-Martial Records

F.1. Preservation
of Court-Martial
Records

General and special court-martial records shall be preserved, without regard to the outcome of the proceeding concerned, for not fewer than 15 years.

Chapter 24 Military Justice Practitioners
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Section A. Article 6, UCMJ Visits
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| A.1. Generally | Article 6, UCMJ, requires the Judge Advocate General to “make frequent inspection in the field in supervision of the administration of military justice.” During these trips, the Judge Advocate General will endeavor to meet, to the extent possible, with convening authorities, particularly those empowered to convene a general court-martial. |
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Section B. Certification of Counsel under Article 27(b), UCMJ
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| B.1. Generally | In addition to the requirements stated in RCM 502, each active duty judge advocate is expected to meet the qualifications listed in this Section in order to become certified in accordance with Article 27(b), UCMJ. |
| B.2. Designation as judge advocate | Each attorney serving in a legal program billet is expected to obtain designation as a judge advocate. Authority to designate attorneys as judge advocates has been delegated to the Judge Advocate General. Requests for designation as a judge advocate may be made to TJAG in accordance with Chapter 11.C, Military Qualifications and Insignia, COMDTINST M1200.1. Requests are submitted in writing. When requesting certification, in addition to the name of the bar in which admitted to practice law, a certificate of good standing from the member’s state bar must be transmitted to the Office of Legal Policy and Program Development (CG-LPD) to complete the application. |
| B.3. Basic Lawyer Course | Each active duty judge advocate must successfully complete the Basic Lawyer Course conducted by the Naval Justice School or the Basic Judge Advocate Course conducted by the U.S. Army or Air Force. Waivers of this requirement may be granted on a case-by-case basis and must include a positive recommendation from the SJA requesting the waiver. Waiver requests should also include a listing of all military justice on-the-job training such as assistant counsel at courts-martial, comparable prior trial experience in civilian courts or previous certification in another military service. |
| B.4. Certification | Personnel already designated as judge advocate will normally receive Article 27(b), UCMJ, certification and be sworn in upon graduation from the Basic Lawyer Course at the Naval Justice School (or the U.S. Army or Air Force equivalent). Those attorneys who are unable to obtain designation as a judge advocate prior to the completion of the Basic Lawyer Course must seek designation as a judge advocate and certification under Article 27(b), UCMJ, as soon as the requirements in Chapter 11.C, Military Qualifications and Insignia, COMDTINST M1200.1 (series) are met. |

Section C. Professional Misconduct

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| C.1. Generally | Subject to the limitations of Article 37, UCMJ, information of alleged personal or professional misconduct by Coast Guard attorneys, including willful and wanton disregard for crime victim rights under Article 6b, UCMJ, should be reported, together with appropriate supporting information, to the Judge Advocate General. For the purpose of this Section, “misconduct” is defined as any act or omission that is a violation of an applicable standard of professional responsibility or serves to demonstrate the unfitness of the respective Coast Guard attorney to perform his or her legal duties. For the purpose of this Section, “Coast Guard attorney” is defined as a military trial or appellate judge or an attorney practicing in proceedings governed by the UCMJ and Manual for Courts-Martial (MCM). This Section does not affect any other criminal or administrative proceedings arising from the underlying alleged misconduct. This |
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Section addresses only the authority of Coast Guard military trial and appellate judges and attorneys to practice as a judge or attorney for the Coast Guard.

C.2. Complaints

Complaints may be made in accordance with the Coast Guard Legal Responsibility Program Procedures for Reporting and Resolving Allegations of Professional Misconduct, Enclosure (3) to Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series).

Section D. Standards of Conduct
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D.1. Professional responsibility

The Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series), applies to all Coast Guard attorneys. As far as practicable and not inconsistent with law, the MCM, and United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), the following American Bar Association Standards for the Administration of Criminal Justice are also applicable to Coast Guard courts-martial: the Prosecution Function and the Defense Function, the Function of the Trial Judge, and Fair Trial and Free Press. The American Bar Association Standards for the Administration of Criminal Justice are published and periodically updated by the American Bar Association.

Chapter 25 Article 138, UCMJ - Complaints
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Section A. Definitions

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| A.1. Generally | An Article 138, UCMJ, complaint is a formal complaint against a Commanding Officer. Members of the Armed Forces who believe themselves wronged by their commanding officers, and have been refused redress by their commanding officers, may complain to a superior commanding officer, who then forwards the complaint to the officer exercising general court-martial jurisdiction (OEGCMJ) <i>over the complained-of commanding officer</i> . Before submitting an Article 138 complaint, members must request in writing that their commanding officer redress the wrong. The OEGCMJ must act upon this request for redress in a timely manner (ordinarily within 30 days) and notify the complainant in writing of the action taken. The Article 138 complaint may address a broad range of wrongs, but does not include issues covered by a specific appeal process, such as evaluations, non-judicial punishment, and court-martial. Article 138, UCMJ. |
| A.2. Wrong | Any act, omission, decision or order, except those excluded by Subsection 25.B.2., taken, caused, or ratified by a commanding officer, under color of that officer's military authority, that (1) results in personal detriment, harm, or injury to a military subordinate; and (2) is without statutory or regulatory basis, unauthorized, an abuse of discretion, arbitrary and capricious, unjust or discriminatory. |
| A.3 Commanding officer | For purposes of an Article 138 complaint, "commanding officer" means a commissioned or warrant officer who, by virtue of rank, assignment, or both, exercises primary command authority over a military organization, or prescribed territorial area, to which the complainant is assigned, that under official directives is recognized as a "command." See Manual for Courts-Martial, Part V. Para. 2a. |
| A.4. Officer exercising general court-martial jurisdiction (OEGCMJ) | The primary OEGCMJ is the OEGCMJ for the unit of the commanding officer about whom the complaint is filed. |
| A.5. Respondent | The individual who committed the alleged wrong(s) against the complainant, and against whom the complaint of wrongs is made. The respondent may be a uniformed member of any armed service. |
| A.6. Complainant | Member submitting complaint. |
| A.7. Redress | Any lawful action by the commanding officer, the OEGCMJ, or any officer in the chain of command that restores the complainant any rights, privileges, property, or status he or she would have been entitled to had the wrong not occurred. |

Section B. Policy

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| B.1. Presumption of administrative regularity | It is the policy of the Secretary, Department of Homeland Security (DHS) to resolve complaints of wrongs at the lowest possible level. There is a presumption of administrative regularity. A commanding officer must not restrict the submission of complaints under Article 138, UCMJ, and all such complaints must be forwarded directly to the responsible OEGCMJ over the complainant. |
| B.2. Improper subject of complaint | <p>The following actions are not proper subjects of a complaint of wrongs:</p> <ul style="list-style-type: none"> a. Acts, omissions, decisions and orders not taken, caused or ratified by respondent; b. Acts that are not final; |

- c. General policies of the Department of Homeland Security or the Coast Guard, including the Instructions and other documents promulgating such policies;
- d. The OEGCMJ's decisions and procedures on complaints of wrongs, except for failure to forward the complaint;
- e. Proceedings, findings, or final actions of nonjudicial punishment (NJP), court-martial, and officer, enlisted, and cadet administrative discharge procedures and results;
- f. Actions regarding officer fitness reports;
- g. Actions regarding enlisted performance evaluation marks;
- h. Actions in accordance with the Enlistments, Evaluations and Advancement Manual, COMDTINST M1000.2, regarding withdrawal removal of designator or administrative reductions in enlisted grade;
- i. Appeal from findings of pecuniary liability;
- j. Withdrawal of flying status;
- k. Military civil rights complaints under the Coast Guard Civil Rights Manual, COMDTINST M5350.4(series); and
- l. Reliefs for cause of commanding officers and officers-in-charge.

B.3. Improper complaint Action against or on behalf of another person, such as court-martial charges, NJP, or apologies, may not be requested to a redress a wrong under this Chapter.

Section C. Participants to a Complaint Process

C.1. Who may complain (complainant)	At the time the complaint is submitted, the complainant must be: <ul style="list-style-type: none"> a. A member of the armed forces on active duty, concerning a wrong which is alleged to have occurred while the complainant was on active duty; or b. Any reservist, concerning a wrong alleged to have been committed by the respondent acting in his or her official capacity as a commanding officer.
C.2. Who may be the subject of a complaint (respondent)	A complaint must be against a specific person, not a command or position. Any commanding officer, as defined in Subsection 25.A.3, may be the respondent to a complaint of wrongs. The Secretary of Homeland Security may not be a respondent to a complaint of wrongs.
C.3. Who considers the complaint	
C.3.a. General rule	The OEGCMJ has the primary responsibility to conduct an inquiry into the complaint of wrongs, take action on it, and submit a report of the proceedings to the Commandant through the Office of Military Justice (CG-LMJ).
C.3.b. Reassignment of the complainant or respondent	If the complainant, respondent, or both, detach prior to the submission of a complaint of wrongs, the complaint will be forwarded to the OEGCMJ over the respondent at the time of the alleged wrong, through the complainant's current commanding officer and the respondent.
C.3.c. Review of complaints from joint commands	Where the complainant is assigned to a joint command, and the OEGCMJ over the respondent is a member of another service, the complaint is forwarded to the OEGCMJ through the senior Coast Guard officer in the joint command. If the OEGCMJ determines that the complaint raises issues unique to the Coast Guard and addressable only under Coast Guard Instructions, the complaint is forwarded to the Coast Guard OEGCMJ overseeing the activity or joint command at issue.
C.3.d. Authority of intermediate superior officers	An intermediate superior officer, subordinate to the OEGCMJ, but superior to the respondent, to whom a complaint is forwarded, may comment on the merits of the complaint, add pertinent evidence, and, if empowered to do so, grant redress, noting

such action on the record. In all cases, immediate superior officers must promptly forward the complaint to the OEGCMJ, and provide a copy of any comments, endorsement, or redress. If a complainant withdraws a complaint, per Subsection 25.D.9., the record of the complaint and withdrawal will be forwarded to the OEGCMJ who must maintain a record of the complaint.

Section D. Submission Procedure

D.1. Initial request for redress prior to submitting a complaint	Before a complainant may submit a complaint of wrongs under Article 138, UCMJ, the complainant must request, in writing, that the Commanding Officer redress the wrong. The Commanding Officer must act upon this request for redress in a timely manner, ordinarily within 30 days, and notify the complainant in writing of the action taken.
D.2. Time Limitations	A complaint must be submitted within a reasonable time after discovery of the alleged wrong. Absent unusual circumstances, a complaint submitted more than 90 days after the complainant discovers the alleged wrong is untimely. The period during which the commanding officer is considering the complainant's written request for redress under Subsection 25.D.1 is not included in this 90-day period. The OEGCMJ may deny relief solely because the complaint is untimely. If, however, the OEGCMJ determines that unusual circumstances justify the delay in submission, the OEGCMJ may find that the complaint is timely and act on it.
D.3. Form of complaint	The complaint must be couched in temperate language and be confined to pertinent facts , and contain the following information: <ol style="list-style-type: none"> a. The specific wrongs alleged and the specific redress requested, followed thereafter by explanatory information; b. All relevant evidence, including affidavits, statements, and documents with the complaint as numbered Enclosures.
D.4. Joinder	A complaint may not be joined with the complaints of other individuals. Similarly, each complainant may seek redress for the wrong(s) of only one respondent. If the complainant believes more than one respondent has committed a wrong, the complainant must submit a separate complaint against each respondent, not against a group such as "the chain of command."
D.5. Forwarding the complaint	The complainant must forward the complaint to the OEGCMJ, through his or her current chain of command, and to the respondent.
D.6. Endorsements	Intermediate endorsers should ordinarily forward the complaint within 10 working days after receipt. Endorsements not completed within 10 working days of receipt must contain an explanation for the delay. Subject to applicable security of classified material Instructions, endorsers must provide to the complainant copies of their endorsement, including enclosures.
D.7. Respondent's response	The respondent must respond, in writing, to the complaint of wrongs and forward that response, along with the complaint and any endorsements, to the OEGCMJ within 10 working days after receipt of the complaint. If the response is not completed within 10 working days of receipt, the response must explain the delay. Subject to applicable security of classified material Instructions, the respondent must provide the complainant with copies of his or her response, including enclosures. If a complaint of wrongs is received by the OEGCMJ without a response from the respondent, it must be forwarded to the respondent to provide a written response back to the OEGCMJ, with a copy to the complainant, prior to being considered by the OEGCMJ.

D.8. Complainant's notifications and rebuttal

Subject to applicable security of classified material Instructions, the OEGCMJ must:

- a. Ensure that the complainant has been provided a copy of all materials (to include, but not limited to, the Respondent's response and any substantive endorsements) received, as well as any evidence developed by the OEGCMJ's inquiry; and
- b. Notify the complainant of the opportunity to rebut any matter contained therein within 10 working days of receipt of the notice.

D.8.a. Opportunity to rebut

No opportunity to rebut is required where the OEGCMJ returns a defective or improper complaint to the complainant pursuant to Subsection 25.E.2. The complainant may submit any rebuttal to the OEGCMJ, through the commanding officer and the respondent. No further opportunity to rebut is required where the respondent or intermediate endorsers provided plain endorsements on the rebuttal, for example, "forwarded," "forwarded for action as appropriate," or "forwarded recommending denial." However, complainant must be provided a copy of such endorsements.

D.8.b. Rebuttal documentation

The OEGCMJ must provide a copy of the rebuttal notification and the rebuttal as enclosures to the final report. See Section 25.F. If the complainant declines to provide rebuttal or fails to provide rebuttal within 10 working days, the final report must adequately document the declination or failure.

D.9. Withdrawal

A complainant may withdraw a complaint at any time. The withdrawal must be in writing and signed by the complainant.

D.10. Waiver

The OEGCMJ may waive any requirement in this Section, except those afforded to benefit a complainant, such as the right to receive copies of all materials received and to rebut any matters submitted to or discovered by the OEGCMJ or any intermediate endorsers.

Section E. Review of the Complaint by the OEGCMJ**E.1 Review**

The OEGCMJ must review the complaint to ensure that:

- a. The complainant has requested redress from the respondent;
- b. The complaint is timely;
- c. The complaint is complete;
- d. The complaint does not join more than one complaint or more than one respondent;
- e. The complaint has been properly forwarded;
- f. The respondent has responded to the complaint in writing;
- g. The alleged wrong is a wrong and a proper subject of a complaint of wrongs; and
- h. The requested redress is proper.

E.2. Defective or improper complaints

If the complaint is defective in that it fails to satisfy the requirements of Subsections Subsection 25.C.1 (who may complain) or 25.C.2 (who may be the subject of a complaint), does not allege a wrong that is a proper subject of a complaint of wrongs, or makes no proper request for relief, the OEGCMJ must return the defective complaint to the complainant with an explanation as to why it is outside the scope of this Chapter. In returning a complaint, if appropriate, the OEGCMJ should inform the complainant about other channels available to resolve the alleged wrong. If the complaint is incomplete or otherwise fails to satisfy the procedural requirements of Subsections 25.D.1-4, the OEGCMJ must, unless the deficiency is waived under Subsection 25.D.10, return the complaint to the complainant with an explanation. In returning the complaint, the OEGCMJ must not address the merits of the complaint.

E.3. Inquiry	<p>If the complaint is not improper or defective, the OEGCMJ must inquire into the merits of the allegation(s). The extent and nature of such inquiry is within the OEGCMJ's discretion, and depends on the seriousness of the allegations, the extent of the investigation conducted by the chain of command subordinate to the OEGCMJ, the available time, and the exigencies of operations. The OEGCMJ may appoint an investigating officer to inquire into the complaint. The OEGCMJ may also request the complainant, the respondent, or both submit additional explanatory statements or other relevant documents.</p>
E.4. Complainant's rebuttal and notifications	<p>Prior to taking final action on a complaint, and subject to applicable security of classified material Instructions, the OEGCMJ must:</p> <ol style="list-style-type: none"> Ensure compliance with Subsection 25.D.8; Ensure the complainant has been provided a copy of any new matters developed by the OEGCMJ inquiry; and Inform the complainant of the opportunity to rebut any new matter within 10 working days. <p>The complainant must submit any new rebuttal materials to the OEGCMJ through the complainant's commanding officer and the respondent. As with the original complaint, if the respondent or intermediate endorers provide anything more than plain endorsements, for example, "forwarded," "forwarded for action as appropriate," or "forwarded recommending denial," in forwarding the rebuttal, the OEGCMJ must ensure the complainant is provided a copy of all materials received and inform the complainant of the opportunity to rebut any matters contained therein.</p>
E.5. Time limitations	<p>Except in unusual circumstances, the OEGCMJ must act on the complaint within 90 days of receipt. If the OEGCMJ action is not completed within 90 days of receipt, the action must explain the delay.</p>
E.6. Personal action by the OEGCMJ	<p>The OEGCMJ must take personal action on the complaint. The OEGCMJ must not delegate action to a subordinate command or individual.</p>
E.7. Standard of proof	<p>Facts must be established in the OEGCMJ's determination by a "preponderance of the evidence."</p>
E.8. Redress	<p>The following provides guidance to the OEGCMJ:</p> <ol style="list-style-type: none"> If the OEGCMJ determines the complaint is without merit, the OEGCMJ must deny redress; If the OEGCMJ determines the complaint has merit, the OEGCMJ must grant such redress as is appropriate and within the OEGCMJ's authority. In certain situations, a complaint may have merit; however, redress may not be available, appropriate, or proper within the context of a complaint of wrongs. In such cases the OEGCMJ should acknowledge the merit of the complaint, even if relief is denied; and If the OEGCMJ determines the complaint has merit, but cannot actually effect the appropriate redress (i.e., removal of a fitness report or performance evaluation from a service record), the OEGCMJ must forward the record to an officer who can effect it, requesting that the specific relief be granted. That officer must effect the relief, unless the officer determines that the relief requested is not permitted by current regulations or is otherwise prohibited by law or policy.

Section F. Forwarding OEGCMJ Action
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F.1. Written response to the complainant	<p>The OEGCMJ must advise the complainant in writing of the action taken on the complaint. The letter must specifically indicate which of the complainant's allegations</p>
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have merit and which are without merit and must either specify the relief granted or expressly deny the requested relief.

F.2. Forwarding the OEGCMJ report

In all cases, the OEGCMJ must prepare and forward to the Commandant, through the Judge Advocate General (the Office of Military Justice (CG-LMJ)) a report on the complaint. In cases where Commandant, U.S. Coast Guard is the respondent, the Secretary of Homeland Security provides review and makes final disposition. The report must include the complaint with all endorsements and Enclosures, a copy of any relevant correspondence with the complainant or respondent including any rebuttal notifications and rebuttals, and a copy of any pertinent investigations that were used in the decision and had been provided to the complainant. The basic letter should simply state "Per references (a) and (b), forwarded for final review." No further elaboration is required (as any elaboration may require forwarding back to the complainant for review).

F.3. Signature of OEGCMJ

The report submitted to the Commandant and the response to the complainant, if by separate correspondence, must be signed personally by the OEGCMJ, or, in that officer's absence, by the officer officially acting in such capacity, with the signature block so indicating.

Section G. Action by the Judge Advocate General and Secretary
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G.1. Ensure compliance with Article 138, UCMJ

When a complaint has been acted upon by OEGCMJ, upon receipt of the OEGCMJ 's report, the Judge Advocate General must ensure that there has been substantial compliance with Article 138, UCMJ. Responsibility for review for compliance is with the Office of Military Justice (CG-LMJ) on behalf of the Judge Advocate General.

G.1.a. Substantial compliance

If there has been substantial compliance, the Office of Military Justice (CG-LMJ) will review the complaint and action. If the Judge Advocate General agrees with the action taken, the complaint will be filed for the Commandant in the Office of Military Justice (CG-LMJ). If the Judge Advocate General disagrees with the action taken, the Judge Advocate General will forward the file to the Secretary, recommending a different action.

G.1.b. No substantial compliance

If there has not been substantial compliance, the Office of Military Justice (CG-LMJ) will notify the Judge Advocate General and return the file to the OEGCMJ for additional investigation or further action.

G.2. Action by the Secretary

If the Secretary, in his or her discretion, takes action on a complaint, the complainant, respondent, and OEGCMJ will be informed.

Chapter 26 Certification and Designation of Judges

Section A. Authority and Responsibility of the Coast Guard Chief Trial Judge

A.1. Authority and responsibility

The Chief Trial Judge shall exercise supervisory authority over the Coast Guard Trial Judiciary. The Chief Trial Judge shall oversee and administer the Coast Guard Trial Judiciary in the fair and timely rendering of judicial services, supervise and coordinate the activities of all judiciary personnel, issue comprehensive standard operating procedures, ensure the effective interchange of information and services among military judges, liaise with other service Chief Trial Judges, ensure the effective accession training and continuing judicial education for all trial judges, and perform other duties as may be directed by The Judge Advocate General of the Coast Guard (TJAG). By this instruction, TJAG delegates to the Chief Trial Judge the authority to carry out the full range of duties related to the administration of the Coast Guard Trial Judiciary.

Section B. Role, Selection, Certification, and Qualification of Coast Guard Military Judges
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B.1. Role of Coast Guard military trial judges

Coast Guard trial judges preside over special and general courts-martial and pre-referral judicial proceedings. In doing so, they have a duty to ensure that trial proceedings are conducted in a fair, orderly, transparent, and efficient manner, enhance public confidence in the Coast Guard's military justice system, and develop new judge advocates and legal yeomen serving in courts-martial.

B.2. How Coast Guard military judges are selected and certified

Judge Advocates are selected, certified under Article 26(b), UCMJ, designated, and assigned as military judges by TJAG. TJAG designates both full-time military judges (including the Chief Trial Judge of the Coast Guard) and collateral duty military judges.

B.3. Qualifications

TJAG selects the best qualified judge advocates for both full-time and collateral-duty military judge assignments using the following factors:

- a. *Prior certification as counsel.* Candidates must be certified under Article 27(b), UCMJ.

Military justice experience. Candidates must have at least four years in criminal or civil litigation billets (e.g. trial or defense counsel, special victim counsel, Appellate litigation, Special Assistant U.S. Attorney). Experience trying cases in civilian jurisdictions, is helpful, but generally not solely sufficient for qualification. Candidates should describe in detail their military justice and trial experience, to include number of trials completed in each role or capacity, noting whether such trials were contested, whether they were before members, and any particularly complex or significant issues that arose during the trial(s). Candidates should also detail appellate practice experience, to include number and complexity of briefs prepared and oral arguments made. Education and training, both at continuing legal education courses and degree programs such as LLM programs in trial advocacy, and national publications on military justice topics, are also factors in determining whether candidates have the requisite experience and in distinguishing those best-qualified.

- b. *Paygrade.* Candidates for full-time billets must be in the pay grade of O-5 or above. Candidates for collateral duty billets must be in pay grade O-4 or above.
- c. *Availability to serve.* Candidates for collateral-duty military judge assignment must be available to serve as a military judge at four trials or pre-referral judicial proceedings per year for three years following certification. They must also be available to attend the annual five-day Joint Military Judiciary Annual Training (JMJJAT), and to complete a certificate program through the National Judicial College (NJC). In addition, collateral duty trial judges must be prepared to be on call to review search authorizations in accordance with policies determined by the Chief Trial Judge.

- d. *Prior performance.* The candidate's Headquarters Personnel Data Record (PDR) will be reviewed.
- e. *Other information.* Any relevant information provided from other sources, including but not limited to the comments of judges the applicant has practiced before, professional reputation within the Coast Guard, and performance information submitted by the applicant that is not contained in the PDR. Information from other sources may be disclosed to the applicant, upon request.

The number of applicants to be recommended in a given year will depend on the projected needs of the service for replacements of military judges expected to become unavailable.

B.3.a. Disqualifying duty assignments

Those currently serving in a full-time military justice capacity, such as trial or appellate defense or government counsel, or Special Victims' Counsel, and those serving in a command position designated as a special court-martial convening authority, and assignments to Naval Justice School, the Army Judge Advocate General's Legal Center and School, and the Air Force Judge Advocate General's School will not be designated as military judges while serving in those capacities. Those currently serving in "Detached Duty – External" positions such as fellows, liaisons, or similar billets will not be designated as military judges if the Chief Trial Judge determines service in those billets would be incompatible with promoting confidence in the integrity and impartiality of the judiciary.

B.4. Application procedures

Coast Guard judge advocates desiring to be certified as a full-time or collateral duty military trial judge must apply, through their chain of command, and the Chief Trial Judge (CG-094J), to the Office of Legal Policy and Program Development (CG-LPD), no later than 31 January annually. The application will include the following information:

- a. *Education.* Include all education after high school (with names of institutions attended and year of graduation) including academic distinctions attained and approximate (if not exactly known) place in class on graduation.
- b. *Military experience.* List all military assignments, including primary duties at each.
- c. *Dates.* List dates designated a judge advocate and certified as counsel for general courts-martial.
- d. *Military justice experience.* State, in detail, all past experience with military justice, both prior and subsequent to being designated a law specialist. Be as specific as possible in the number, forum, type, and level of review of records of trial. See Subsection 26.B.3.
- e. *Legal experience other than military justice.* Identify all prior legal experience that did not involve military justice. This will include experience gained prior to becoming a member of the Coast Guard, all non-legal assignments significantly law related, and all assignments in legal billets, delineating the primary, nonmilitary justice areas of the law dealt with as required by the billet.
- f. *Evidence of requisite knowledge and temperament to be a military judge.* Applicants must provide two letters of recommendation from senior judge advocates who have had a significant opportunity to observe the applicant's military justice practice, judgement, temperament, maturity, leadership, mentoring, and writing skills. At least one of these recommendations must be from a current or former military or civilian judge before whom the applicant practiced. If the applicant cannot obtain such an appraisal from a military or civilian judge, the applicant must clearly address the reason for its absence in his or her application. Judicial temperament includes, but is not limited to, patience, forbearance to avoid premature decisions, calm demeanor, respect for others, and projection of an air of authority.
- g. *Statement of Availability.* A statement concerning the applicant's expected availability to serve as military judge for the three years following the next

Military Judge Course. The statement should cover both the likelihood of remaining in a billet from which the applicant could periodically be spared and any special restrictions on availability within the billet (e.g., any assignment that precludes military judge service during the months of July and August).

- h. *Authorization.* A PDR Review Authorization enclosure signed and dated by the applicant, coordinated by Personnel Service Command.

B.5. Selection

The Chief Trial Judge is solely responsible, in consultation with the Office of Legal Policy and Program Development (CG-LPD), for reviewing applications for certification, prepare a recommendation, and forward it to TJAG. TJAG will select the best qualified applicants, who will be assigned to attend the Military Judge Course. CG-LPD will notify the applicants of the results. TJAG will certify the new judges after they successfully complete the Military Judge Course.

Section C. Designation as Military Judge

C.1. General court-martial military judges

General court-martial military judges are designated, and located at Coast Guard units, as determined by TJAG. Administrative and logistics support, including office space, office equipment, stationery, and office supplies, telephone and other communication services, access to law library, and clerical assistance, will be provided by the unit where the military judge is located.

C.2. Collateral duty special court-martial military judges

In addition to full-time general court-martial judges, TJAG may also designate collateral duty judges to serve as special court-martial military trial judges.

C.3. Oath

A military judge certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his or her duties faithfully and impartially in all cases to which detailed. The oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ, to administer oaths. Once such an oath is taken, the military judge need not be re-sworn at any court-martial to which subsequently detailed.

C.4. Officer evaluation reports

TJAG is the supervisor, reporting officer, and reviewer for the Chief Trial Judge. The Chief Trial Judge is the supervisor and reporting officer for all other general court-martial military Judges. TJAG as the Reviewer must provide a Coast Guard form 5315 (CG-5315) for all active military trial and appellate judges. See Ch. 5.D.2, Officer Accessions, Evaluations and Promotions, COMDTINST M1000.3A.

Section D. Duties of the Coast Guard Trial Judiciary

D.1. General court-martial judges

The primary duty of general court-martial military judges is to preside at general courts-martial. No person may assign them any duties other than that of military judge without prior notification of the Chief Trial Judge and authorization of TJAG. TJAG has determined that general court-martial military judges will be made available for detail as military judge for special courts-martial or pre-referral judicial proceedings on a not-to-interfere basis with their primary duty. TJAG approves leave and temporary duty for the Chief Trial Judge. The Chief Trial Judge approves leave and temporary duty for the other general court-martial military judges.

D.2. Collateral duty special courts-marital military judges

The primary duty of collateral duty special-court-martial military judges is normally in accordance with their assigned permanent billets. However, when detailed to preside over a special court-martial, the military judge must perform this duty fully and expeditiously, and is responsible for balancing his or her primary duties to accomplish this. Primary duty supervisors of collateral-duty military judges should be aware that duty as a special court-martial military judge may need to be considered equivalent to the officer's primary duties.

D.3. Military Magistrate Program	The Chief Trial Judge is authorized, at his or her discretion, to create a military magistrate program in accordance with 10 U.S.C. §826a and RCM. 502(c)(2). If established, the military magistrate program may be altered or dissolved by TJAG or the Chief Trial Judge.
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Section E. Detailing Military Judges to Courts-Martial or Pre-Referral Judicial Proceedings

E.1. Generally	The Chief Trial Judge is authorized to detail military judges for courts-martial or pre-referral judicial proceedings. This authority may be delegated to an alternate docketing judge. Nothing in this regulation precludes the detail of a military judge from another armed force who has been made available for detail, provided that such military judge has been certified by the Judge Advocate General of the military judge's armed force. Coast Guard military judges may preside at courts-martial of other armed forces, under RCM 503(b)(3) if permitted by the Chief Trial Judge. To aid in the detailing of judges to courts-martial or pre-referral judicial proceedings, the Chief Trial Judge is authorized to establish judicial circuits. If established, judicial circuits may be altered or dissolved by TJAG or the Chief Trial Judge.
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Section F. Assignment Lengths for Military Trial Judges

F.1. General court-martial judges	<p>A General Court-Martial military trial judge, including the Chief Trial Judge, is assigned for a minimum of three years, except when he or she:</p> <ol style="list-style-type: none"> a. Retires or otherwise separates from military service; b. Is assigned elsewhere to meet exceptional needs of the service; or, c. Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause.
F.2. Collateral duty special court-martial military judges	<p>A collateral duty military trial judge is assigned for a minimum of three years and may request to serve beyond the normal three-year term. Requests may be made to the Chief Trial Judge by no later than 1 February of the year in which the normal three-year term ends. The minimum 3-year term does not apply whenever the Special Court-Martial Judge:</p> <ol style="list-style-type: none"> a. Assumes duty as a trial judge on a less than three-year basis or requests to be relieved of trial judge duties, and TJAG approves such assignment; b. Retires or otherwise separates from military service; c. Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as a military trial judge; or, <p>Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause.</p>

Section G. Appellate Judges

G.1. Appellate judges generally	TJAG assigns judges to the Coast Guard Court of Criminal Appeals, including collateral-duty judges. TJAG designates one of the assigned judges as Chief Appellate Judge. Persons interested in becoming a collateral duty appellate judge should contact the chief of CG-LPD or the Chief Appellate Judge. Candidates will be required to provide a resume showing their military justice experience.
G.2. Certification of appellate judges	Coast Guard appellate judges serve on the Coast Guard Court of Criminal Appeals as provided in Article 66, UCMJ. Pursuant to Article 66(a), UCMJ, and RCM 1203(a), TJAG certifies Judge Advocates or civilian attorneys as qualified to serve as appellate judges by reason of education, training, experience, and judicial temperament. Unless waived by TJAG, prospective appellate judges must successfully complete a formal

course of instruction specifically designed to prepare a Judge Advocate to serve as an appellate judge.

G.3. Chief Appellate Judge

The position of the Chief Judge of the Coast Guard Court of Criminal Appeals is a designated civilian position. The Chief Judge remains in the position until he or she:

- a. Retires or otherwise separates from Coast Guard service;
 - b. Accepts another position, under normal federal civilian employment processes;
- or,

Is temporarily, indefinitely, or permanently suspend from practice as an appellate judge by TJAG for good cause.

G.4. Full-time Appellate judges

Full-time judges of the Coast Guard Court of Criminal Appeals may be military or civilian. Civilian Judges of the Coast Guard Court of Criminal Appeals are appointed by the Secretary, and serve indefinitely, with the same exceptions as appear in Subsection 26.G.2. A full-time military judge is assigned primary duty to the Coast Guard Court of Criminal Appeals for a minimum of three years, except when he or she:

- a. Assumed the duty as an appellate judge on a less than three year basis; or requests to be relieved of duty as appellate judge, and TJAG approves such a request;
- b. Retires or otherwise separates from Coast Guard service;
- c. Is reassigned to another billet under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties; or,

Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause.

G.5. Collateral duty appellate judges

An appellate judge is assigned to collateral duty on the Coast Guard Court of Criminal Appeals for a minimum of three years, except when he or she:

- a. Assumed the duty as an appellate judge on a less than three year basis or requests to be relieved of duty as appellate judge, and TJAG approves such request;
- b. Retires or otherwise separates from Coast Guard or DHS service;
- c. Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as an appellate judge; or,

Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause.

Section H. Courts Rules of Practice and Procedure
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H.1. Court rules

The Court Rules of Practice and Procedure before Coast Guard Courts-Martial are promulgated by the Chief Trial Judge. The Coast Guard Rules of Practice and Procedure before the Coast Guard Court of Criminal Appeals are promulgated by the Chief Appellate Judge.

H.2. Role of the military judge

RCM 108 authorizes the Judge Advocate General and persons designated by him or her to issue rules of court that are consistent with the UCMJ and MCM. RCM 801(b)(1) authorizes the military judge to promulgate and enforce rules of court.

Chapter 27 Search Authorizations

Section A. Introduction

- A.1. Background** This Chapter establishes the procedure for the issuance of search authorizations. A search authorization is express permission issued by competent military authority to search a person or an area. Although the procedures and standards set out in this Chapter should be followed as appropriate under the circumstances, deviations will not invalidate an otherwise lawful search. For pre-referral Stored Communications Act warrants and orders see Chapter 7.C.

Section B. Military Judge

- B.1. Authority of military judge** Pursuant to the authority of Military Rule of Evidence (M.R.E.) 315(d)(2), Coast Guard military trial judges and magistrates are empowered to authorize searches. This includes the authority to issue a search warrant authorization by telephone.
- B.2. Limitations** Only the following persons may obtain search authorizations from a military judge:
- a. Individual commanding officers or officers-in-charge;
 - b. Persons designated by the commanding officer or officer-in-charge to obtain such search authorizations (this authorization need not be in writing, but must be communicated to the military judge or indicated in the application);
 - c. CGIS agents assigned to investigative duties—this includes CGIS agents bearing current credentials and assigned to an investigation billet; or
 - d. Counsel for the government.
- B.3. Coordination with servicing legal office required** Persons authorized to seek search authorizations must coordinate their request for a search authorization with the servicing legal office having primary military justice jurisdiction over the case.

Section C. Commanding Officers and Officers-in-Charge

- C.1. Authority of commanding officers and officers-in-charge** Pursuant to the authority of M.R.E. 315(d)(1), Coast Guard commanding officers and officers-in-charge are empowered to authorize searches. Commanding officers and officers-in-charge may only grant search authorizations requested in person; telephonic applications are not authorized.

Section D. Probable Cause

- D.1. Probable cause required** Upon a finding of probable cause a commanding officer or officer-in-charge may authorize a search of any person or place over which he or she has control. M.R.E. 315(f) sets out the basis for determining probable cause.

Section E. Policy Regarding Commanding Officers and Officers-in-Charge

- E.1. Generally** Commanding officers and officers-in-charge may issue search authorizations only on the basis of a personal application. Commanding officers or officers-in-charge issuing a search authorization must ensure that the procedures of this Chapter are followed, substituting themselves for the military judge. Commanding officers and officers-in-charge must consult with their servicing legal office prior to authorizing a search, if practicable.
- E.2. Preference for search authorizations** Commanding officers and officers-in-charge are encouraged when circumstances allow, to refer applicants seeking a search authorization to a military trial judge rather than

issued by military judges

acting on the application themselves. They should, however, act themselves if resorting to a military trial judge would likely result in harm or loss of evidence.

Section F. Issuance of Search Authorizations
F.1. Application

A search authorization must be issued by a military judge pursuant to the requirements of M.R.E. 315. United States Coast Guard Application for Search Authorization, Form CG-5810F must be used, supplemented by a written affidavit.

F.1.a. Personal application

Search authorizations from a commanding officer may only be obtained in person. If time and the circumstances permit, written affidavits may be submitted in person to the military judge. Before ruling on a request for a search authorization, the military judge may require the affiant to appear personally and may examine the affiant and any witnesses he or she may produce, under oath if desired, to obtain additional information. It is normal however, that search authorizations are obtained telephonically from a military trial judge due to geographic separation.

F.1.b. Telephonic application

Application for a search authorization may be made by telephonic communication between the applicant and a military judge. A judge advocate of the servicing legal office should ordinarily be on the telephone conference call with the applicant and military judge. The military judge will normally need an affidavit from the applicant. A Search Authorization Application Script is available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. Prior to the telephone call, the applicant should submit to the military judge the following documents (electronic submission is sufficient):

- i. Completed search application. A search application (Application for Search Authorization, Form CG-5810F) with all parts completed except any signatures;
- ii. Written affidavit. A written affidavit in support of the application must be provided. The affidavit should contain all the facts and circumstances to support a determination that probable cause exists to issue the authorization. The affidavit will be signed and sworn to by the applicant; and
- iii. Completed search authorization. A completed search authorization (Search and Seizure Authorization, Form CG-5810I) that is ready for the military judge's signature. The completed authorization should contain all the relevant information, but should leave blank those items that are to be determined by the military judge during the phone call.

F.2. Issuance

Upon the presentation, by way of personal or telephonic application, of information establishing probable cause, a military trial judge must issue a search authorization identifying the specified property or evidence to be seized and naming or describing the person or property to be searched.

F.3. Scope

A military trial judge may issue a search authorization directing a search of any of the persons or property permitted under M.R.E. 315. It is imperative that persons seeking and executing search authorizations be completely familiar with M.R.E. 315.

F.4. Signature

If personal application is made, the military trial judge must sign the original search authorization before delivering it to the applicant. If telephonic application is made, the search authorization should be sent electronically to the military trial judge and then returned electronically to the applicant with the military trial judge's signature. A copy of the search authorization will take the place of the original for purposes of executing a search. In the event that electronic means are unavailable, the military trial judge may orally authorize the applicant to sign the military trial judge's name above the applicant's signature on a duplicate original search authorization. This duplicate original search authorization is deemed to be a search authorization and it will be returned along

with the unsigned original search authorization to the military trial judge. In such cases, the military trial judge will enter on the face of the original search authorization the exact time of the issuance of the search authorization and sign and forward the original search authorization and the duplicate original search authorization.

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| F.5. Search authorization must be directed to a named individual | The search authorization issued by a military trial judge must be directed to a named individual who will usually be the applicant or any agent of such person. If good cause is shown the military trial judge may direct the search authorization to a person other than the applicant. |
| F.6. Authorization form | The U.S. Coast Guard Search and Seizure Authorization, Form CG-5810I, is the search authorization form. The preparer should fill out all applicable blanks on the form. And, the affidavit presented to the military trial judge will be attached to the search authorization. |
| F.7. Disclosure required for reapplication | Any person requesting a search authorization must disclose during the application procedure any knowledge he or she has of a denial of any previous request for a search authorization or permission to search involving the same individual and the same property. |
| F.8. Corroboration | The application should include any information showing the suspect committed the crime or that the described property is at the described location. Corroboration is particularly important where the application is based on information supplied by an informant rather than on the personal knowledge or observation of the applicant. |

Section G. Execution of Search Authorizations
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| G.1. Time limit | The search authorization issued by a military trial judge must begin within ten days after its date of issue if execution is not required earlier. If the search authorization is not executed within that time, or for any other reason, the unexecuted search authorization must be returned to the issuing military trial judge with an explanation as to why the search authorization was not executed. |
| G.2. Notice to command | The individual conducting the search must notify the commanding officer of the person to be searched, or the commanding officer who is responsible for the premises to be searched, prior to initiating the search unless the military trial judge, in his or her discretion, concludes that such notice would impede the orderly execution of the search authorization. The military trial judge may in such a case waive the requirement for prior notice to the commanding officer; however, such a waiver must be clearly indicated in the search authorization. The appropriate commanding officer will be notified after the search when prior notice is not given. |
| G.3. Notice to individual | The individual conducting the search must give to the person searched or whose premises are searched a copy of the search authorization and a receipt for items seized at the place searched. It is not required that a copy of the application proceedings establishing the grounds for issuing the search authorization be attached to this copy of the search authorization. |
| G.4. Receipt of property seized | A receipt will be given for any property seized. The receipt must contain an inventory of the property. This inventory must be made in the presence of the person searched or whose premises are searched. If such person is not present, the inventory must be made in the presence of some other person, preferably designated by the commanding officer. |
| G.5. Property that may be seized | Care must be taken that only property fully described in the search authorization is seized, unless other types of evidence come into plain view or are encountered within the lawful execution of the search authorization. |

G.6. Administrative inspections

This Section is not applicable to valid administrative inspections. See M.R.E. 313.

Section H. Return of Search Authorization

H.1. Return disposition	After the search authorization has been executed, or at the end of the ten day period if unexecuted, the search authorization, together with a copy of the inventory of property seized, if any, must be returned to the issuing military trial judge. All documents and papers relative to a search authorized under the provisions of this Chapter must be retained by the unit or organization responsible for the application and the servicing legal office, to be available in any future litigation or proceeding considering the results the search.
H.2. Describing the premises to be searched	The areas most frequently subject to search in the Coast Guard are barracks, berthing spaces, and workspaces. The description of the area to be searched must be as specific as possible and as limited in scope as is consistent with the goals of the search.
H.3. Describing the person to be searched	The description of the person to be searched should include as much specific information about the person as possible. This should include, when known, the name, rank or rate, Employee Identification Number, and physical description of the individual. When the name of the suspect is not known the affidavit should contain all possible relevant information including physical description, places that he or she frequents, known associates, type of car and clothing, pattern of operation, etc.
H.4. Describing personal property	
H.4.a. Vehicles	The description should contain the make and model, color, license number, and any peculiarities of the vehicle. Include the vehicle identification number when possible.
H.4.b. Lockers	Include a complete description of where the particular locker is located.
H.4.c. Suitcases, bags, etc.	Include a description of the color, approximate size, location, type of fastener, stencil or shipping labels, and any available information.
H.5. Describing the property to be seized	The following general types of property may be seized pursuant to a lawful search authorization: instrumentalities of a crime, fruits of a crime, things that might be used to resist apprehension or to effect escape, property the possession of which is itself a crime (contraband), and evidence that there is a reason to believe will otherwise aid in a particular apprehension or conviction. The latter category may include identification evidence.
H.5.a. Instrumentalities of a crime	This category encompasses property used in a crime. Often these will be items used in the consumption and transfer of drugs, but may also include such items as weapons that do not fit into the contraband category and tools used in the commission of the offense.
H.5.b. Fruits of a crime	This category usually consists of stolen property.
H.5.c. Contraband	Contraband means items that are illegal to possess. Examples of contraband items include narcotics, unregistered or unlicensed weapons, endangered species, and child pornography.
H.5.d. Reason to believe evidence will aid in an	The law dealing with this general category of evidence is extremely complex and is beyond the scope of this Chapter as it frequently changes. The applicant for a search

apprehension or conviction authorization must rely on the advice of his or her servicing legal office when faced with a question as to the extent of this provision.

H.5.e. Identification evidence Whenever evidence is seized, identification evidence should also be seized if necessary to connect the suspect with the other evidence seized. This category includes items that can tie the suspect to the crime, or establish that the suspect is in control of the area or article searched. It includes such items as cancelled mail envelopes, stenciled or monogrammed clothing, vehicle registration, etc.

H.5.f. Plain view doctrine Under this doctrine, incriminating evidence such as contraband or recognized fruits or tools of a crime may be seized in the course of a lawful search even if the seized item does not relate to the original purpose of the search as long as the seized item is readily apparent in "plain view." The individual making the search or seizure must be lawfully present at the scene within the proper scope of authority. The "plain view doctrine" is limited by the "elephant in a matchbox" common sense limitation. That is, a search of a locker for a submachine gun, pursuant to a search authorization could not lawfully extend to the seizure of a cigarette package containing narcotics if the package must be opened in order for the narcotics to come into view because the submachine gun could never be hidden in a cigarette package.

H.6. Sample descriptions

H.6.a. Basic rule The basic rule in describing the property is to go from the general to the specific. For example, if the purpose of the search is to discover and seize a Thompson Machine gun the search authorization should state: "Automatic firearms, including, but not limited to, one 'Thompson Machine gun.'" It is important to fully describe property to be seized because only that property described in the search authorization, or otherwise lawfully seized, can be used in court.

H.6.b. Contraband Example: "Narcotics, including, but not limited to, heroin and paraphernalia for the use, packaging, and sale of said contraband, including, but not limited, to burnt spoons, hypodermic syringes and needles, balloons, cotton, lactose and rubber tubing."

H.6.c. Fruits of a crime Example of stolen property: "Household appliances, including but not limited to, one General Electric clock radio, light blue in color, having an AM-FM selector, and one Sony 15" portable color TV, tan in color, with black knobs."

H.6.d. Tools of a crime Example, marijuana paraphernalia: "Items used in the sale and consumption of marijuana including, but not limited to, plastic baggies, smoking pipes, scales used in the weighing of marijuana, cigarette rolling machines, and cigarette papers."

H.6.e. Identification evidence Example: "Papers, documents, and effects that show possession, dominion, and control of said area or objects including, but not limited to, keys, cancelled mail envelopes, monogrammed or stenciled clothing, wallets, and receipts."

H.6.f. Electronic media Example: "Any and all electronic media to include cellular phones, tablet computers, computers, zip drives, hard drives, cameras, and any other possible media storage devices."

Section I. Telephonic Application Procedure and Checklist

I.1. Advanced preparation

Before contacting the military trial judge, an applicant for a search authorization should:

- Be thoroughly familiar with the contents of this Chapter and the procedures set out herein. Have the facts organized;
- Contact the servicing judge advocate and relate the facts giving probable cause for the search authorization;

- c. With the assistance of the judge advocate, fill out a United States Coast Guard Application for Search Authorization, Form CG-5810F, to include the description of the person or location to be searched, and the property to be seized;
- d. Refer to the script for application for search authorizations and write out the answers to the questions that will be asked by the military trial judge;
- e. Ensure the same verbatim description of the place or person to be searched and the articles to be seized is used in both the application and the search authorization; and
- f. Applicants for search authorization must complete a search authorization application and be prepared to hand deliver, e-mail, or fax a copy to the military trial judge to whom the application will be directed.

I.2. Application procedure

After completing the preliminary steps, the applicant's servicing legal office will help the applicant contact the appropriate military trial judge by telephone.

Section J. Search Execution Procedure
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J.1. Procedure

After obtaining the search authorization, the applicant should take the following action:

- a. If the person whose property is to be searched is present, give him or her a copy of the search authorization and allow the person to read the original if he or she so desires;
- b. Enter the time of execution on the authorization;
- c. Detail all property seized on a receipted inventory form and give a copy to the individual if present;
- d. Forward all documents; and
- e. Maintain secure custody of items seized, and initiate a proper chain of custody if the items seized change hands.

Chapter 28 Delivery of Personnel to Civil Authorities
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Section A. Introduction

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| A.1. Background | This Chapter sets forth the authority, policy, and procedures for delivery of Coast Guard military personnel to civil authorities for trial. See Article 14, UCMJ. |
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Section B. Definitions

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| B.1. State | “State” includes each of the states of the United States; District of Columbia; Commonwealth of Puerto Rico; Guam; American Samoa; United States Virgin Islands; Commonwealth of the Northern Mariana Islands; and any other commonwealth, territory, or possession of the United States. |
| B.2. Civil authorities | “Civil authorities” are state agents or representatives acting under the authority of their respective state or jurisdiction. |
| B.3. Foreign authorities | “Foreign authorities” are all authorities not defined as a state or federal authority. |
| B.4. Personnel | “Personnel,” “Coast Guard personnel,” “Coast Guard member” or “member” as used in this Chapter refer to Coast Guard military personnel and U.S. military personnel attached to the Coast Guard. This Chapter does not apply to civilian personnel, civilian contractors, or foreign military personnel. |

Section C. Applicability

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| C.1. Coast Guard personnel | This Chapter applies to all Coast Guard personnel. |
| C.2. Non-applicability to foreign authorities | This Chapter does not apply to delivery of personnel to foreign authorities. It also does not apply to situations where a member is arrested by civil authorities without a formal request to the Coast Guard for delivery of that person. |

Section D. Cooperation with State Civil Authorities
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| D.1. Policy | It is Coast Guard policy to cooperate with civil authorities to the maximum extent possible consistent with needs of the service and the individual rights of the service members concerned. It is contrary to Coast Guard policy to transfer a Coast Guard member from a command within one state to a command within another state solely, or primarily, for the purpose of making the individual amenable to prosecution by civil authorities. |
| D.2. Within the territorial limits of the requesting state | When the delivery of any person in the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction and such person is within the state territorial limits (including territorial waters), commanding officers are authorized to deliver such person when a proper warrant is presented and the approval of the Judge Advocate General (TJAG), if necessary, has been obtained. See Section 28.F for situations where such approval is required. |
| D.3. Beyond the territorial limits of the requesting state | When delivery of any member of the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction, and the member is not within the requesting state’s territorial limits (including territorial waters) the OEGCMJ or staff officer designated by him or her, over |

the command of the person may authorize the individual's delivery when all of the following conditions are met:

- a. A signed warrant is presented or there has been a valid waiver of formal extradition; and
- b. The approval of TJAG, if necessary, has been obtained.

D.4. Waiver of extradition

All persons in the Coast Guard requested to be delivered under this Chapter must be afforded the opportunity to consult with a judge advocate or with a civilian attorney at no cost to the government concerning the formal extradition process of the jurisdiction in which the person is located. Consultation with a judge advocate will be arranged through the Office of Member Advocacy & Legal Assistance (CG-LMA). Once having received advice from an attorney the person may waive extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing the extradition waiver has received the advice of an attorney and include the name and address of that attorney. The waiver must be substantially in the form suggested in Waiver of Extradition template, available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. An executed copy of each waiver of extradition must be e-mailed to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil.

D.5 Refusal to waive extradition

When a member declines to waive extradition, or refuses to consult with an attorney, the requesting civil authority will be notified and advised delivery may only be made to local civil authorities on the presentation of a warrant.

Section E. Agreement Prior to Delivery to State Authorities

E.1. Terms of agreement

When delivery is authorized directly or ultimately to a state other than the one where the member is located the member's commanding officer must, before making such delivery, obtain a written agreement providing:

- a. The commanding officer will be informed of the outcome of the trial;
- b. The member so delivered will be transported to the requesting state without expense to the member or the United States; and
- c. The member so delivered will be returned to the place of delivery, or such place as is mutually agreeable to TJAG and the requesting state, upon disposition of the case, provided the Coast Guard desires the member's return.

E.2. Form of agreement

The language of the agreement must be substantially the same as that in Delivery Agreement template, available on the Office of Military Justice (CG-LMJ) website, <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>. Substantial deviations from the suggested language require the advance approval of the Office of Military Justice (CG-LMJ).

E.3. Parties to the agreement

When delivery is made directly to the requesting state, the Governor or authorized agent of the requesting state is required to complete the agreement. When delivery is made to local civil authorities to provide for formal extradition, process attempts will be made to have the agreement executed by the officials of both the requesting state and the local state.

Section F. Delivery of Personnel to Federal Authorities

F1. Generally

Commanding officers are authorized to deliver personnel to federal authorities on presentation of a warrant in all cases if the approval of TJAG, if applicable, has been obtained.

F.2. Agreement not required

An agreement as to expenses will not be exacted as a condition of delivery of Coast Guard members to federal authorities either in response to writs of habeas corpus, as witnesses, or for trial.

Section G. Deliveries Requiring Advanced Approval from the Judge Advocate General (TJAG)
G.1. Policy

Approval of TJAG is required prior to delivery of Coast Guard personnel to federal or state authorities when:

- a. Disciplinary or judicial proceedings involving offenses in violation of the UCMJ are pending (e.g., charges have been preferred or potential charges are under investigation) against the member;
- b. The member is serving a sentence imposed by a court-martial; and
- c. In the opinion of the commanding officer, it is in the best interest of the Coast Guard to refuse delivery.

Any requests for TJAG approval must be submitted to the Judge Advocate General by e-mailing CG-LMJ at HQS-DG-LST-CG-LMJ@uscg.mil.

Section H. Reporting Requirements
H.1. Policy

The commanding officer concerned must, either upon delivery or refusal to deliver personnel under this Chapter, e-mail a report with pertinent documents to the Office of Military Justice (CG-LMJ), through the chain of command. The report must include a full statement of the facts in the following cases:

- a. When delivery is ultimately refused;
- b. When a member is delivered to state authorities pursuant to an agreement under Section 28.E; or
- c. When the advance approval of the Judge Advocate General is necessary.