

CONVENING AUTHORITY'S ACTION CHECKLIST

ICO _____

Procedures: If a case was referred to trial on or after 1 January 2019, the post-trial procedures contained in this checklist and Articles 60a and 60b, as well as R.C.M. 1109 and 1110 will be used. In a case that was referred to trial before 1 January 2019 or if there is a finding of guilt for an offense that occurred before 1 January 2019, this checklist is not applicable, and the post-trial procedures (to include the requirement for SJA recommendations (SJAR)) contained in R.C.M. 1107, MCM (2016 ed.) will be used.

Note: "Victim" includes a victim, crime victim representative, or designee as defined in R.C.M. 1106A.

Clemency Power: The convening authority's power to grant clemency is based on the date of the earliest offense of which the accused was convicted.

(1) If a case was referred to trial on or after 1 January 2019, the following convening authority (CA) action procedures apply:

(a) If all of the offenses of which the accused was convicted occurred **after** 1 January 2019, the post-trial procedures contained in this instruction, in Articles 60a and 60b, UCMJ, 10 U.S.C. §§ 860a, 860b (eff. Jan. 1, 2019), and in R.C.M. 1109 and 1110, of reference (b), and section 0153 of reference (c) shall apply.

(b) If the accused is convicted of any offense that occurred **before** 1 January 2019, but **on or after** 24 June 2014, the clemency authority described in Article 60, UCMJ (as amended by the FY14 and FY15 NDAs) and R.C.M. 1107, MCM (2016 ed.), will apply, and the post-trial procedures contained in this instruction and all enclosures shall be utilized. An SJAR will be created in these cases.

(c) In a case in which the accused is convicted of any offense that occurred **before** 24 June 2014, the clemency authority described in Article 60, UCMJ (2012), will apply, and the post-trial procedures contained in this instruction and all enclosures shall be utilized. An SJAR will not be created in these cases.

(d) The CA's suspension authority outlined in Article 60a(c) applies regardless of the date of any conviction, even if the operative version of Article 60 does not permit such suspension.

(e) Regardless of which version of clemency authority applies (see above), and even if the CA decides to take no action, the SJA will ensure that the CA complies with the requirements of R.C.M. 1109(g) and the action is documented using enclosure (6).

(f) Prior to taking any action on a case, the SJA must complete the below checklist and ensure the CA reviews all matters submitted under R.C.M. 1106 and 1106A. When the

checklist is complete, the SJA must provide it to the Post-Trial Processing Department or Review Shop for inclusion in the Record of Trial.

(2) In cases referred to trial before 1 January 2019, this instruction does not apply (use JAG/CNLSCINSTRUCTION 5814.1B). Also apply the Article 60 provisions in place at the time of the *earliest* offense resulting in a guilty finding (to include the requirement for SJA recommendations) and the post-trial procedures contained in R.C.M. 1107, MCM (2016 ed.). In a case in which the accused is convicted of an offense that occurred **before** 24 June 2014, the clemency authority described in R.C.M. 1107, MCM 2012 shall apply.

(3) The following procedures must be performed by the Staff Judge Advocate or Convening Authority prior to taking action in a case:

_____ Obtain any matters submitted by the accused and/or the victim.

_____ Accused and victim have 10 days from the date the sentence is adjudged to submit matters. However, the accused and/or victim may request an extension of up to 20 days to submit matters if good cause is shown. R.C.M. 1106 and R.C.M. 1106A.

_____ If a victim submits matters for the CA's consideration, provide a copy of those matters to the accused or detailed counsel. R.C.M. 1106A.

_____ If a victim submits matters for the CA's consideration, the accused has an additional 5 days to respond to those matters. R.C.M. 1106.

_____ Obtain a copy of the court-martial trial proceedings (either recording or transcript) and, unless sealed, copies of the evidence admitted at the court-martial and appellate exhibits.

***If CA would like to review sealed or classified evidence in order to complete the post-trial process, a formal request to review such sealed/classified evidence must be submitted to the Military Judge presiding over the court-martial.

_____ Action shall not be taken earlier than 10 days after the announcement of the sentence adjudged, unless the accused and victim both waive their right to submit matters before 10 days.

_____ Action states:

_____ The action taken or if no action is taken, so state. If the CA believes action is appropriate, he or she must either: (1) adjust the findings if allowed by Article 60a, UCMJ, and/or the sentence pursuant to R.C.M. 1109, or (2) take no action, and state "no action taken."

_____ Written explanation for the action taken when there is a mandatory minimum punishment or offenses for which the maximum sentence to confinement that may

be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b. *See* R.C.M. 1109.

- ___ Address specific action with regard to findings, if applicable.
 - ___ Rehearing on findings ordered.
 - ___ If rehearing or new trial ordered, reasons for disapproval.
 - ___ If no rehearing ordered on disapproved charges and specifications, statement of dismissal included.
 - ___ If “other” trial ordered, basis for declaring the proceedings invalid stated.
- ___ If a portion of the sentence is to be suspended, indicate the terms of the suspension in the CA’s Action.
- ___ Draft a letter of reprimand, if adjudged, and attach it to the CA’s Action for service on the accused.
- ___ Must be signed by the CA with authority to sign or the CA’s delegate to sign with verbal approval of the CA, subsequently memorialized in writing, in accordance with JAGMAN 0153a.(6). No “by direction” authorized. If signed by an acting CA, ensure the signature block notes acting status and that the letter designating said individual as acting is attached to the record of trial.
- ___ If signed by a substitute CA, acting pursuant to a specific request that is in compliance with R.C.M. 1109(d) and JAGMAN 0153c action notes as such. (Attach documentation of reasons for substitute CA to record of trial – *U.S. v. Brown*, 57 M.J. 623 N-M. Ct. Crim. App. (2002)).
- ___ If action on rehearing or new trial, comply with limitations of R.C.M. 810.

Not Guilty by Lack of Mental Responsibility

- ___ If accused is found not guilty by lack of mental responsibility, the Military Judge will conduct a hearing. Prior to that hearing, the military judge or CA must order a psychiatric or psychological examination of the accused and the report must be provided to the military judge.
 - ___ The CA may commit the accused pending an R.C.M. 1105 hearing.
 - ___ If the judge finds the accused has met the standards set forth in R.C.M. 1105(c)(3), the accused shall be released.

_____ If the judge finds the accused has not met the standards set forth in R.C.M. 1105(c)(3), the CA must turn the accused over to the Attorney General.

_____ If the judge finds the accused is not guilty by lack of mental responsibility ensure the RLSO or Law Center submitted the STR along with the accused's full name, including full middle name, and date of birth to NCIS via email at nicssubmission@ncis.navy.mil (for Navy cases) and usmccid@ncis.navy.mil (for Marine Corps cases).

Crime Reporting Requirements

_____ Review the Statement of Trial Results and determine whether any additional crime reporting requirements are triggered under references (d) through (g).

_____ Gun Control Act of 1968 Reporting Requirements. If applicable, ensure the RLSO or Law Center submitted the STR along with the accused's full name, including full middle name, and date of birth to NCIS via email at nicssubmission@ncis.navy.mil (for Navy cases) and usmccid@ncis.navy.mil (for Marine Corps cases).

_____ Sex Offender Notification Requirements. If applicable, ensure the RLSO or Law Center submitted DD Form 2791 to NCIS at cjidservices@ncis.navy.mil and the U.S. Marshals Service (USMS) National Sex Offender Targeting Center (NSOTC) at iod.nsotc@usdoj.gov. See enclosure (2) for detailed information regarding this requirement.

Service of CA's Action

_____ Upon completion, provide the CA's Action to the Post-Trial Processing Department or Review Shop for delivery to the military judge, the accused or defense counsel and the victim or victims' legal counsel.