

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-201**



14 APRIL 2022

LAW

**ADMINISTRATION OF MILITARY
JUSTICE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at www.e-Publishing.af.mil for downloading or ordering.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brigadier General Rebecca R. Vernon)

Supersedes: AFI 51-201, 18 January 2019

Pages: 246

This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial (MCM), including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.) and applicable Department of Defense (DoD) guidance. It applies to individuals at all levels, including Regular Air Force, Space Force, and the Air Force Reserve Component, including members of the Air National Guard who committed violations of the UCMJ while in Title 10 status. Commands may supplement this instruction only with the prior, written approval of the Military Justice Policy Division (JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This Instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by DoD Directive (DoDD) 5400.11, DoD Privacy Program. The applicable System of Records Notice (SORN), "Military Justice and Civilian Criminal Case Records," DoD 0006, is available at <https://www.federalregister.gov/documents/2021/05/25/2021-10367/privacy-act-of-1974-system-of-records>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through major command (MAJCOM) or field command (FLDCOM) functional managers. The authorities to waive requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. For tiered items, submit requests for waivers through the chain of command to the

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SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. This document implements requirements contained in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, Division E (Military Justice Act of 2016), FY 2019 NDAA, FY 2020 NDAA, and FY 2021 NDAA. It updates guidance as necessary to reflect the establishment of the United States Space Force as an armed force within the DAF. Guidance on victim and witness matters has been removed from this instruction and published as a separate instruction, DAFI 51-207, *Victim and Witness Rights and Procedures*. This includes sections pertaining to the Victim and Witness Assistance Program (VWAP), Victims' Counsel (VC) Program, Central Witness Funding, Witness Production, and Immunity. Matters pertaining to criminal indexing have been substantially revised to comply with updated DoD policy and publication of AFMAN 71-102, *Air Force Criminal Indexing*. Article 137, UCMJ, requirements are updated to reflect myLearning training as an authorized method of delivering training. Policy previously included in AFI 51-204, *United States Air Force Judiciary and Air Force Trial Judiciary* has been consolidated into this instruction, which supersedes AFI 51-204. All templates have been removed from this instruction and can now be found only on the Virtual Military Justice Deskbook (VMJD). Finally, most guidance on legacy cases referred prior to 1 January 2019 has been removed from this instruction.

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Chapter 1

OVERVIEW, TEMPLATES, ROLES & RESPONSIBILITIES

Section IA—Overview

1.1. Overview. The military justice system promotes justice, assists in maintaining good order and discipline, and promotes military efficiency and effectiveness, thereby strengthening the national security of the United States. This instruction implements requirements for the administration of military justice in the DAF (comprised of the Air Force and Space Force). The primary sources of direction and guidance on military justice are the UCMJ, Title 10 United States Code (U.S.C.) § 801 et seq., and the MCM which includes the R.C.M. and M.R.E. Compliance is mandatory with the UCMJ as federal law, and with the MCM as an Executive Order. **(T-0)**. While this publication may expand upon articles of the UCMJ or rules in the MCM, to the extent this publication is ever in direct conflict with the UCMJ or MCM, those sources take precedence over this publication. All requirements that are not tiered may only be waived by JAJM or superior functional authority with coordination with JAJM. Submit waiver requests via AF Form 847 through the functional chain.

1.2. Templates. All templates implementing the UCMJ and MCM that are referenced in this instruction can be found on the VMJD on Flite KM. Contact JAJM for questions. The link for VMJD is available to Air Force JAG Corps personnel at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251>. Non-JAG Corps personnel requesting copies of templates should work with the relevant servicing legal office to obtain needed templates and other documents.

1.2.1. Templates. With limited exceptions, legal offices are strongly advised to use JAJM-produced templates that are included on the VMJD. Templates may be modified as needed to address the particulars of a given case, however the format should be adhered to unless modification is required. This ensures consistency in military justice documentation and records of trial throughout the DAF. Nothing in the templates should be construed to inhibit the ability of an attorney to provide legal advice to a commander, convening authority, or trial participant.

1.2.2. Modification of Templates. Deviation on substantive provisions is not recommended without prior approval of JAJM; however, templates may be modified to address the facts and circumstances of each individual case (e.g., names, addresses, offense types, etc.). If there is uncertainty about whether a specific provision is substantive, contact JAJM for guidance.

1.3. Mandatory Use of Court-Martial Checklists. The base legal office responsible for prosecuting a court-martial must use the applicable JAJM court-martial checklists, to include checklists for completion of post-trial paperwork and distribution, available on the VMJD. Legal offices must begin using the checklists as soon as they start reviewing a case with an eye toward the earlier of pretrial confinement, preferral of charges, or an Article 30a, UCMJ, pre-referral judicial proceeding. Supplemented checklists may only be used if reviewed and approved by JAJM. Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the Record of Trial (ROT) and are kept with the base copy of the ROT.

Section 1B—Roles and Responsibilities

1.4. Secretary of the Air Force (SecAF). Exercises Department of the Air Force secretarial authorities set out in 10 U.S.C. § 9013, *Secretary of the Air Force*, the UCMJ, and the MCM. Is a general court-martial convening authority (GCMCA) pursuant to Article 22, UCMJ. Designates commanders with convening authority pursuant to R.C.M. 504. Issues DAFPD 51-2 and other regulations to implement the UCMJ, MCM, and DoD policy. Authorizes The Judge Advocate General (TJAG) to issue DAF publications establishing procedures to administer military justice in the DAF, as directed in DAFPD 51-2.

1.5. The Judge Advocate General. Exercises TJAG authorities set out in the UCMJ and MCM for the DAF. Conducts inspections to supervise the administration of military justice pursuant to Article 6, UCMJ. Advises the SecAF, the Chief of Staff of the Air Force, and the Chief of Space Operations on military justice matters. Provides oversight of the DAF military justice system. Issues DAF publications establishing procedures to administer military justice in the DAF.

1.6. Military Justice and Discipline Directorate (JAJ). Exercises supervisory responsibility for its subordinate divisions. Adjudicates central witness funding matters.

1.6.1. The Director, Military Justice and Discipline (JAJ). A senior judge advocate assigned by TJAG to direct the duties of and to exercise supervisory responsibility for all JAJ personnel, including all members assigned who are detailed to perform full-time duties as directors of trial operations (DTOs) and circuit trial counsel (CTC); chief circuit defense counsel (CCDC), circuit defense counsel (CDC), area defense counsel (ADC), defense paralegal managers (DPM), and defense paralegals (DP); chief circuit victims' counsel (CCVC) and victims' counsel (VC); and appellate government and appellate defense counsel.

1.6.2. Chief, Military Justice Law and Policy Division (JAJM). A senior judge advocate assigned by TJAG to direct the duties of and who shall be responsible for providing field support for the administration of military justice, development and dissemination of DAF military justice instructions and policy, and supervision of certain other actions required by TJAG.

1.6.2.1. JAJM provides counsel, guidance and support to Headquarters DAF, court-martial convening authorities and staff judge advocates (SJAs) on the administration of military justice.

1.6.2.2. JAJM is the Office of Primary Responsibility for this instruction and other regulations establishing procedures to administer military justice in the DAF.

1.6.2.3. JAJM functions as a component of the Office of The Judge Advocate General (AF/JA) for matters pursuant to the UCMJ, as determined by TJAG, operating in close coordination with AF/JAJ.

1.6.2.4. JAJM manages the Automated Military Justice Analysis and Management System (AMJAMS) (and any replacement systems).

1.6.2.5. JAJM is responsible for ROTs for all DAF courts-martial.

1.6.2.6. JAJM provides the DAF active duty voting member to the Joint Service Committee on Military Justice.

1.6.3. Chief, Government Trial and Appellate Operations Division (JAJG). A senior judge advocate assigned by TJAG to direct the duties of and to supervise the DTOs, CTCs, and Government appellate counsel. This individual manages the training and assignment of DTOs and CTCs as part of the Special Victim Investigation and Prosecution (SVIP) capability, details the DTOs and CTCs to courts-martial and supervises all DAF appeals before the Air Force Court of Criminal Appeals (AFCCA), the U.S. Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court. This individual may delegate this authority to the Director of Operations and/or DTOs to detail themselves or their subordinates to courts-martial.

1.6.3.1. Director of Operations, JAJG. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. Supports the Chief, JAJG, in directing the duties of and supervising the DTOs, all CTC, and Government appellate counsel. This individual may detail the DTOs and CTCs to courts-martial and supports the Chief, JAJG in supervising all DAF appeals before AFCCA, CAAF, and the U.S. Supreme Court.

1.6.3.2. DTO. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. **(T-0)**. Assigned to direct the duties of and to supervise the CTCs. The DTO executes the responsibilities of circuit trial counsel duties and details circuit trial counsel to courts-martial in support of military justice throughout the DAF. The DTO may detail himself/herself to courts-martial.

1.6.3.2.1. The Circuit DTO will ensure a thorough review of all pre-preferral Article 120, UCMJ, charges. It is the responsibility of the SJA to ensure proper notifications are made to JAJG personnel, to include the appropriate Circuit Counsel and JAJG leadership, when charges are ready for review.

1.6.3.3. SVU-CTC. The Chief, JAJG, must certify that each SVU-CTC possesses the requisite litigation skills, professionalism, and leadership ability to provide the highest quality of legal representation for the government and support to victims. SVU-CTCs must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to servicing legal offices.

1.6.3.3.1. Prior to being designated as a member of the SVU, a CTC will generally have completed one year as either CTC or CDC, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.

1.6.3.4. CTC. Must be a judge advocate, certified under Article 27(b)(2), UCMJ. **(T-0)**. Primary duties will include the following in order of priority:

1.6.3.4.1. Serve as trial counsel in general courts-martial.

1.6.3.4.2. Serve as the government representative in Article 32, UCMJ, preliminary hearings when requested by an SJA, as other duties permit, and when made available by the DTO.

1.6.3.4.3. CTCs will not be detailed to serve as trial counsel in special courts-martial or summary courts-martial, except upon approval of the JAJG Division Chief, Director of Operations, or DTO.

1.6.3.4.4. Train, advise, and assist other personnel involved in the prosecution of courts-martial.

1.6.3.4.5. CTCs will not be detailed to serve as recorder for administrative boards convened under AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, and AFI 36-3207, *Separating Commissioned Officers*, except upon approval by the JAJG Division Chief, Director of Operations, or DTO.

1.6.3.4.6. CTCs will not be detailed to serve as recorder for administrative boards convened under AFI 36-3208, *Administrative Separation of Airmen*, except upon approval by the JAJG Division Chief or DTO.

1.6.3.5. SJAs are expected to use their circuit for support and employ the expertise and the services of the DTO, and the CTCs to the maximum extent possible. SJAs should consult with the DTO and/or CTCs on all significant and complicated cases, especially cases involving allegations pursuant to Article 120, UCMJ. While JAJG personnel are charged with litigating cases and training base-level personnel under the supervision of JAJG leadership, SJAs shall be responsible for the courts-martial conducted on their installation.

1.6.4. Chief, Trial Defense Division (JAJD). The Chief, JAJD has overarching supervisory authority over all CCDCs, CDCs, ADCs, DPMs, DPs, the Superintendent, JAJD, the Deputy Chief of Policy and Training, and the Chief, Defense Counsel Assistance Program (DCAP). The Chief, JAJD's duties include: (1) serving as the ultimate detailing authority on all detailing decisions and individual military defense counsel (IMDC) requests not otherwise delegated; (2) managing the training, legal and developmental education, and career progression of all JAJD personnel; (3) personally defending senior officers and others in select cases; (4) overseeing the management of trial defense facilities, equipment, and budgets; (5) serving as the rater for all JAJD personnel not otherwise delegated; and (6) establishing policy and strategic guidance to enhance the trial defense division worldwide.

1.6.4.1. Superintendent, JAJD. The Superintendent is the senior noncommissioned officer assigned to JAJD whose primary duty is to assist and advise the Chief, JAJD, CCDCs and DPMs with all enlisted matters (e.g., training, mentoring, and administrative aspects of enlisted affairs) within the division. Additionally, the Superintendent is responsible for office management matters.

1.6.4.2. DCAP. The DCAP is a civilian attorney who works directly for the Chief, JAJD. The DCAP is responsible for providing technical expertise, strategic planning/policy development, and programmatic continuity for the division. This attorney also develops training for JAJD personnel, serves as reach-back to the field on new and complex issues, and responds to various inquiries and taskers from higher headquarters, Congress, and within the DoD.

1.6.4.3. CCDC. CCDCs, in concert with subordinate CDCs, mentor, train, and direct the provision of defense services throughout their circuit. CCDC duties consist of the following: (1) exercising supervisory authority over all ADCs, DPs, CDCs, and the DPM assigned to their circuit; (2) managing all administrative and personnel actions (e.g., evaluations, awards, and decorations) for personnel assigned to the circuit; (3) serving as the rater for all ADCs and additional rater for all DPs assigned to the circuit; (4) serving as defense counsel in selected courts-martial, administrative boards, investigations, and other

adverse actions; (5) making detailing decisions; (6) acting on IMDC requests for personnel currently assigned to the circuits; (7) overseeing the management of trial defense facilities, equipment, and budgets; and (8) performing other duties as assigned by the Chief, JAJD.

1.6.4.4. DPM. DPMs are the senior enlisted advisors to the CCDCs on all DP matters within their assigned circuit. DPMs also assist and advise CCDCs, CDCs and ADCs on DP professional development, performance reports, awards and decorations, manpower issues, and training/utilization of their circuit's assigned DPs. The DPM evaluates and monitors DP proficiency/upgrade training requirements and coordinates compliance with wing legal offices. DPMs provide DPs with career guidance, training on duties and responsibilities, and oversee law office and resource management. DPMs conduct staff assistance inspections and help provide oversight on the management of trial defense facilities, equipment, and budgets.

1.6.4.5. Deputy Chief of Policy and Training. The Deputy Chief of Policy and Training is an attorney designated by the Chief, JAJD to manage policy and training for all personnel within the division. The Deputy Chief of Policy and Training may be detailed as DC in select courts-martial and other adverse actions, and perform other duties as assigned by the Chief, JAJD.

1.6.4.6. Circuit Defense Counsel. CDCs, in concert with the CCDCs, mentor, train, and direct the provision of defense services throughout their assigned circuit. CDC duties include the following: (1) serving as the first-line supervisory attorney to all ADCs assigned to their region; (2) assisting with administrative matters and personnel actions, as directed by their supervising CCDC; (3) making detailing decisions in accordance with the JAJD Operating Instruction; (4) serving as defense counsel in select courts-martial, administrative boards, and other adverse actions; and (5) training, advising, and assisting other defense personnel in the region, as needed.

1.6.4.7. ADC. ADCs are responsible for providing defense services at the installation where assigned and any designated geographically separated units, subject to conflicts and detailing decisions made by the CDC or CCDC. ADCs serve as a rater and supervisor for the DP(s) assigned to their office. In an office with more than one ADC, the ADC senior in grade or rank is responsible for rating the DP(s) and for oversight of office administration.

1.6.4.8. Defense Paralegal. DPs' primary duties are to support ADCs in the management and operation of the ADC office. As appropriate, DPs shall complete upgrade training in a timely manner, as described in their respective career field education and training plan (CFETP) or other official publication(s).

1.6.4.9. Other Designated Defense Counsel. In accordance with R.C.M.s 502(d)(2)(B) and 506(b), counsel not currently assigned to JAJD may be detailed as defense counsel through the IMDC process. All IMDC requests shall be processed in accordance with this instruction.

1.6.5. Chief, Appellate Defense Division (JAJA). A senior judge advocate assigned by TJAG to direct the duties of and to supervise the division's appellate counsel in filing all appeals on behalf of DAF members entitled to representation under Article 70, UCMJ, before the AFCCA, CAAF, and the U.S. Supreme Court.

1.6.6. Victims' Counsel Division (JAJS). Provides legal representation to victims of crimes in accordance with 10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*, 10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*, 10 U.S.C. § 1044, *Legal assistance*, Public Law 116-92, Section 548, *Legal counsel for victims of alleged domestic violence offenses*, and other applicable rules and regulations. Additionally, the division provides policy guidance on legal representation of victims under those prescribed laws and regulations. For additional information, see DAFI 51-207.

1.6.7. Office of Disability Counsel (JAJO). Provides policy guidance on legal representation of DAF members meeting established criteria for referral into the Disability Evaluation System (DES) in accordance with 10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*; DoDI 1332.18, *Disability Evaluation System*; and AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*.

1.6.8. Investigations, Inquiries and Relief Division (JAJI). Functions as a component of AF/JA for matters pursuant to the UCMJ, as determined by TJAG and operating in close coordination with JAJ. Advises senior leaders, SAF/IGQ and SAF/IGS on senior officer misconduct and other matters. Processes adverse actions that require SecAF coordination or approval, including but not limited to nonjudicial punishment (NJP) appeals, recalls to active duty, requests for resignation, retirements, and discharges in lieu of court-martial. Advises SecAF on promotion proprietary actions. Conducts final legal review of formal Article 138 complaints on behalf of SecAF. Advises AF/JA on media, congressional, secretarial, and White House inquiries pertaining to military justice and discipline matters. Coordinates on Board for Correction of Military Records petitions. Recommends actions by SecAF on all affirmed officer courts-martial resulting in a dismissal, and action by SecAF or TJAG on all court-martial sentences in which clemency may be appropriate. Represents TJAG on the Air Force Clemency and Parole Board, advises the Office of the Pardon Attorney on applications for Presidential Pardon, and is counsel to the Director of Air Force Corrections on matters relating to corrections and rehabilitation of DAF inmates.

1.7. Trial Judiciary (JAT). Provides support to military courts-martial throughout the DAF. Details trial judges to courts-martial. Dockets courts-martial. Provides oversight of military judges and court reporters throughout the DAF. Prescribes guidance for military judges regarding procedural and substantive aspects of trials by courts-martial. Responsible for the centralized management of the court reporter program and serves as the single point of contact for all requests for transcription assistance and court reporter temporary duty support. See DAFMAN 51-203, *Records of Trial* for guidance on requesting court reporter assistance.

1.7.1. Chief Trial Judge. A senior judge advocate designated by TJAG, pursuant to statutory authority under Article 26(c) and (g), UCMJ, to direct and manage JAT. The Chief Trial Judge supervises all trial judges, details judges to all DAF general and special courts-martial, supervises the Central Docketing Office, maintains and updates the Uniform Rules of Practice Before Department of the Air Force Courts-Martial, supervises the docketing of all general and special courts-martial within the DAF, and manages and details military judges to administrative hearings as appropriate. The Chief Trial Judge shall be responsible for all policies pertaining to court reporters and the overall management of the court reporter program.

1.7.2. Central Docketing Office. The Central Docketing Office reports directly to the Chief Trial Judge. The Central Docketing Office's primary function shall be to implement the Chief

Trial Judge's (or the Chief Trial Judge's delegee's) decisions regarding the docketing of courts-martial and detailing of military judges.

1.7.3. **Military Judge.** Must be a judge advocate, certified under Article 27(b)(2), UCMJ, and designated by TJAG as a military judge according to Article 26(b) or (c), UCMJ. **(T- 0).** Military judges are assigned to a designated circuit or to the Chief Trial Judge. Judges may perform the following duties, in an installation or expeditionary environment, subject to availability as determined by the Chief Trial Judge:

1.7.3.1. Preside over courts-martial.

1.7.3.2. Preside over Article 30a, UCMJ, proceedings.

1.7.3.3. Serve as Article 32, UCMJ, preliminary hearing officers (PHOs).

1.7.3.4. Serve as legal advisors for administrative discharge boards or boards of inquiry.

1.7.3.5. Serve as hearing officers for contingent confinement hearings.

1.7.3.6. Serve as pretrial confinement hearing officers.

1.7.3.7. Conduct other investigations.

1.7.3.8. Other duties as detailed by the Chief Trial Judge (e.g. presiding over environmental impact public hearings).

1.7.4. **Air Force Trial Judiciary Court Reporter Manager.** A paralegal assigned to the Trial Judiciary who is delegated operational authority over the court reporter program. The Court Reporter Manager shall be responsible for the centralized management and detailing of all court reporting and transcription taskings.

1.8. Court Reporters. Records, transcribes, and assembles records for Article 30a, pre-referral judicial proceedings, courts-martial, and other proceedings, as required, in accordance with the MCM, UCMJ, and DAFMAN 51-203. Assists counsel, hearing officers, and the military judge in preparing and marking documents associated with proceedings and may assist paralegals with the assembly of the ROT. Remains neutral and refrains from expressing personal opinions about the case being reported. Records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns, and maintains the reporter's notes and recordings according to the Air Force Records Disposition Standards.

1.9. SJA. Performs the duties of the SJA set out in the UCMJ and MCM. Directly reports to and advises the Court-Martial Convening Authority or commander on military justice matters. Supervises the administration of military justice for the command. Forwards specified disposition data for criminal indexing to the appropriate points of contact. Ensures individuals identified by the Force Support Squadron Commander (FSS/CC) receive Article 137 briefings. Serves as the release authority on certain court-martial and disciplinary documents pursuant to VC and civilian victim attorney requests for information, as outlined in this instruction. Supports SVIP and Criminal Investigation and Prosecution (CIP) capabilities. Ensures legal office responsibilities are accomplished in accordance with this and other applicable instructions. See [Section 1C](#) for additional guidance.

1.10. Court-Martial Convening Authority. Exercises court-martial convening authority powers. With the exception of the President of the United States, the Secretary of Defense, and SecAF, is a commander or commanding officer on G-series orders. In this regulation, the term

“court-martial convening authority” may be used to refer to an individual authorized to convene courts-martial or generally to the authority to convene courts-martial.

1.11. Installation Commanders’ Logistical Support.

1.11.1. Commanders of installations where JAJ or JAT personnel are assigned or on temporary duty (TDY) are responsible for their administrative and logistical support. Host commanders will provide support to JAJ and JAT personnel as set forth in AFI 25-201, *Intra-service, Intra-agency, and Inter-agency Support Agreements Procedures*.

1.11.1.1. Installation commanders will ensure that assigned military judges, CTCs, VCs, and ADC offices receive no less than the same support provided to other units assigned to the host command. This support must include, but is not limited to, the following:

1.11.1.1.1. Private office space clearly designated as a military judge, CTC, VC, ADC office including necessary furniture/supplies and access to electronic law library facilities. ADC offices and VC offices shall be physically separated from the offices of the SJA and the convening authority. AFMAN 32-1084, *Standard Facility Requirements*, sets forth minimum space requirements.

1.11.1.1.2. All communications equipment and support, to include: telephone services, e-mail capability, installation of security measures such as a “panic button” in offices where JAJ and JAT personnel are designated to work, to include courtrooms, and office equipment, including, but not limited to, computer refresh and multi-function device equipment including copier maintenance agreements.

1.11.1.1.3. Military family housing on the same basis as other personnel of like grade, rank, and responsibility.

1.11.1.1.4. Civilian personnel services normally provided by the Civilian Personnel Office.

1.11.1.1.5. Publications support normally furnished tenant units.

1.11.1.1.6. Funding for necessary supplies.

1.11.1.1.7. Duress alarms.

1.11.1.2. Military transportation support is crucial to successful execution of military justice proceedings. The host installation commander should provide suitable military transportation support, such as a government-owned vehicle, to JAJ and JAT personnel TDY to their installation.

1.11.1.3. Host SJAs will assist TDY JAJ and JAT personnel by arranging appropriate billeting, messing, and transportation in advance to ensure TDY personnel may devote full attention to their duties.

1.11.1.4. JAJ provides funding for travel costs and per diem expenses for their personnel when TDY to execute their military justice duties. JAT provides funding for military judges when TDY to execute their military duties. The convening authority funds travelling court reporters.

1.12. Unit Commander. Exercises authorities of a commanding officer set out in the UCMJ and MCM.

1.13. FSS/CC. Identifies individuals that require Article 137 briefings.

Section 1C—Additional Requirements and Delegations Affecting the Staff Judge Advocate

1.14. Title of Staff Judge Advocate. Unless otherwise specified by TJAG, the senior judge advocate on a commander's staff is designated the "Staff Judge Advocate" of that command. All other judge advocates assigned to a command are designated "Assistant Staff Judge Advocates" for the purpose of pretrial advice, post-trial recommendations and court-martial orders.

1.15. Acting as the Staff Judge Advocate. The Deputy Staff Judge Advocate (DSJA) or other assistant staff judge advocate signs "Acting as the Staff Judge Advocate" when the SJA is absent or ineligible to act in a particular case. In all other matters, titles such as "Deputy Staff Judge Advocate" or "Chief, Military Justice," may be used.

1.16. Convening Authority Delegation of Military Justice Administrative Duties. Convening authorities may delegate military justice administrative duties to the SJA or any other attorney assigned to the servicing SJA's office. A template delegation letter is located on the VMJD. In addition to the duties listed in the template, convening authorities may delegate any other military justice administrative duties not expressly requiring convening authority action.

1.17. Signing on Behalf of the Convening Authority. When signing a military justice matter for the convening authority, use the signature element, "FOR THE COMMANDER."

1.18. Staff Judge Advocate Rating Chain. To maintain unfettered access to military justice legal advice, avoid conflicts of interest, execute delegations of convening authority prerogatives, and maintain confidentiality, officers designated as SJAs by TJAG in accordance with Article 6(a), UCMJ, shall report to and be rated by the first commander in the chain of command who has been designated as a convening authority. TJAG-designated SJAs, assigned to units where the commander is not designated as a convening authority, should ordinarily report to and be rated by the immediate commander despite not being designated as a convening authority.

Section 1D—Applicability of This Instruction

1.19. General Rule. In cases where either the substantive or procedural provisions of Military Justice Act of 2016 (MJA 16) do not apply, see the applicable portion of the VMJD and contact JAJM for guidance. This includes all cases in which charges were referred prior to 1 January 2019 (e.g., deserter cases, rehearings).

1.20. Cases Referred On or After 1 January 2019. This version of DAFI 51-201 and all of the provisions of MJA 16 apply to cases referred on or after 1 January 2019, with the following caveats:

1.20.1. Substantive Provisions. The amendments to Articles 2 (personal jurisdiction), 56(d) (Government appeal of sentences), and 63 (rehearings) apply only to cases where all of the specifications allege offenses that occurred on or after 1 January 2019. **(T-0)**.

1.20.2. Special Court-Martial by Military Judge Alone. A convening authority shall only refer a case to a special court-martial by military judge alone under Article 16(c)(2) if all of the specifications allege offenses committed on or after 1 January 2019.

1.20.3. Sentencing Procedures. The sentencing provisions in Articles 53 and 56(c) and R.C.M. 1002 apply to cases where all of the charged offenses occurred on or after 1 January 2019. In a case where charged offenses occurred both before and after 1 January 2019 (“straddling cases”), the convening authority may:

1.20.3.1. Refer the charges to two different courts-martial;

1.20.3.2. Apply the sentencing rules in the 2016 MCM to the entire case; or

1.20.3.3. The accused may opt in to the current Article 56(c) sentencing framework for the entire case. If all offenses occurred before 1 January 2019, the accused may not opt in to the new Article 56(c) sentencing framework and only the 2016 MCM sentencing rules apply. See R.C.M. 902A, 1007 and 1009.

1.20.4. Plea Agreements. The current provisions in Article 53a, R.C.M. 705, and R.C.M. 910 apply to cases where all of the specifications allege offenses on or after 1 January 2019. **(T-0)**. See **Section 17B** of this publication. Where a case with straddling offenses involves a plea agreement:

1.20.4.1. The convening authority may refer the charges to two different courts-martial; or

1.20.4.2. The accused may opt in to the new Article 56(c) sentencing framework.

1.20.4.3. The convening authority shall not apply pre-Military Justice Act pretrial agreement rules to a court-martial with straddling offenses.

1.21. Article 60 Authority. Use the version of Article 60 in effect on the date of the earliest offense resulting in a conviction to determine the convening authority’s ability to modify the findings and/or sentence for an entire case. In all cases, regardless of the date of the offense, the convening authority may suspend certain sentences upon the recommendation of the military judge pursuant to Article 60a(c).

Chapter 2

COURT-MARTIAL CONVENING AUTHORITY

Section 2A—DAF Court-Martial Convening Authority (Articles 22, 23, and 24, UCMJ; R.C.M. 504)

2.1. General Court-Martial Convening Authority (GCMCA).

2.1.1. The following DAF commanders may exercise general court-martial convening authority:

2.1.1.1. Commanders of organizations designated in Article 22(a)(7), UCMJ, who have been authorized by SecAF to convene general courts-martial (GCMs) under Article 22(a)(7), UCMJ.

2.1.1.2. Commanders of organizations not designated by Article 22(a)(7), UCMJ, but who are authorized and designated to convene GCMs by SecAF under Article 22(a)(8) or who are empowered by the President under Article 22(a)(9), UCMJ.

2.1.2. Commanders empowered by SecAF to convene GCMs are listed in the current worldwide convening order or worldwide convening authority designation memorandum (WWCO or WWCADM) which can be located on the VMJD.

2.1.3. Requests for authorization to exercise general court-martial convening authority are forwarded through functional channels with commanders' indorsements to JAJM.

2.2. Special Court-Martial Convening Authority (SPCMCA).

2.2.1. The following DAF commanders may exercise special court-martial convening authority:

2.2.1.1. Commanders authorized to convene GCMs under [paragraph 2.1](#) See Article 23(a)(1), UCMJ.

2.2.1.2. Commanders of organizations designated in Article 23(a), UCMJ, who have been authorized to exercise special court-martial convening authority by SecAF. Commanders empowered by SecAF to convene special courts-martial (SPCMs) are listed in the current WWCO or WWCADM which can be located on the VMJD.

2.2.1.3. Commanders of organizations designated in Article 23(a)(4), UCMJ, who are not authorized by SecAF to exercise special court-martial convening authority, but who are authorized by the superior commander of an Air Force major command (MAJCOM) or Space Force field command (FLDCOM) to convene SPCMs. **Note:** Prior to exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing MAJCOM/FLDCOM must send a copy of the authorization to JAJM.

2.2.1.4. Commanders who are not authorized by SecAF to exercise special court-martial convening authority, but who are authorized to exercise special court-martial convening authority by the superior commander of a DAF component of a unified or specified combatant command.

2.2.1.4.1. The commander of a DAF component of a unified or specified combatant command may only authorize subordinate commanders to exercise special court-martial convening authority if the subordinate commander commands an organization identified by Article 23, UCMJ, and that organization or unit is assigned or attached to the superior component commander's command. See AFI 38-101, *Manpower and Organization*.

2.2.1.4.2. Prior to the exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing GCMCA must send a copy of the authorization to JAJM.

2.2.2. A request for authorization to exercise special court-martial convening authority or a superior commander's authorization for a subordinate commander to exercise special court-martial convening authority is forwarded through functional channels with commanders' indorsements to JAJM to process SecAF's acknowledgement. **Note:** This does not apply to organizations identified in [paragraph 2.2.1.4](#).

2.2.3. Special court-martial convening authority includes the authority to refer cases to a special court-martial by military judge alone as defined in Article 16(c)(2)(A).

2.3. Summary Court-Martial Convening Authority (SCMCA). Any person who may convene a GCM or SPCM may convene a summary court-martial (SCM) under Article 24(a)(1), UCMJ.

2.3.1. The commanding officer of a detached squadron or other DAF detachment may also convene an SCM under Article 24(a)(3), UCMJ, but only with the express authorization of the superior GCMCA for the detached squadron or other detachment consistent with R.C.M. 504(b)(2)(B).

2.3.2. Prior to the exercise of summary court-martial convening authority by a commander pursuant to [paragraph 2.3.1](#), the SJA of the authorizing GCMCA sends a copy of the authorization to JAJM.

Section 2B—UCMJ Jurisdiction (Articles 2 and 3, UCMJ; R.C.M. 201, 202, 203, and 204)

2.4. Exercise of UCMJ Jurisdiction. This section details the exercise of UCMJ jurisdiction and general, special, and summary courts-martial convening authority in the DAF. No other order, document, or implementing agreement is required unless otherwise stipulated below. This section applies to DAF members and Air Reserve Component members when subject to the UCMJ in accordance with Article 2.

2.5. Members of Department of Air Force Tenant Organizations.

2.5.1. Unless otherwise stated in this chapter, all members of a DAF tenant unit or DAF element, whether designated as a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. On bases, to include joint bases, where a unit of another military service has been designated as the host unit, the DAF unit that has the preponderance of military justice capabilities will be considered the "host command" for the purposes of this paragraph unless an installation service agreement specifying the contrary is otherwise in place. Requests for exceptions to the exercise of jurisdiction or convening authority pursuant to this instruction shall be coordinated with JAJM in advance of any exercise of jurisdiction pursuant to this

paragraph. Attachment to a host command for purposes of this paragraph does not serve to divest any commander from the lawful exercise of convening authority. See [paragraph 2.5.5](#).

2.5.2. For guidance specific to the Reserve Component, see [Chapter 3](#).

2.5.3. Members of a tenant unit, DAF Element, or Reserve or National Guard unit include personnel on temporary duty with or otherwise attached to such unit. See also AFI 90-1001, *Total Force Associations (TFAs)*.

2.5.4. Jurisdiction pursuant to [paragraph 2.5](#) is concurrent jurisdiction to be shared between the command chain of the relevant tenant, DAF Element, Reserve, or Title 10 National Guard unit and the relevant Regular Air Force or Space Force unit or host command.

2.5.5. Attachment for the exercise of court-martial convening authority does not serve to divest any commander of authority over a member of an Air Force or Space Force tenant unit, an Air Force or Space Force Element, or a member of the Reserve or National Guard.

2.5.5.1. Exercise of such authority by the applicable Regular Air Force or Space Force host command is preferred to resolve the matter expeditiously, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

2.5.5.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined.

2.5.5.3. When it is necessary or desirable to deviate from this jurisdiction arrangement, it must be documented in a support agreement or similar document signed at the GCMCA level or a superior level of command with a copy provided to JAJM.

2.5.6. Air Force Judge Advocates (AFLOA). The following members are attached to AFLOA/CC, the DJAG, for the exercise of special and general court-martial convening authority, regardless of where they are stationed:

2.5.6.1. Circuit Trial Counsel, Circuit Defense Counsel, and Chief Circuit Victims' Counsel;

2.5.6.2. Area Defense Counsel and defense paralegals;

2.5.6.3. Appellate Government Counsel and Appellate Defense Counsel;

2.5.6.4. Victims' Counsel and Victims' Paralegals;

2.5.6.5. Office of Disability Counsel judge advocates and paralegals; and

2.5.6.6. Military trial and appellate judges.

2.6. Jurisdiction of Air Force District of Washington (AFDW). The commander, AFDW (AFDW/CC), as GCMCA, and the Commander, 11th Wing (11 WG/CC), as the SPCMCA, are authorized to exercise court-martial convening authority over Air Force members whose organization is not subordinate to an Air Force or Space Force GCMCA and who are not assigned to an Air Force or Space Force commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, Air Force and Space Force field operating agencies, direct reporting units, Elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.6.1. Air Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to AFDW and its subordinate units for the exercise of court-martial convening authority.

2.6.2. Inmates, parolees, and members on appellate leave assigned to the Air Force Security Forces Center (AFSFC), Confinement and Corrections Directorate, are attached to AFDW and its subordinate commands for court-martial convening authority. This includes members of the USSF who are so assigned.

2.6.3. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

2.7. Jurisdiction of Space Operations Command (SpOC). The commander, SpOC (SpOC/CC) is authorized to exercise court-martial convening authority over Space Force members whose organization is not subordinate to a Space Force or Air Force GCMCA and who are not assigned to an Air Force or Space Force commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, Space Force field operating agencies, direct reporting units, elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government.

2.7.1. Space Force personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to SpOC and its subordinate units for the exercise of court-martial convening authority.

2.7.2. See [paragraph 2.12](#) for the exercise of convening authority over general officers.

2.8. Members of the Air Force Assigned to Headquarters Air Force, Office of the Chief of Space Operations, Joint Staff, or Office of the Secretary of Defense. Air Force members assigned or attached to Headquarters DAF, including the Air Staff and the Office of SecAF; Office of the Chief of Space Operations; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to AFDW and subordinate units for the exercise of court-martial convening authority. See AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*.

2.9. Members of the Space Force Assigned to Headquarters Air Force, Office of the Chief of Space Operations, Joint Staff, or Office of the Secretary of Defense. Space Force members assigned or attached to Headquarters DAF, including the Office of Chief of Space Operations, Air and Space Staffs and the Office of SecAF; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to SpOC and subordinate units for the exercise of court-martial convening authority. See AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*.

2.10. North Atlantic Treaty Organization. Air Force members assigned or attached to North Atlantic Treaty Organization and stationed in Europe are attached to the United States Air Forces in Europe and Air Forces Africa for the exercise of court-martial convening authority and other disciplinary purposes. Space Force members assigned or attached to North Atlantic Treaty Organization and stationed in Europe are attached to the SpOC for the exercise of court-martial convening authority and other disciplinary purposes. See DAFPD 51-2.

2.11. Joint Commands and Other Armed Forces. Pursuant to R.C.M. 201(e), a commander of a unified or specified combatant command may convene courts-martial over any armed forces member. Also, a convening authority of one armed force may convene a court-martial to try a member of another armed force. Nonetheless, a joint or non-DAF commander normally allows the appropriate DAF commander to exercise court-martial convening authority over a DAF member. See AFI 38-101, *Manpower and Organization*.

2.11.1. DAF members in a joint command fall under the applicable DAF component commander for disciplinary purposes. DAF members assigned or attached to an air expeditionary unit fall under the air expeditionary unit chain of command for disciplinary purposes. While attached to a joint command or air expeditionary unit DAF members normally remain assigned to a home station DAF unit, and the home station chain of command maintains concurrent jurisdiction.

2.11.2. DAF convening authorities exercise court-martial jurisdiction over members of other armed forces only when warranted by R.C.M. 201(e)(3). Prior to exercising such authority, the convening authority's SJA must coordinate with JAJM.

2.11.3. Transmitting or transferring any proceeding from one armed force to another armed force within the DAF prior to final action (e.g., court-martial entry of judgment (EoJ), Article 15 staff judge advocate legal review, or separation action) shall not invalidate an otherwise valid proceeding.

2.12. General Officers. Only a commander of an Air Force MAJCOM, Space Force FLDCOM, AFDW/CC, or a superior convening authority may exercise court-martial convening authority over a DAF general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified or specified command. SecAF has court-martial convening authority over the Chief of Staff of the Air Force, Chief of Space Operations, commanders of MAJCOMs, commanders of FIEDLCOMs, AFDW/CC, and DAF generals not assigned to a MAJCOM, FLDCOM, or combatant command.

2.13. United States Air Force Academy (USAFA) Cadets. Only the Commandant of Cadets, a superior commander at USAFA (e.g., the Superintendent), or a commander designated by SecAF may exercise court-martial convening authority over a USAFA cadet. USAFA cadets are considered either Regular Air Force or Space Force personnel, and are subject to the UCMJ. See Article 2(a), UCMJ. For purposes of courts-martial jurisdiction and limitations on punishments, cadets are treated as officers. See R.C.M. 1003(c)(2)(A). However, cadets cannot serve as members on a court-martial.

2.14. Jurisdiction over Separated and Retired Members.

2.14.1. General Provision. Generally, jurisdiction to try a member of the military by court-martial ceases upon discharge or other separation, provided the discharge is a complete termination of military status and relieves the member of any further military service, including service in the Individual Ready Reserve. Jurisdiction over active duty military personnel normally continues until the member receives a valid discharge certificate, there is a final accounting of pay, and the member has completed administrative clearance processes required by SecAF. See *United States v. Christensen*, 78 M.J. 1 (CAAF 2018) (reaffirming the three-part test and applying a "reason or policy" standard); *United States v. Nettles*, 74 M.J. 289 (CAAF 2015) (pertaining to discharge of reservists); *United States v. Hart*, 66 M.J. 273 (CAAF

2008). Exceptions may include regaining military jurisdiction for members upon reentry into military service or recalling to active duty retired members receiving pay. See Article 2(a), UCMJ, R.C.M. 202(a), Discussion; R.C.M. 204(d).

2.14.2. Members Pending Expiration of Terms of Service, Discharge or Separation. Court-martial jurisdiction extends to those Regular Air Force or Space Force members whose enlistments have expired but are awaiting discharge. See Articles 2(a)(1) and 3(a), UCMJ. A DAF member separated or discharged prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the member retains military status in a reserve component. Action with a view to trial should be taken as soon as practicable to preserve jurisdiction. Jurisdiction may attach by apprehension, imposition of restraint, or preferral of charges. Once attached, jurisdiction continues for purposes of trial, sentence, and punishment. See R.C.M. 202(c).

2.14.3. Retired Personnel.

2.14.3.1. Retired active duty members who are entitled to receive pay (Article 2(a)(4), UCMJ), retired members of a reserve component receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired reserve component members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial subject to both legal and policy limitations.

2.14.3.1.1. For retired Air Reserve Component (ARC) members, the acts or omissions must have been committed while on active duty, inactive duty training or for ANG members while in federal status and even so, prosecution is ordinarily not appropriate unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

2.14.3.1.2. Retired active duty members who are subject to the UCMJ and who commit misconduct after retirement will not ordinarily be tried by court-martial unless:

2.14.3.1.2.1. A federal, state or local jurisdiction is not available for prosecution; and

2.14.3.1.2.2. The misconduct clearly links them to the military or is adverse to a significant military interest of the United States. See DAFPD 51-2.

2.14.3.2. If a retiree meeting the qualifications of [paragraph 2.14.3.1](#) is to be recalled to active duty to be tried by court-martial, the commander seeking the recall should consider the location of the alleged offense, whether the alleged offense occurred outside the United States, the current location of the retired member, and the current location of the victim, if any, to determine the appropriate recall authority. Retired DAF members recalled to active duty by SecAF may be tried by a court-martial convened by a DAF convening authority and confined in accordance with applicable instructions.

2.14.3.3. If SecAF approval is sought, SecAF approval to recall a retired member to active duty must be obtained prior to preferral of charges.. The supporting legal office of the command seeking the member's recall forwards the request for SecAF approval via functional channels to JAJI. The request should include coordination with the GCMCA and additional information addressing the policy implications described in [paragraph 2.14.3.1](#). If there is an immediate issue regarding the statute of limitations (Article 43,

UCMJ) and the time prescribed by the relevant statute of limitations is about to expire, the SJA coordinates immediate preferal of charges and a request for SecAF approval of the retiree's recall as soon as possible.

2.15. Jurisdiction Involving Federal Agencies.

2.15.1. Department of Justice. As with state (non-federal) nonexclusive jurisdiction, the determination of whether civilian federal or military authorities will exercise jurisdiction is made through consultation or prior agreement between appropriate DAF and civilian authorities. Convening authorities and SJAs foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction. See DoD Instruction (DoDI) 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, which sets forth DoD and Department of Justice responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

2.15.2. United States Secret Service. The service exercises primary investigative responsibility for all cases involving alleged threats against the President or successors to the Presidency. 18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*. The Chief, JAJM, or a designee, coordinates with representatives of the Department of Justice and the Secret Service to determine which department will exercise jurisdiction in any such case involving a DAF subject.

2.15.3. 18 U.S.C. § 3261 et seq., *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act (MEJA) of 2000)*. Pursuant to MEJA, military members subject to the UCMJ as well as civilians employed by or accompanying the armed forces outside the United States may be subject to United States civilian federal jurisdiction for offenses committed while overseas. The court-martial convening authority with jurisdiction reports any potential MEJA cases through command channels, and the supporting SJA reports the same through functional channels to JAJM. JAJM coordinates potential MEJA cases with the DoD Office of General Counsel and Department of Justice. See AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction Over Civilians and Dependents Overseas*, for guidance and procedures in MEJA cases.

2.15.4. Federal Criminal Proceedings. A member pending trial or who has been tried by a federal court may not be tried by court-martial or subjected to NJP proceedings for the same act or omission. Unlike exercise of jurisdiction by a state or foreign authority, exercise of jurisdiction by federal civilian authorities prevents exercise of jurisdiction by military authorities for the same act or omission. See R.C.M. 907(b)(2)(C). See [paragraph 2.16.4](#) for further guidance.

2.16. Jurisdiction Involving State or Foreign Prosecution Interest (R.C.M. 201(d)).

2.16.1. Courts-martial have exclusive jurisdiction of purely military offenses. However, when a member is subject to both the UCMJ and state (non-federal) or foreign jurisdiction for substantially the same act or omission, the determination of which sovereign shall exercise jurisdiction should be made through consultation or prior agreement between appropriate authorities (e.g., memoranda of agreement, status of forces agreements). Convening

Authorities and SJAs should foster relationships with local civilian authorities with a view toward maximizing DAF jurisdiction. For cases within the United States involving sexual assault, see [Section 10A](#).

2.16.1.1. Members who are being investigated by a civilian jurisdiction which has not relinquished jurisdiction, as well as members pending trial or who have been tried by a state or foreign court, should not ordinarily be tried by court-martial or subjected to NJP for the same act or omission, except upon SecAF approval (see [paragraph 2.16.4](#)). This policy is based on comity between the federal government and state and foreign governments and is not intended to confer additional rights upon the accused. See *United States v. Kohut*, 44 M.J. 245 (CAAF 1996).

2.16.1.1.1. This limitation does not apply to action or vacation proceedings under R.C.M. 1108 and MCM, Part V, paragraph 6a(4)-(5).

2.16.1.1.2. A member may be considered to be “pending trial” when state or foreign authorities have expressed their intention to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.16.1.1.3. A member is deemed “tried” if jeopardy has attached. Follow the state or foreign law to determine when this occurs.

2.16.1.1.4. A member is not deemed “tried” if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.

2.16.1.1.5. A member is not deemed “tried” in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).

2.16.1.2. If the state or foreign proceedings end without jeopardy attaching or if the DAF receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the DAF may proceed with court-martial or NJP.

2.16.2. When a member is subject to both the UCMJ and state or foreign jurisdiction, the installation commander and SJA should determine whether the exercise of jurisdiction is in the best interests of the DAF. Some factors to consider in making this determination include, but are not limited to location of offense, lead investigative agency, status of victims and witnesses, and public attention.

2.16.2.1. If the exercise of jurisdiction is sought, DAF authorities (normally the SPCMCA SJA or delegate) contact appropriate civilian authorities; notify them of the DAF desire to exercise jurisdiction; and, if civilian authorities have primary jurisdiction, request a waiver of state or foreign jurisdiction (additional procedures for seeking jurisdiction from foreign authorities are discussed in [paragraph 2.16.3](#)).

2.16.2.2. DAF requests for waivers of jurisdiction from state or foreign authorities must be in writing with written responses requested.

2.16.2.3. If state or foreign authorities decline or waive the right to exercise jurisdiction, the DAF may proceed with action, up to and including court-martial or NJP.

2.16.2.4. The written request and response shall be maintained as part of the case file and documented in AMJAMS.

2.16.3. **Foreign Criminal Jurisdiction.** The procedures to determine whether United States military authorities or foreign (host nation) authorities will exercise criminal jurisdiction over military members present in foreign countries vary from country to country. The Status of Forces Agreement, or a similar agreement, should address procedures for dealing with nonexclusive or concurrent jurisdiction offenses. Comply with AFI 51-402, *International Law*.

2.16.4. **Secretarial Approval.** Only SecAF may approve initiation of court-martial or NJP action against a member previously tried by a state or foreign court for substantially the same act or omission, regardless of whether the member was convicted or acquitted of the offense. Approval by SecAF will be granted in only the most unusual cases when justice and good order and discipline can be satisfied in no other way. A request may be submitted only after the member has been tried in a state or foreign court. Submit the request with full justification and commanders' indorsements through functional channels to JAJI.

2.16.5. **Department of Defense (DoD) Civilian Employees, Department of Defense (DoD) Contractor Personnel, and Other Persons.** For authorities and procedures related to DoD civilian employees, DoD contractor personnel, and other persons, refer to AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*.

Chapter 3

MATTERS SPECIFIC TO THE AIR RESERVE COMPONENT

Section 3A—Overview

3.1. Air Reserve Component (ARC) References. ARC is both the Air Force Reserve (AFR) and the Air National Guard (ANG).

3.2. Air Force Reserve Categories. AFR categories are organized exclusively under federal authority (Title 10).

3.2.1. Ready Reserve: The Air Force Ready Reserve is a category of reservist most often called to active duty. It consists of two subcategories, Selected Reserve and Individual Ready Reserve who are available to be involuntarily ordered to active duty in time of war or national emergency, pursuant to 10 U.S.C. § 12301, *Reserve components generally*, 10 U.S.C. § 12302, *Ready Reserve*, and 10 U.S.C. § 12304, *Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency*.

3.2.2. Selected Reserve: Units and individuals within the Ready Reserve approved by the Joint Chiefs of Staff as so essential to initial wartime missions that they have priority over all other reserves. It includes traditional reservists, individual mobilization augmentees (IMA), active guard reservists (AGR), and military technicians.

3.2.3. Individual Ready Reserve (IRR): Individuals who have had some training or who have served previously in the Active Component or in the Selected Reserve, or have some period of their military service obligation remaining. See AFMAN 36-2136, *Reserve Personnel Participation*.

3.2.4. Standby Reserve: Individuals who have a temporary disability or hardship, hold key positions in their civilian jobs, and other certain categories may be on the active status list (ASL) or inactive status list (ISL) of the standby reserve. When authorized by Congress, members of the Standby Reserve may be involuntarily recalled to active duty under 10 U.S.C. 12301 and 12306.

3.2.5. Retired Reserve: The Retired Reserve includes Reservist who are receiving retired pay or Reservists who transfer into the Retired Reserve after qualifying for reserve retirement, but before becoming eligible to receive retired pay. Members of the Retired Reserve may be involuntarily ordered to active duty.

3.3. Personnel Duty Status. Members of the AFR participate in different capacities.

3.3.1. Full Time Support Personnel

3.3.1.1. Air Reserve Technician (ART): Members are full-time federal civil service employees of an Air Force reserve unit and serve in dual roles as both civilians and Reserve Airmen. ART are generally required to maintain membership in the Selected Reserve as a condition of their employment.

3.3.1.1.1. Active Guard Reserve (AGR) under Title 10: Reservists or Guard members on full-time active duty (AD) for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing or training ARC units, or

performing duties prescribed in 10 U.S.C. § 12310. (**Note:** AGRs do not usually mobilize; they are the steady force that stays to organize, administer, recruit, instruct, or train others.)

3.3.2. Traditional Reservist (TR/CAT A): Assigned to stand-alone reserve units. CAT A personnel require one weekend of inactive duty training a month, referred to as unit training assembly, and two weeks annual training.

3.3.3. Individual Mobilization Augmentees (IMAs) (CAT B): Attached to and augment active component and government agency missions and are rated by active component or government agency supervisors.

3.4. Air National Guard Overview. ANG personnel have a dual role based on the Militia Clause of the U.S. Constitution, Article 1, Section 8. ANG personnel are members of “two overlapping but legally distinct organizations.” *Perpich v. Dept of Defense*, 496 US 334, 345 (1990) (quoting *Perpich v. Dept of Defense*, 666 F. Supp. 1319 (D. Minn. 1987)). ANG personnel are members of their organized federally-regulated State Militia and they are Reserve members of the Air Force, except for the District of Columbia ANG which is exclusively federal and operates under federal control at all time. ANG personnel serve in three separate duty statuses: State Active Duty; Title 10, and Title 32. When ANG personnel are performing State Active Duty, the duty is purely a state function in their State Militia; therefore they are not subject to Title 10 (including the UCMJ). When ANG members are in Title 10 status, the duty is purely federal service and the member is generally relieved of all National Guard duty in accordance with 21 USC 325(a). Title 32 is a mixture of federal and state service, which includes Full Time National Guard Duty (FTNGD) for training and operational support, and as AGR members, are under the command and control of their Governors and Adjutant Generals (TAGs). Therefore, for purposes of this instruction, ANG personnel on State Active Duty or in a Title 32 status are not subject to the UCMJ.

3.5. Air National Guard Roles.

3.5.1. Federal Role (Title 10): The mission is to maintain well-trained, well-equipped units available for prompt mobilization under Title 10 of the U.S.C. during war and national emergencies. Generally, SecAF may not order to active duty a member of the Air National Guard of the United States (for the remainder of this chapter, ANG personnel in this status will be designated as members of ANGUS) without the consent of the governor or other appropriate authority of the state concerned. 10 U.S.C. 12301(d). ANGUS personnel in Title 10 federal status are subject to the UCMJ, the contents of this chapter and Department of the Air Force Instructions.

3.5.2. State Role. Service in this capacity occurs when the governor activates National Guard personnel to State Active Duty (for the remainder of this chapter, ANG personnel in this status will be designated as members on SAD) in response to natural or man-made disasters or Homeland Defense missions. National Guard personnel on SAD are under the command and control of their State Governors and TAGs and subject only to the state’s code of military justice (i.e., not the UCMJ or this instruction). See DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*.

3.5.3. FTNGD or FTNGD-AGR (Title 32). The mission is to provide trained, organized and disciplined units and individuals to protect life, property, and preserve peace, order and public safety within the state or territory by providing emergency relief support, search and rescue,

support to civil defense authorities and counterdrug operations. Duties performed while in Title 32 status typically include inactive duty for training (IDT/drill weekend) annual training and full-time ANG duty. FTNGD or FTNGD-AGR, 32 USC 502, personnel are under the command and control of their State Governors and TAGs subject to the state's code of military justice (i.e., not the UCMJ or this instruction). See DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*.

Section 3B—Jurisdiction, UCMJ Authority, and Recall Process

3.6. Court-Martial Jurisdiction over ARC Members. ARC members meeting the requirements of Article 2, UCMJ, are subject to UCMJ jurisdiction for NJP, and general, special, and summary courts-martial for offenses committed while in federal status, on active duty, or on IDT for AFR members. For guidance on NJP, see DAFI 51-202, *Nonjudicial Punishment*. **Note:** Federal active duty statuses for ANGUS personnel may include active duty for training (ADT), active duty other than training (ADOT) which includes operational support to the active component (ADOS-AC) or active duty operational support to the reserve component (ADOS-RC), and National Guard Bureau (NGB). See Article 2(a)(3), UCMJ, for further guidance. **Note:** For ARC members, review the member's orders to determine the status (e.g., annual tour or IDT, etc.) and the authority for the orders (e.g., Title 10, Title 32, state authority, etc.). ANG members' orders may have a clause that auto-converts orders from one status to another, so it is vital to review orders to identify the member's status as early into the investigation as possible to identify whether the military has prosecutorial jurisdiction over the member.

3.6.1. Concurrent Nature of Jurisdiction. Jurisdiction pursuant to [paragraph 3.7](#) is concurrent jurisdiction to be shared between the command chain of the relevant ARC unit and the relevant Regular Air Force unit or host command. Attachment for the exercise of court-martial convening authority does not serve to divest any commander from the exercise of such authority over a member of an Air Force or Space Force tenant unit or Air Force or Space Force element or a member of the ARC.

3.6.2. Exercise of Court-Martial Jurisdiction over ANGUS Members. All ANGUS members are assigned to the 201st Mission Support Squadron (MSS) and are attached for ADOT or ADT to the relevant Regular DAF unit or host command.

3.6.2.1. Convening authorities generally will reside with the Regular Air Force unit, host command, or with that attached Regular DAF unit host command's NAF/FLDCOM. Moreover, the exercise of convening authority by the Regular DAF host command ensures resolution of military justice matters expeditiously (bearing in mind due process considerations of the accused and the interest of victims in timely resolution), preserves resources, and retains command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the DAF.

3.6.2.2. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined. Accordingly, prior to taking judicial action against an ANG member, legal offices, commanders, and convening authorities at all attached Regular DAF unit or host commands must coordinate with 201 MSS through ANGRC (NGB). Correspondence can be directed to NGB.CC.201MSS.ADCON.Org@us.af.mil. Such coordination is required to ensure jurisdiction properly attaches. **Note:** Attached/host command legal office coordination with the National Guard Bureau, Office of the General

Counsel (NGB-GC) is required; however, the NGB-GC is not an active duty SJA, but a legal advisor assigned to support 201 MSS/CC in ensuring appropriate Total Force Discipline with regard to current and former ANGUS members.

3.6.3. Duration of Jurisdiction. Once court-martial jurisdiction attaches for an offense, an accused remains subject to the UCMJ for that offense through the execution and enforcement of a sentence, or, if not sentenced to confinement, until such time as the member is no longer in a federal status.

3.6.3.1. AFR members may be involuntarily ordered to active duty as necessary if not in federal status, on active duty, or in IDT status when the offense is discovered. Once jurisdiction attaches in accordance with R.C.M. 202(c), an AFR member may be held on active duty pending disposition of offenses or may be released to reserve status and recalled as necessary for imposing restrictions on liberty in advance of trial, preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and initial entry into confinement, if adjudged. See R.C.M. 204(b). Prior to holding the member on or recalling the member to active duty, the servicing SJA must consult with JAJ/JAJI and the member's Reserve chain of command through AFRC/JA.

3.6.3.2. ANGUS members are subject to UCMJ jurisdiction while on Title 10 orders, in accordance with R.C.M. 202(c). However, ANGUS orders cannot be administratively extended for purposes of investigations into UCMJ violations.

3.6.3.2.1. When ANGUS have or are about to revert to a State or Title 32 status, the previously attached Regular DAF unit or host command legal office must contact the NGB-GC, who is the legal advisor detailed to the 201 MSS, Air National Guard Readiness Center (ANGRC) at Joint Base Andrews, to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction.

3.6.3.2.2. If the attached Regular DAF unit or host command will not be able to complete UCMJ disciplinary action by NJP or court-martial before an ANGUS member's status reverts to a non-federal status, the Regular DAF unit or host command should contact the SJA for the Regular Air Force or Space Force unit that is geographically closest to the member's home state ANG wing. The two Regular DAF units should consider whether it would be appropriate to transfer the case, including its AMJAMS entry, to the geographically closer installation in order to complete any necessary military justice actions, including involuntarily recalling that ANG member to active duty for NJP or court-martial. Ordinarily the case should transfer to the installation geographically closer to the member. **Note:** Nothing in this paragraph is intended to limit concurrent jurisdiction or otherwise inhibit the ability of any other convening authority from exercising convening authority (and its ancillary recall authority, if applicable) over the ANG member.

3.6.4. Jurisdiction over Separated/Retired Members.

3.6.4.1. See [paragraph 2.16.1](#) and [paragraph 2.16.2](#) for effects of completion of Regular DAF Military Service.

3.6.4.2. A member separated or discharged from the Regular DAF prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the service member retains military status in the ARC.

3.6.4.3. Retired ARC members receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired ARC members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (AFCCA 15 Mar. 1999)), may be tried by court-martial for acts or omissions committed while on active duty or inactive duty training or in federal status, if their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

3.6.5. Responsible Regular DAF Command.

3.6.5.1. AFR members are attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.6.5.2. ANG members who commit UCMJ offenses while in federal status or on Title 10 orders, will ordinarily be tried by the Regular DAF unit to which they are assigned or attached. Once recalled to federal status, ANG members not assigned or attached to a Regular DAF unit will be attached to the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a).

3.6.5.3. Mobilized or deployed ARC members. The organizational commander exercising Operational Control (OPCON) over the unit/organization to which a recalled or activated reservist is assigned or attached for duty (at the mobilized or deployed location) has concurrent UCMJ punishment authority. However, the deployed commander will confer with the ARC Airman's commander at his or her permanently assigned duty station before taking any action. See AFI 10-402_ANGSUP, *Mobilization Planning*, paragraph 5.5..

3.7. Court-Martial Considerations for ARC Members.

3.7.1. General and Special Courts-Martial.

3.7.1.1. In ARC member cases, trial counsel must be prepared to introduce sufficient evidence to establish in personam (personal) jurisdiction over the accused at the time of the offense. **(T-0)**. See R.C.M. 307; *United States v. Miller*, 78 M.J. 835 (ACCA 2019); *United States v. McDonagh*, 14 M.J. 415, 422 (C.M.A. 1983); *United States v. Laws*, 11 M.J. 475 (C.M.A. 1981).

3.7.1.2. ARC members must be on active duty prior to arraignment at a general or special court-martial. **(T-0)**. See R.C.M. 204(b)(1).

3.7.2. Summary Courts-Martial.

3.7.2.1. ARC members may be tried by SCM during the member's period of Title 10 active duty or normal period of IDT for reservists.

3.7.2.2. All punishments remaining unserved at the end of a period of Title 10 active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of IDT or Title 10 active duty. See Article 2(d)(4), UCMJ and R.C.M. 204(b)(2).

3.8. Recall to Duty Considerations for ARC Members.

3.8.1. In order for an ARC member to be adjudged confinement or any other restriction on liberty, SecAF must approve the recall to active duty. See Article 2(d)(5), UCMJ. **(T-0)**.

3.8.2. An ARC member must be in a Title 10 federal status for the following stages in the court-martial process:

3.8.2.1. While in pretrial confinement; **(T-0)**.

3.8.2.2. Preferral (**Note:** When preparing the DD Form 458, *Charge Sheet*, for ARC members serving on extended active duty, use the organization to which they are attached for active duty in Block 5); **(T-0)**.

3.8.2.3. Article 32 preliminary hearing; **(T-0)**.

3.8.2.4. Service of referral documents; **(T-0)**. and

3.8.2.5. Any court-martial proceeding at which the accused has a right to be present, to include arraignment and sentencing proceedings. **(T-0)**.

3.8.3. An ARC member confined pursuant to a sentence imposed by a court-martial having in personam jurisdiction over the member at the time of trial remains subject to the UCMJ while in a military confinement facility. See Article 2(a)(7), UCMJ.

3.9. ARC Member Recall Authority.

3.9.1. Recall Authority for AFR Members. Subject to the consultation requirement of [paragraph 3.7.3.2.1](#) the following individuals may recall a Reserve member to active duty:

3.9.1.1. A GCMCA for the Regular DAF unit to which the ARC member is attached for training purposes;

3.9.1.2. A GCMCA for the Regular DAF unit in which the ARC member performed federal service, active duty, or inactive duty training when the offense occurred;

3.9.1.3. A GCMCA for the Regular DAF host unit, as designated in the applicable host-tenant support agreement, if the ARC member is assigned to an ARC unit for training purposes or was attached to such a unit when the offense occurred;

3.9.1.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for ARC members assigned or attached to their respective commands; or

3.9.1.5. A GCMCA for the Regular DAF host command described in paragraphs [2.5.1](#) and [2.5.5](#) See Article 2(d), UCMJ.

3.9.2. Recall Authority for ANG Members. If an ANG member reverts to Title 32 or state status before UCMJ action commences, the member must be recalled to active duty under Title 10 U.S.C. § 802(d), *Persons subject to this chapter*. **(T-0)**.

3.9.2.1. Subject to the consultation requirement of [paragraph 2.5.5](#), the following individuals are authorized to order the recall of an ANG member to Title 10 active duty:

3.9.2.1.1. A GCMCA for the Regular DAF unit to which the member was attached for duty;

3.9.2.1.2. A GCMCA for the Regular DAF unit to which the member was attached for training;

3.9.2.1.3. A GCMCA for the host command of the nearest Regular Air Force wing or Space Force equivalent and its appropriate subordinate and higher commands; or

3.9.2.1.4. A GCMCA pursuant to an agreement with the former attached supported unit commander or attached unit training commander.

3.9.2.2. Legal Office Coordination. The local legal office supporting the relevant SPCMCA will coordinate with the GCMCA legal office and the NGB-GC legal advisor to the 201 MSS/CC when determining whether ANG member recall to active duty is appropriate in each applicable case. If the GCMCA concurs with the SPCMCA legal office that an ANG member's recall to active duty is appropriate, that local SPCMCA legal office will work with the NGB-GC legal advisor on the process to involuntarily recall the ANG member to active duty.

3.10. Additional Process Requirements to Recall an ANG Member.

3.10.1. The GCMCA, in consultation with its SJA, evaluates recall recommendations made by the subordinate unit and legal office. In order to proceed with recall, the GCMCA SJA concurs with the local SPCMCA SJA's evaluation of the evidence that establishes a probable cause standard has been met and that NJP or court-martial is an appropriate UCMJ process.

3.10.2. The installation legal office informs the NGB-GC legal advisor of the GCMCA SJA concurrence and GCMCA intent to recall the ANG member. The NGB-GC legal advisor forwards the recommendation to the 201 MSS/CC for concurrence.

3.10.3. Upon concurrence, the 201 MSS/CC requests the applicable state TAG's documented consultation and concurrence with the decision to seek the ANG member's involuntary recall to active duty. See [paragraph 3.12.7](#) for documents which must be forwarded to TAG. Upon receipt of the TAG's memorandum, the NGB-GC legal advisor forwards the memorandum to the installation legal office staffing the recall package for continued processing of the request.

3.10.4. The recall request is routed through JAJI to the SecAF for approval in accordance with [paragraph 3.12](#). **Note:** This step may be skipped if there is no intent to seek confinement in sentencing.

3.10.5. The GCMCA signs the order recalling the member to Title 10 status for UCMJ action;

3.10.6. AF/A1M provides the man days for the orders under 10 U.S.C. § 802(d);

3.10.7. The member's home station creates the pay order(s);

3.10.8. Travel Funding for Recalled Member. The GCMCA who recalls the member to active duty funds travel-related entitlements in accordance with the Joint Travel Regulations, [Chapter 3](#), Part A. <https://www.defensetravel.dod.mil/site/travelreg.cfm>

3.10.9. Man Days and Travel Funding for Military Witnesses. The convening authority that convenes a court-martial requiring the involuntary recall to active duty of ANG members for the purpose of appearing as military witnesses is responsible for providing man days for active duty military orders and any accompanying travel-related entitlements. The NGB-GC legal advisor should be contacted well in advance of trial to assist in facilitating the placement of ANG members on active duty orders for the purpose of appearing during courts-martial as military witnesses. **Note:** If ANG members are being required to travel and appear at a court-martial in military uniform as witnesses they must be activated using DAF military personnel appropriations and travel funding.

3.11. Secretarial Approval of ARC Member Recall for Court-Martial. Forward requests for SecAF approval of an order to recall an ARC member for court-martial via functional channels to JAJI. The request should be made prior to preferral of charges. SecAF must approve the recall prior to referral of charges in order to preserve confinement as a punishment option. Requests forwarded to JAJI for processing shall include, at a minimum, the following:

- 3.11.1. Concurrence of the GCMCA for the DAF unit convening the court-martial.
- 3.11.2. The preferred or anticipated charges and specifications. If charges have been preferred, include a copy of the charge sheet and personal data sheet.
- 3.11.3. A summary of the evidence relating to each offense. Include copies of any reports of investigation, witness statements, or documentary evidence.
- 3.11.4. A description and copies of any records of the member's prior court-martial convictions and NJPs, if any.
- 3.11.5. Whether the member refused an offer of NJP for any of the charged offenses at issue in the case.
- 3.11.6. The member's background, including civilian employment, family circumstances, and character of military service.
- 3.11.7. Documentation of consultation with the member's ARC chain of command. **Note:** For ANG members, the state TAG must be informed and consulted. Consultation requires the state TAG or chain of command be provided with the general nature of the charges, copies of all investigative reports, and other evidence in the government's possession used to support a finding of probable cause.
- 3.11.8. A written legal review by the wing-level legal office requesting the recall. Additional written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is sufficient.

3.12. NJP Jurisdiction Over ARC Members. Refer to DAFI 51-202 for jurisdictional considerations and processing of ARC members.

3.13. Other Administrative Action. Refer to AFI 36-2907, *Adverse Administrative Actions*, for disciplinary matters not rising to NJP or court-martial.

Section 3C—Investigations and Initial Disposition

3.14. Investigations Involving ARC Members.

- 3.14.1. Investigations are conducted by the applicable DAF law enforcement.
- 3.14.2. The legal office for the responsible Regular DAF command over the ARC member is responsible for advising law enforcement and the command on the case.
- 3.14.3. NGB-GC and ANG wing legal offices are not responsible for advising law enforcement, or the Regular DAF commander, or the convening authority on case.
- 3.14.4. Investigation considerations for AFR members. Upon discovery, the servicing Regular DAF legal office should consult with AFRC/JA for specific status considerations.

3.14.5. Investigation Considerations for ANG members.

3.14.5.1. When ANG members are investigated, the legal office servicing the DAF investigative agency must notify NGB-GC. When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to JAJM and document the rationale for the delayed entry in AMJAMS case notes.

3.14.5.2. Although service members may be involuntarily retained beyond their expiration of term of service to undergo court-martial, there is no authority to administratively extend an ANGUS member's active duty orders for the purpose of completing an investigation.

3.15. Search Authorizations (M.R.E. 315). Commanders acting as search authority for Air Force Reserve Command installations must be serving in a Title 10 status to authorize a search. See [Section 6A](#) for general information on search authorizations.

3.16. Initial Disposition Authority for Qualifying Sexual Assault Allegations Involving ARC Members. For general instructions and qualifying offenses, see [paragraph 10.2](#).

3.16.1. Servicing Legal Office. The servicing legal office responsible for advising the Regular DAF SPCMCA and GCMCA regarding the initial disposition is the Regular Air Force or Space Force legal office that services the Regular DAF SPCMCA to whom the accused is assigned, unless such provision of advice has been withheld to the Regular DAF GCMCA legal office level.

3.16.1.1. Air Force Reserve Members. Air Force Reserve Command (AFRC) is not responsible for the processes defined in [Section 10B](#). However, servicing Regular DAF legal offices should consult with AFRC/JA prior to making a recommendation as to initial disposition.

3.16.1.2. Air National Guard Members. The 201 MSS, Air National Guard Readiness Center is not responsible for the processes defined in [Section 10B](#). However, servicing Regular DAF legal offices should consult the 201 MSS/CC and NGB-GC prior to making a recommendation to the SPCMCA as to initial disposition of allegations of sexual assault allegations.

3.16.2. AFR members accused of committing a covered offense in [paragraph 10.2](#) while in Title 10 status. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.3](#).

3.16.3. ANG members accused of committing a covered offense in [paragraph 10.2](#) while on Title 10 active duty. The responsible SPCMCA will obtain the victim's views on jurisdiction and disposition if the member has been previously recalled to Title 10 active duty status or has remained on Title 10 active duty status. See [Section 10A](#). The responsible GCMCA will conduct the review of initial disposition decision. See [paragraph 10.3](#) In the event the offense occurred while the member was in Title 32 or civilian status, the active duty SPCMCA and GCMCA are not subject to the requirements of Sections [10A-10D](#).

3.16.3.1. If the following conditions apply, the local legal office should contact JAJI for guidance:

- 3.16.3.1.1. The ANG member committed the offense while in Title 10 active duty status;
 - 3.16.3.1.2. The ANG member was subsequently released from Title 10 active duty status;
 - 3.16.3.1.3. The ANG member has not been recalled; and
 - 3.16.3.1.4. No convening authority listed in [paragraph 3.6.2](#), has indicated an intent to recall the member for either NJP or court-martial.
- 3.16.4. If the initial disposition decision is not to refer the qualifying sexual assault allegation to a court-martial, the responsible legal office will make the required notifications.
- 3.16.5. In cases where the convening authority with initial disposition authority (IDA) decides to dispose of qualifying sexual assault offenses as listed in [paragraph 10.2](#), the servicing legal office must notify the 201 MSS/CC through NGB-GC of the decision. If applicable, the servicing legal office may also recommend adverse administrative action which may be appropriately taken by either the 201 MSS/CC, the ANG member's local state wing, or unit commander.

Section 3D—Pre-Trial Matters

3.17. Detailing ARC Members to Courts-Martial (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ). For courts-martial involving an AFR accused, convening authorities should consider detailing AFR members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

3.18. IMDC Requests. Only ARC judge advocates on extended Title 10 active duty tours can be requested and may be made available. The reasonable availability of ARC judge advocates is assessed in the context of R.C.M. 506(b)(1) and [paragraph 15.6](#) (i.e., the restrictions apply to the active and reserve components alike). ARC judge advocates must be in Title 10 status at all times when performing as IMDC. Requests for ARC judge advocates are processed in accordance with [paragraph 15.6](#).

3.19. Plea Agreement Considerations with ARC Members. As with expiration term of service (ETS) for RegAF members, if an ARC member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their expiration of Title 10 status may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0)**. See *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

Section 3E—Post-Trial and Punishment Considerations for ARC Members.

3.20. Post-Trial and Punishment Considerations for ARC Members.

- 3.20.1. Confinement and Restrictions on Liberty. Without SecAF approval of the order to active duty, an ARC member recalled to active duty for trial by court-martial may not be

sentenced to confinement or required to serve a punishment consisting of any restriction on liberty during the recall period of duty. Article 2(d)(5), UCMJ. A punishment of restriction to specified limits may be served only during normal periods of inactive duty training or active duty.

3.20.2. Forfeitures.

3.20.2.1. Member Status. An ARC member sentenced to post-trial confinement should not be placed in an active duty pay status beyond the EoJ.

3.20.2.2. Active Duty Pay. An ARC member in confinement is ordinarily not entitled to pay unless ordered on active duty by statute (mission-related need or disciplinary purposes under 10 U.S.C. § 802(d)), or necessarily incident to an authorized expenditure.

3.20.2.3. Legal Office Responsibilities. Legal offices must pay particular attention to the ARC member's status after EoJ or, if applicable, entry into confinement. If the ARC member is removed from active duty status after the EoJ, it may limit the relief a convening authority may provide to the member or the member's family under R.C.M. 1103, 1109-1110 (e.g., it may limit the ability of the convening authority to waive forfeitures for the benefit of the dependents).

3.20.3. Involuntary (Required) and Excess Leave. See [Section 20M](#) for general guidance on excess leave. ARC members may be removed from active duty status after serving an approved sentence of confinement leave and recalled as necessary to complete appellate review rather than being placed in excess. AFRC/JA and DAF/A1M should be consulted for further guidance on excess leave for ARC members. Only a GCMCA may involuntarily recall an ANG member to active duty under 10 U.S.C. § 802(d) for purposes of appellate review by the GCMCA.

3.20.4. Release from Active Duty. At the final adjournment of the court-martial, the ARC member ordered to active duty for the purpose of conducting disciplinary proceedings should be released from active duty within one duty day, unless the order to active duty was approved by SecAF and confinement was adjudged.

3.20.5. Unserved Punishment.

3.20.5.1. AFR members. Any other unserved punishments, including a restriction on liberty, may be served during subsequent periods of inactive duty training or active duty. See Article 2(d)(5), UCMJ; R.C.M. 204(b) and 1003(c)(3).

3.20.5.2. ANG members. ANG members may not be placed on NGB or ANG funded orders for the sole purpose of serving unserved punishments, including any restriction on liberty.

Section 3F—Victim Witness Assistance Program and ARC Members

3.21. General Provision. For general instructions see DAFI 51-207, Chapter 2.

3.22. Determining the Appropriate Local Responsible Official (LRO).

3.22.1. The LRO of an ARC member in federal status who allegedly committed an offense is the installation commander or SPCMCA of the Regular DAF unit to which the ARC member is attached.

3.22.2. The LRO of an ARC member in federal status who allegedly committed an offense and is not assigned or attached to a Regular DAF unit (e.g., stand-alone AFR or ANG base) is the installation commander of the nearest DAF unit.

Section 3G—ARC Judge Advocate Requirements

3.23. ARC Judge Advocates Serving as Counsel. The requirements of certification and designation set out in [paragraph 15.4](#) apply to AFR judge advocates. Only those AFR judge advocates assigned as Circuit Trial or Circuit Defense Counsel may be certified annually. Other AFR judge advocates are certified according to AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*. Air Force Reserve judge advocates must be on active duty or performing inactive duty training to be detailed as trial counsel or military defense counsel, and they must be in Title 10 status at all times when performing trial duties. [Paragraph 15.6](#) provides additional guidance on AFR judge advocates performing IMDC duties.

3.24. ARC Judge Advocates Serving as PHOs. Refer to [paragraph 12.2.1](#) for general qualifications of a PHO. ARC judge advocates may serve as a PHO while on Title 10 federal status or performing inactive duty training. ANG judge advocates may serve as a PHO but must be on Title 10 orders. (T-0). Article 136(b), UCMJ, authorizes ARC judge advocates to administer oaths while on active duty or performing inactive duty training.

3.25. ARC Judge Advocates Serving as Summary Court-Martial Officers (SCMOs). Refer to the Summary Court-Martial Guide on the VMJD for guidelines in conducting Summary Courts-Martial.

3.25.1. An AFR on active duty who is a commissioned officer may serve as an SCMO under R.C.M. 1301. AFR judge advocates on inactive duty for training are not on active duty and cannot serve as SCMOs.

3.25.2. An ANG officer serving on active duty in federal status may serve as an SCMO under R.C.M. 1301.

Section 3H—ARC Mandatory Legal Training

3.26. SAPR Program First Responder Training for Legal Personnel. Annual SAPR First Responder Training for Legal Personnel is required for certain legal personnel (judge advocates, victim and witness assistance program personnel, legal assistance attorneys, and trial counsel in accordance with DoDI 6495.02, Volume 1, Enclosure 10, paragraph 2, *Sexual Assault Prevention and Response (SAPR): Program Procedures*). See DAFI 51-207, Chapter 4 for additional information.

3.26.1. ARC judge advocates who practice in military justice (including Article 32 PHOs) or legal assistance (this may include VCs and defense counsel) or who serve as trial counsel are required to complete the annual training.

3.26.2. ARC paralegals who provide legal assistance support or directly contribute to a VWAP are required to complete the annual training.

3.27. Article 137 Briefing Requirements for ARC Members.

3.27.1. ARC enlisted members are required to receive the Article 137 briefing within 14 calendar days of initial entrance on a duty status with an ARC, again after completing basic training, and again at the time of reenlistment. **(T-0)**.

3.27.2. ARC officers are required to receive the Article 137 briefing within six months of commissioning in a reserve component. **(T-0)**.

3.27.3. Training Wing SJAs ensure officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

Section 3I—ARC AMJAMS Issues**3.28. Obtaining Inputs.**

3.28.1. Demographic Data. Demographic data may not automatically populate for members of the ARC. For AFR members, the servicing Regular DAF legal office should contact the unit to which the member is assigned or attached, which may be either an active duty or reserve unit, to request the member's record review RIP. For ANG members, the servicing legal office should contact 201 MSS and NGB-GC to obtain such data.

3.28.2. Command Inputs. The servicing Regular DAF legal office should periodically contact the member's ARC chain of command for AMJAMS inputs. For ANG members, this means contacting NGB-GC to request substantive inputs.

3.29. Special Interest Reports (SIRs). The servicing Regular DAF legal office is responsible for creation, modification, closure, and submission of SIRs in cases for which they are the servicing legal office, including where the members belong to the ARC.

Chapter 4

INITIAL STEPS UPON NOTIFICATION OF A QUALIFYING ALLEGATION: CIP, SVIP, VICTIM SUPPORT, PROTECTIVE ORDERS, AND ADMINISTRATIVE HOLDS

4.1. General Provision. An effective military justice process starts with a timely, thorough, and accurate investigation. Legal office and investigative personnel must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready reports of investigation, robust litigation preparation, and timely resolution of military justice cases.

Section 4A—Criminal Investigation and Prosecution (CIP) Capability

4.2. CIP Capability. The CIP capability integrates DAF military legal capabilities and military criminal investigation capabilities at the earliest possible opportunity in cases where the servicing legal office SJA determines a substantive investigation warrants CIP capability activation.

4.3. Composition of the CIP capability. The CIP capability will consist of investigative personnel and the servicing base legal office judge advocates and paralegals. The CIP capability also includes *individually assigned but not detailed* CTC, in those cases where the servicing legal office SJA determines CTC support is warranted. Other personnel may join the capability on a case-by-case basis as necessary at the discretion of the SJA or the CTC, if assigned.

4.3.1. Investigative Personnel. The investigator or agent assigned to an investigation is part of the CIP capability. During the investigative stage of the case and until a decision on disposition (e.g., preferral of charges), the investigator or agent is supported by the other CIP capability members. Once charges are preferred the CIP capability investigator or agent will support the capability's prosecutorial investigation and trial preparation.

4.3.2. Legal Office Personnel. If the servicing legal office SJA determines CIP capability activation is warranted, the servicing legal office SJA must appoint, in writing, the legal office members of the CIP capability, which must consist of at least one judge advocate, one paralegal, and one victim/witness liaison (VWL). Judge advocate, paralegal and VWL members can be designated as a standing capability or may be appointed on a case-by-case basis. SJAs should appoint more experienced judge advocates, paralegals and VWLs to the more complex and serious cases. See [Section 4B](#) regarding Special Victim Investigation and Prosecution (SVIP) capability requirements for certain categories of cases.

4.3.3. CTCs. CTCs are assigned to a CIP capability by either the circuit DTO, or Chief/Director of Operations of JAJG. CTCs will be detailed in appropriate cases pursuant to JAJG guidance. CIP capability CTCs will support and advise as necessary. Once charges are preferred, the CIP capability CTC will continue to provide pretrial and trial advice to the servicing legal office and military criminal investigators. If the CIP capability CTC is detailed as trial counsel to the case, the CTC will be the lead prosecutor and will be supported by the other CIP capability members.

4.4. Activation of CIP Capability.

4.4.1. Initiation of Substantive Investigation. If a report of a criminal offense is made to military law enforcement, such that either Security Forces or OSI initiates an investigation into

the alleged offense, the investigator or agent must notify the servicing legal office of the receipt of the report or allegation within 24 hours.

4.4.2. Receipt of Jurisdiction from Local Authorities. If a criminal report is made to non-DoD law enforcement, such that neither Security Forces nor OSI initiates substantive investigative steps, Security Forces or OSI will notify the servicing legal office SJA within 24 hours of the earlier of either: (1) non-DoD law enforcement cease their investigation and either Security Forces or OSI becomes the primary investigative agency; or (2) the DAF requests and receives jurisdiction from the local authorities.

4.4.3. Within 24 hours of determining a substantive investigation warrants CIP capability, the SJA or designated legal office personnel may request CTC support in accordance with JAJG requirements. The DTO or JAJG will assign a CTC to the CIP capability within 72 hours.

4.5. CIP Capability Process.

4.5.1. Designation and Notification of CIP Activation. In cases where a CTC is requested, no later than one duty day after CTC assignment, the SJA will ensure the membership of the CIP capability is memorialized in writing and that documentation of such is provided to the members of the CIP capability. Where no CTC is requested, the SJA will ensure membership of the CIP capability is memorialized no later than one duty day after CIP activation. This designation and notification may only be made by the SJA or person acting as the SJA.

4.5.2. Case Consultation. Within five duty days of the later of (1) CIP activation; or (2) CTC assignment for a specific case, the CIP capability must conduct a case consultation in order to obtain the facts and circumstances of the alleged offense and discuss initial legal matters relevant to the investigation. The frequency of further case consultations will be determined on a case-by-case basis, at the discretion of the assigned CTC and the servicing legal office SJA. The case update consultations may be conducted in person, telephonically, over video-conference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual CIP capability. The case paralegal or judge advocate member must document CIP consultation meetings in the case file and AMJAMS entry.

4.5.3. The CIP capability supports the case agent or investigator during the investigative stage of the case.

4.5.3.1. Judge advocate and paralegal members of the CIP capability should avoid direct participation in MCIO activities that may disqualify them from participating as trial counsel or case paralegal on a court-martial. Judge advocates and paralegals should consult with their assigned CTC, circuit DTO, and SJA to identify any activities posing this risk. The capability should properly safeguard all attorney work-product material. See *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Romano*, 46 M.J. 269 (CAAF 1997); *United States v. Vanderwier*, 25 M.J. 263 (C.M.A. 1987).

4.5.3.2. Trial counsel and paralegals provide legal support to the investigator, to include addressing any requests for investigative subpoenas, immunity, or judicial process.

4.5.3.3. The capability will work with investigators during the development of the investigative plan. This includes working with the case agent or investigator in identifying potential criminal offenses for investigation, and comparing the evidence in the case with the elements of proof for a given offense.

4.5.3.4. Judge advocates will coordinate with the case agents or investigators on subject interviews and victim interviews. Preferably, judge advocates should coordinate with the case agents or investigators on all substantive witness interviews.

4.6. Case Development.

4.6.1. The CIP capability and the case agents will continue their collaborative efforts as the investigation proceeds. As appropriate, designated investigative support capability members or judge advocate staff members will attend OSI case review meetings. Likewise, OSI personnel and Security Forces investigators may be invited to attend portions of judge advocate military justice meetings for relevant case updates. Investigative personnel will not be provided with AMJAMS materials or any other attorney work product and legal office personnel must be cautious to avoid discussing work product materials with investigators present.

Section 4B—Special Victim Investigation and Prosecution (SVIP) Capability (DoDI 5505.19, Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs))

4.7. General Provision. The SVIP capability is a specialized CIP capability activated for investigations and cases involving qualifying offenses.

4.8. Qualifying Offenses. Offenses that require activation of the SVIP capability are (1) all unrestricted reports of adult sexual assault (including penetrative and contact offenses); (2) unrestricted reports of domestic violence involving (a) strangulation or suffocation, (b) a dangerous weapon, or (c) resulting in substantial or grievous bodily harm; and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. **(T-0).**

4.9. Composition of the SVIP Capability.

4.9.1. The SVIP Capability is comprised of specially-trained and qualified CIP members. The SVIP capability will consist of criminal investigative personnel; CTC (In SVIP cases in which the CTC assigned is not a member of the SVU, the CTC will consult with an SVU-CTC on complex or unfamiliar issues); and the following SVIP capability members from the base legal office, at a minimum:

4.9.1.1. Judge advocate(s). At least one judge advocate appointed to the capability must be certified under Article 27(b)(2), UCMJ, unless no certified judge advocate (other than the SJA and DSJA) is assigned to that legal office, or other exceptional circumstances apply. If a certified judge advocate is available but no certified judge advocate is appointed to the SVIP capability, the SJA must indicate the reasons for this in writing.

4.9.1.2. Paralegal(s). At least one paralegal appointed to the capability must have completed the Paralegal Craftsman Course.

4.9.1.3. VWAP victim liaison(s).

4.10. Consultations.

4.10.1. SVIP Initial Notification. Installation legal offices must provide initial notice to JAJG within 24 hours of receiving an allegation involving an SVIP covered offense. This required notice is accomplished via submission of the SVIP Initial Notification Form located on JAJG's

Flite KM page. Directions for submission are included on the form. Within one duty day, JAJG will respond to the installation legal office with a preliminary determination of whether the alleged offense qualifies for SVIP status.

4.10.2. SVIP Capability Case Consultation. For cases with SVIP covered offenses, initial collaboration of the SVIP capability must occur within 48 hours of confirmation from JAJG that an allegation meets criteria of a special victim covered offense. **(T-0)**. Case update consultations must occur on at least a weekly basis thereafter. All consultations may be conducted in person, telephonically, over video-teleconference (VTC), through e-mail, or utilizing other collaborative tools, as determined by the individual SVIP capability. The case paralegal or legal office judge advocate member must document these weekly meetings in the case file and AMJAMS.

4.10.3. Consultation with External Personnel. In addition, the SVIP capability shall consult, as applicable, with the following personnel:

4.10.3.1. Sexual Assault Response Coordinators (SARC) providing services to any victim(s) in an investigation or case.

4.10.3.2. Victim Advocates (VA) providing services to any victim(s) in an investigation or case.

4.10.3.3. Family Advocacy Program (FAP) personnel, to include FAP managers, providing services to any victim(s) in an investigation or case.

4.10.3.4. Domestic Abuse Victim Advocates (DAVAs) providing services to any victim(s) in an investigation or case.

4.11. Required Training for SVIP Capability. All personnel assigned as members of an SVIP capability are required to have completed SAPR training requirements listed in DoDI 6495.02, Volume 1, to include annual training and first responder training. All judge advocates must have also completed the judge advocate training requirements detailed in DoDI 6495.02, Volume 1. Where possible, SJAs should consider appointing judge advocates who have attended specialized training in sexual assault investigations and prosecutions, such as the Sex Crimes Investigations Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia, or other advanced litigation or investigative courses.

4.12. Victim Support. See DAFI 51-207 for further rights, privileges and responsibilities to victims of crime and for special requirements pertaining to victims of certain sexual offenses and crimes of domestic violence.

4.12.1. Victim Access to Legal Assistance. If victims are eligible for legal assistance, the victim liaison must notify them of their eligibility during their initial meeting.

4.12.2. Victim Access to VC. If a victim is not represented by a VC but is eligible for representation, the SVIP Capability is responsible for notifying the victim of eligibility during the initial meeting. This notification will typically be accomplished by the victim liaison.

4.12.3. Victims' Rights. In cases where victims are not represented by a VC, crime victims must be notified by the SVIP capability of their rights, as discussed in DAFI 51-207. Where applicable, this includes the additional rights afforded to victims of sexual assault, as noted in DAFI 51-207. This notification will typically be accomplished by the victim liaison during the initial meeting with the victim.

4.12.4. Child Forensic Interviewers. The SVIP Capability should request specially trained child forensic interviewers to support the investigations and prosecution of complex child abuse and child sexual abuse cases.

4.12.5. Coordination with Key Organizations and Victim Support Services. Legal offices must establish and maintain active liaisons with the following organizations and key individuals to ensure appropriate victim support:

- 4.12.5.1. Local OSI Detachment;
- 4.12.5.2. Local civilian law enforcement and prosecutors' offices;
- 4.12.5.3. Local civilian victim advocacy organizations;
- 4.12.5.4. SARC and SAPR victim advocates;
- 4.12.5.5. VC;
- 4.12.5.6. FAP clinicians, FAP managers, and domestic abuse victim advocates;
- 4.12.5.7. Military chaplain offices;
- 4.12.5.8. Medical and mental health providers; and
- 4.12.5.9. Commanders and first sergeants.

Section 4C—No Contact and Military Protective Orders

4.13. General Provision. There are two types of orders that fall under this category which are issued by military members, to military members: informal “no-contact” orders and formal military protective orders (MPOs). SJAs must ensure that they advise commanders on the issuance of any such order, to include which type of order is appropriate in each situation.

4.14. No-Contact Orders.

4.14.1. Overview. No-contact orders may be verbal or written in memorandum form addressed to the person being given the order to have no contact with another. No-contact orders are appropriately used to temporarily stop communications between two or more parties who are involved in a dispute that does not rise to the level of a criminal investigation or to safeguard the investigative process in a criminal matter. No-contact orders may also be appropriately used as a brief, interim measure when a commander on G-Series orders is unavailable to issue an MPO. No-contact orders can be used CONUS and OCONUS. Generally, no-contact orders should be of limited duration or have a defined beginning and end date.

4.14.2. Issuing a No-Contact Order. No-contact orders may be issued by commanders, first sergeants, and other members senior in rank to the recipient of the order. If a no-contact order is issued verbally, it should be memorialized writing as soon as practicable. **Note:** No-contact orders may not be used with the intent to stop defense counsel from contacting witnesses as part of their duty to investigate changes pertaining to their client.

4.14.3. Limitations of a No-Contact Order. These orders are not enforced by civilian law enforcement. Moreover, unless notified of the existence of the no-contact order, military law enforcement is generally unaware of the existence of any such order and, therefore, cannot act to enforce the order on the installation.

4.15. Military Protective Orders (MPOs).

4.15.1. Overview. An MPO is a formal protective order. MPOs are appropriately used to ensure a person is protected from a subject during criminal investigations and prosecutions. Unlike a no-contact order, an MPO offers broad protections to the person being protected. An MPO affords the commander the opportunity to: limit communications; prohibit a subject or accused from being within a certain physical distance of a protected person or protected person's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person. MPOs are generally used in all cases involving domestic violence or sexual assault, though commanders may elect to use a no-contact order if more appropriate in the particular case.

4.15.2. Issuing an MPO. MPOs must be completed on DD Form 2873, *Military Protective Order*. **(T-0)**. Only a commander on G-Series orders may issue an MPO.

4.15.3. Member Request for Review of an MPO. Any individual who is either the subject of or party protected by an MPO may request the issuing commander review the MPO or any terms included on the MPO. Such requests are processed in accordance with [paragraph 4.16](#).

4.15.4. Modifying or Rescinding an MPO. Modification and/or rescission of an MPO must be completed via DD Form 2873-1. **(T-0)**. Commanders may modify or rescind an MPO of their own volition, responsive to requests from either of the parties, responsive to the periodic review process outlined in [paragraph 4.16](#), or for other reasons.

4.15.5. Expiration of an MPO. MPOs do not expire and an expiration date may not be listed on the DD Form 2873. Commanders must periodically review MPOs on file with their units in accordance with the procedures outlined in [paragraph 4.16](#).

4.15.6. Effect of Change of Command or Permanent Change of Station. If the member goes TDY or permanently changes duty stations, the gaining commander must be made aware of the existence of the MPO within the 30 days prior to the member's movement. In the event a member with an MPO is transferred to a different unit, the losing commander shall, not later than the date of the transfer, notify the gaining commander of the issuance of the MPO and the individuals involved in the MPO. **(T-0)**. The gaining commander shall make the notification requirements in [paragraph 4.15.9](#) to the local authorities within seven days of gaining the member. **(T-0)**. If the commander changes command or moves to a new duty station, then the gaining commander must be made aware of and provided a copy of the MPO within 30 duty days of taking command. The gaining commander, in either circumstance, must conduct the periodic review described in [paragraph 4.16](#).

4.15.7. Limitations of an MPO. These orders are not enforced by civilian law enforcement; however, civilian law enforcement may notify military law enforcement (e.g., Base Defense Operations Center (BDOC)) if an MPO is violated, provided the MPO is properly indexed in the National Crime Information Center (NCIC) and therefore visible to civilian law enforcement. See [paragraph 4.16.8](#).

4.15.8. Service. Copies of completed DD Forms 2873 and 2873-1 are served on each of the parties involved in the order.

4.15.9. Security Forces Notification. All new, modified, and rescinded MPOs (i.e., DD Forms 2873 and 2873-1) must be forwarded by the issuing commander to Security Forces (or service equivalent on installations where there is no Security Forces presence) for indexing in accordance with AFMAN 71-102 and DoD Policy Memorandum, Placing Military Protective Orders in the National Crime Information Center Protective Order File, dated 26 June 2014 and DoDI 6400.06, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*. On installations where there is a BDOC, MPOs are forwarded to BDOC. On installations where there is no Security Forces presence, MPOs are forwarded to the primary military law enforcement agency on that installation.

4.15.10. Local Authorities Notification. The installation commander is required to notify the civilian authorities of the issuance of any MPO, the identities of individuals involved in the order, any modifications to the order, and the termination of the protective order. **(T-0)**. See 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*. This requirement is satisfied when the issuing commander provides the required information to Security Forces, per [paragraph 4.15.9](#), and Security Forces submits the order to NCIC. See [Section 29B](#).

4.15.11. Orders Issued in Conjunction with Civilian Protective Orders. A commander may issue a “no-contact” order or MPO in conjunction with a protective order issued by civilian authorities. In determining whether issuance of a “no contact” order or MPO is appropriate, commanders should review the terms and length of any civilian protective order (e.g., prohibition against being within 500 feet of a person or prohibition against carrying a firearm vice merely preventing communication). This will help commanders determine which type of order is appropriate and prevent issuance of an order with terms that are contrary to or less restrictive than that issued by civilian authorities. See also 10 U.S.C. § 1561a, *Civilian orders of protection: force and effect on military installations*. Commanders must also consider that civilian authorities will not enforce a no-contact order or MPO, but will enforce a civilian protective order; therefore, MPOs should be no less restrictive than any civilian protective order. Commanders may issue MPOs with terms that are more restrictive than any civilian protective order.

4.16. Command Review of Military Protective Orders.

4.16.1. Subject Requests for Review.

4.16.1.1. Members subject to an MPO may request the review of an MPO or any of its terms.

4.16.1.2. Any such request and supporting matters must be submitted in writing.

4.16.1.3. The commander may elect to allow the member to further present matters in person, telephonically, or in writing.

4.16.1.4. Upon receipt of such requests, the commander must provide a copy of the request to the party protected by the MPO and allow that party three calendar days to provide any matters in response. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.16.1.5. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0)**.

4.16.1.6. The determination of the commander is final. Members may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

4.16.2. Victim Request for Review.

4.16.2.1. Parties protected by an MPO may request the review of an MPO or any of its terms.

4.16.2.2. Any such request and supporting matters must be submitted in writing.

4.16.2.3. The commander may elect to allow the protected party to further present matters in person, telephonically, or in writing.

4.16.2.4. Any decision must be communicated to the member and protected party in writing. If the commander modifies or rescinds the MPO, it must be formalized on DD Form 2873-1. **(T-0)**.

4.16.2.5. The determination of the commander is final. However, protected parties may request additional review of the MPO if the circumstances underlying the MPO or previous request for review have materially changed.

4.16.3. Annual Review Requirement. Commanders must review existing MPOs on at least an annual basis. This obligation is not delegable. This review should be documented in writing, though no format is prescribed.

4.16.3.1. Review as the Result of the Movement of a Member. In the event a member subject to an MPO moves to a new duty station on either an extended TDY, deployment, or PCS, the losing commander must notify the losing BDOC and the gaining commander of the existence of the MPO within 30 days prior to the member's arrival at the new unit. This ensures sufficient safeguards for the member and the protected party are put into place prior to the member's arrival and that the gaining commander is put on notice of the requirement to review the MPO. The gaining commander must review the MPO within seven days of the member's arrival to assess whether the MPO and its terms continue to be valid. If the gaining commander determines that the MPO continues to be valid, the gaining commander must notify the protected parties and BDOC within that initial seven day period. **(T-0)**. This obligation is not delegable.

4.16.3.2. Review as the Result of Change of Command. In the event the issuing commander (or subsequent commander who determined the MPO continued to be necessary) changes command, retires, separates, or otherwise ceases to be the commander of the unit to which the individual is assigned, the outgoing commander must notify the incoming commander of the existence of the MPO within 30 days after the change of command. This ensures sufficient safeguards for the member and the protected party remain in place and that the new commander is put on notice of their requirement to review the MPO. The new commander must review the MPO within 30 days of the commander's arrival to assess whether the MPO and its terms continue to be valid. This obligation is not delegable.

4.16.4. Review Process.

4.16.4.1. In order to maintain the MPO and its terms, the commander must determine that the MPO continues to be the least restrictive means necessary to safeguard the protected party from the subject of the MPO.

4.16.4.2. The commander may review the MPO at any time without notifying the subject or victim. However, prior to modifying or rescinding an MPO, the commander (or the commander's designee) must make reasonable attempts to notify the protected party to ensure the opportunity to provide matters for consideration by the commander. The commander (or the commander's designee) should document all attempts to reach the protected party. The commander must consider the response of the protected party in making a determination as to whether to modify or rescind the MPO or any of its terms.

4.16.4.3. After reviewing the MPO and any matters provided by the protected party, the commander makes a determination as to whether to retain the MPO. If the MPO is retained in its entirety, the commander must annotate his review in writing. It is recommended that any such documentation be retained with the MPO. If the MPO is rescinded or modified, any such rescission or modification must be documented on DD Form 2873-1 and a copy must be served on all parties and provided to BDOC. **(T-0)**.

4.17. Military Protective Orders and Unrestricted Sexual Assault Reports. In cases involving an unrestricted report of a sexual assault, the commander ensures the issuance of any military protective order complies with DoDI 6495.02. **(T-0)**. If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander documents in writing the basis for denial and forwards the request and basis for denial to the installation commander or equivalent.

4.18. Military Protective Orders and Unrestricted Domestic Violence Reports. In cases involving an unrestricted report of a domestic violence, the commander acts in accordance with this paragraph. If a victim requests a military protective order, be it an informal no-contact order or a formal MPO, and the commander elects to deny the victim's request, the commander must document in writing the basis for denial and forward the request and basis for denial to the installation commander or equivalent.

Section 4D—Legal Office Periodic Notification to Victims

4.19. Monthly Notice Required. Victims must be notified, no less than monthly, of the status of the investigation, prosecution, or alternate disposition of the allegation reported to law enforcement or the command, whichever is applicable. Written notification or memorialization is required in accordance with DAFI 51-207. This notification is required regardless of whether a victim is represented by counsel. See DAFI 51-207 for guidance on contacting represented victims.

Section 4E—Administrative Holds

4.20. Administrative Holds. Placing an "administrative hold" on an accused pursuant to DAFI 36-2110, *Total Force Assignments*, and AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, is generally advisable and, in most cases, necessary to avoid risk of PCS or separation of an accused during the pendency of an investigation or judicial proceedings.

4.21. Accused Members Assigned to CONUS. Accused members assigned CONUS will normally be subject to administrative hold and remain in the same assignment throughout investigation and any judicial proceedings. However, administrative holds of an accused can pose additional challenges at overseas stations or other locations with frequent personnel turnover. Practitioners may exercise discretion in determining whether initiating an administrative hold or terminating an existing administrative hold is in the best interest of the DAF.

4.21.1. Practitioners should consider the following non-exhaustive list of factors: the anticipated length of investigation or proceedings, the accused's DEROS, whether the offenses were allegedly committed at the currently assigned station, whether the accused's tour is accompanied or unaccompanied, location of accused's dependents and support network, the health and safety of the accused, availability of services in the community or host nation, current and anticipated locations of DoD and non-DoD witnesses, availability of service of process and court compulsion, U.S. or host nation restrictions on travel, substantial recurring difficulty in coordinating across geographic boundaries or time zones, and other practical obstacles to holding a trial at or near the accused's current duty station.

4.21.2. If an investigation is open, coordination with the military law enforcement office or other investigating offices is strongly recommended.

4.22. PCS of Accused Members. For accused members under law enforcement investigation, with pending charges preferred against them, or for whom a commander is contemplating charges, MAJCOM or FLDCOM SJAs may direct PCS of the accused when in the best interest of the DAF. See DAFI 36-2110, paragraph A17.2.6. Legal offices at each level of the chain of command should coordinate with their counterparts in the intended gaining commands prior to directing PCS.

Section 4F—Proof Analyses, Sensitive Case Information, and Lessons Learned

4.23. Proof Analyses. The first draft of a proof analysis should normally be completed within 30 days of the activation of CIP or SVIP. In cases resulting from command initiated investigations or inquiries, a proof analysis should be complete as soon as possible after the legal office is made aware the commander is exploring the option of preferring charges. For all investigations, investigators and trial counsel, or command and trial counsel, should review and update the initial proof analysis crafted by trial counsel to address the elements, evidence, anticipated objections, and potential defenses for each specification as appropriate, but at least on a monthly basis. Judge advocates may generally discuss the analysis with the case agent, investigator, or command as a means of guiding investigative steps, but should not provide investigators or command with copies of the proof analysis. A proof analysis is typically attorney work-product material; provision of the proof analysis to investigators or command may result in legal challenge to the work product privilege. Proof analyses and should be continuously revised during the investigative and pre-trial processes, which will assist counsel in both investigative and pre-trial preparation efforts. Counsel should continue to update and modify the proof analysis as they prepare the case for trial.

4.23.1. In accordance with AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, the SJA initiates the coordination process as early as possible for cases falling under MEJA.

4.24. Disclosure and Reporting of Sensitive Case Information. As a case develops, both the SJA and law enforcement are required to provide case information and status updates to higher

commands through their respective reporting channels. If the detachment commander, special agent in charge, or security forces commander determines that a case involves sensitive investigative information, to avoid compromising an ongoing investigation, the SJA will not allow disclosure of such information without the concurrence of the detachment commander, special agent in charge, or security forces commander. Some examples of sensitive investigative information could include certain investigative techniques, case leads, and confidential source information. After service of charges, the rules of discovery will control the release of any sensitive investigative information. In addition, portions of the ROI that are in draft form should not be released outside legal office channels without detachment concurrence.

4.25. Lessons Learned. Within 30 calendar days of the conclusion of trial, the legal office trying the case and the investigative office responsible for the investigation of the case should conduct a “hot wash.” The hot wash should include the SJA or DSJA, chief of military justice, and trial team from the legal office (to include applicable VWAP personnel), as well as the AFOSI detachment commander/SFS commander, lead investigator and other case agent(s) or investigators. Other legal office and investigative personnel may attend. Lessons learned may be captured in an after-action report, but an after-action report is not required.

Chapter 5

MILITARY MAGISTRATE PROGRAM

5.1. Military Magistrates Not Authorized. SecAF has not authorized the utilization of military magistrates. See Article 26a.

Chapter 6

OBTAINING EVIDENCE IN SUPPORT OF CRIMINAL INVESTIGATIONS

Section 6A—Overview of Authorities for Search and Seizure

6.1. Authorization for Search and Seizure. Military judges and qualified commanders have the authority to grant search authorizations based upon probable cause for personnel and locations within the military span of control in accordance with M.R.E. 315(d)(1). This authority is not delegable.

6.1.1. **Order of Preference.** When attempting to obtain a search authorization, legal offices must first attempt to identify a qualifying commander before seeking authorization from a military judge. This reduces the chance that the military judge will be conflicted out of being detailed to subsequent proceedings related to the search authorization.

6.1.2. **Obtaining Search Authorization from a Military Judge.** Government counsel may request a search authorization from a military judge in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

6.1.3. **Forms.** Air Force Form 1176, *Authority to Search and Seize*, is used to document authorization for a search of a person, location, or property and seizure of property pursuant to M.R.E. 315(d). When required by circumstances, verbal authorization may be given but should be followed by written documentation.

Section 6B—Search Authorizations (M.R.E. 315)

6.2. Search Authority. A commander is only qualified to grant a search authorization if the commander has control over the place where the property or person to be searched is situated or found, or, if the place is not under military control, if the commander has control over persons subject to military law or law of war. See M.R.E. 315.

6.2.1. **Legal Determinations.** SJAs and government counsel advising on the decision as to whether to request a search authorization from a military judge or commander must carefully review the facts in each instance to determine whether an impartial commander is qualified to grant a search authorization without conflicting that commander out of other parts of the courts-martial process (e.g., preferral, referral, etc.). SJAs and government counsel must also determine whether a commander is qualified to act as a search authority each time a request arises (e.g., whether the commander has control over the place where the person or property to be searched is situated or found, or over the person to be apprehended).

6.2.2. **Requirement for Neutral and Detached Commander Acting as Search Authority.** A commander issuing a search authorization must be neutral and detached. This excludes commanders who exhibit bias or appear to be predisposed to one outcome or another. However, the participation of a commander in investigative activities in furtherance of command activities does not per se disqualify that commander from authorizing a search under M.R.E. 315. See *United States v. Huntzinger*, 69 M.J. 1 (CAAF 2010); *United States v. Freeman*, 42 M.J. 239 (CAAF 1995). Prior to utilizing a commander for granting search authorization, counsel for the government should determine whether the commander's involvement may preclude them from preferring or referring charges in the same case. Law

enforcement members shall not exercise authority to grant search authorizations under M.R.E. 315.

6.2.3. Air Force Reserve Command Jurisdiction. Commanders acting as search authority for Air Force Reserve Command installations and personnel must be in a Title 10 status.

6.2.4. Military Installations Not Under Control of the Air Force or Space Force. Qualifying DAF commanders may exercise search authority for matters involving DAF personnel on the installation. Based on probable cause, qualifying commanders may authorize search and seizure (and apprehension) involving DAF personnel at such installations to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. M.R.E. 315(d)(1); R.C.M. 302(e)(2). Commanders may possess concurrent search and seizure authority with non-DAF commanders. Nothing in this paragraph is intended to negate or diminish the authority of a non-DAF commander, military judge, or magistrate to authorize searches consistent with M.R.E. 315.

6.2.5. Pentagon Reservation. AFDW/CC is a GCMCA and may authorize searches involving DAF controlled or occupied spaces of the Pentagon Reservation or DAF personnel located, assigned or attached therein, pursuant to M.R.E. 315(d)(1). Additionally, any other DAF commander located in the Pentagon may authorize searches over people or places under that specific commander's control. Generally, authorized searches within the Pentagon Reservation are coordinated with Washington Headquarters Services and the Pentagon Force Protection Agency prior to execution. The failure to coordinate with the Washington Headquarters Services and Pentagon Force Protection Agency does not create any right or benefit for any DAF member.

6.2.6. Tenant Units. A tenant unit commander may exercise search authority for matters involving DAF personnel to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. Depending on the place to be searched, other commanders on the installation may be the more appropriate choice to exercise search authority.

6.2.7. Searches of Locations or Property Under the Control of Military Counsel. If a location or property that is to be inspected or searched is under the control of a military DC or VC, precautions should be taken to protect client confidentiality, privileged communications, and attorney work product to the maximum extent possible. Such a search should be pursued only when there is no other feasible alternative.

6.2.7.1. The base-level SJA informs the Director, JAJ, before such a search is executed pursuant to authorization under M.R.E. 315(d) or as soon as possible if exigent circumstances exist pursuant to M.R.E. 315(g).

6.2.7.2. The purpose of this notification is to provide information, not to seek assistance in obtaining or authorizing a search of defense counsel or VC property. If a search is authorized, it should be conducted so as to minimize disruption to the operation of the office of the defense counsel or VC and should occur at a time when clients are unlikely to be present. It is further recommended that additional precautions, such as having an investigator and judge advocate unaffiliated with the installation conduct the search, ordering the searchers not to disclose the matters o, and have a military judge review papers

seized to determine what matters are responsive to the search authorization and how to handle other seized material. See *United States v. Calhoun*, 49 M.J. 485 (CAAF 1998).

Section 6C—United States Mail and Government Information Systems

6.3. United States Mail. For the inspection, search, and/or seizure of mail in the custody of the military postal service OCONUS, a convening authority authorized under Article 23(a) may issue a search authorization for the particular person or location involved. See DoD 4525.6-M, *Department of Defense Postal Manual*, for procedures. For the inspection, search, and/or seizure of mail in the United States, a warrant or other court order issued by a federal civilian magistrate or civilian judge is generally required. See *United States Postal Service Administrative Support Manual*, Part 274.

6.4. Government Information Systems. Government information systems are subject to monitoring, interception, search, and seizure for all authorized purposes in accordance with the DoD Consent Banner placed on government information systems.

6.4.1. The DoD Consent Banner does not extend to the content of privileged communications or work product related to personal representation or services by attorneys, psychotherapists, or clergy, to include their assistants. Users should annotate their privileged communications in e-mails and documents to ensure such information is kept confidential and not inappropriately accessed or read during authorized search, seizure, interception, or monitoring activities. Failure to annotate that a communication is privileged does not, per se, waive the privilege. Investigators should consult with the appropriate legal office or OSI/JA prior to and during such activities to ensure privileged communications are appropriately protected and remain confidential.

6.4.2. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. See M.R.E. 314(d). However, if the totality of the facts and circumstances indicate that the subject has a reasonable expectation of privacy, usually because the government property was issued for exclusive personal use, obtaining a search authorization is warranted.

Section 6D—Investigative Subpoenas

6.5. Overview. Investigative subpoenas may be issued at any point during the investigative or court-martial process (e.g., at any point after an allegation is received and prior to completion of final review). Investigative subpoenas may be issued either by counsel for the government (when authorized by the GCMCA) or by a military judge pre-referral, and may be issued by trial counsel post-referral. See R.C.M. 703. Investigative subpoenas may be issued for production of evidence, unless otherwise limited by law.

6.5.1. Limitations of Investigative Subpoenas.

6.5.1.1. Pre-referral investigative subpoenas may not be used for witness testimony.

6.5.1.2. Pre-referral investigative subpoenas may not be used to obtain content or non-content wire or electronic communications. **(T-0)**. See R.C.M. 309(b); R.C.M. 703A. However, this does not limit the ability of government counsel (if authorized by the

GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information.

6.5.2. **Trial Counsel Investigative Subpoenas.**

6.5.2.1. **Pre-Referral Investigative Subpoenas.** Prior to issuing a pre-referral investigative subpoena, government counsel must request authorization to issue each pre-referral investigative subpoena from the GCMCA. See R.C.M. 703(g)(3)(D)(v). The convening authority's authorization is limited to specific subpoenas. Blanket authorization to issue subpoenas is not authorized (e.g., convening authority may not permit government counsel to issue "all the subpoenas necessary in the case of United States v. Amn Snuffy" but may permit government counsel to issue "a subpoena for bar receipts of Amn Snuffy and SSgt Doe to Bar X"). Authorization by the convening authority to government counsel must be in writing. A template can be found on the VMJD.

6.5.2.2. **Post-Referral Subpoenas.** Government counsel may issue post-referral subpoenas in accordance with R.C.M. 703(g)(3)(D). There is no requirement to obtain convening authority approval to issue any such subpoena.

6.5.3. **Convening Authority Authorization to Issue Investigative Subpoenas.** Convening authorities do not have the independent authority to issue investigative subpoenas. Investigative subpoenas may only be issued by government counsel. See R.C.M. 703(g).

6.5.4. **GCMCA Delegation of Authorization to Issue Investigative Subpoenas.** The GCMCA may delegate the authority to approve pre-referral investigative subpoenas to subordinate SPCMCAs, but such delegation must be in writing. A template for this delegation can be found on the VMJD.

6.5.5. **Military Judge Investigative Subpoenas.** Military judges may issue investigative subpoenas pre-referral, but do not issue investigative subpoena post-referral.

6.5.5.1. Upon application by government counsel, a military judge may issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). See R.C.M. 309(b)(1); Articles 30a and 46, UCMJ.

6.5.5.2. Defense counsel may request that government counsel make an application for a pre-referral investigative subpoena. See R.C.M. 309(b) Discussion. Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. **(T-0)**.

6.5.6. **Victim Notification.** Subpoenas for personal or confidential information about a victim named in a specification require the victim be given notice in accordance with R.C.M. 703(g)(3)(C)(ii) so that said victim has the opportunity to move for appropriate relief, unless exceptional circumstances exist. This notification is required regardless of whether the subpoena is issued by a military judge or by government counsel (when authorized by a GCMCA or delegee).

6.5.7. **Required Format.** Investigative subpoenas are issued on DD Form 453, *Subpoena*. **(T-0)**. It is the responsibility of government counsel to ensure the subpoena is served on the party subject to the subpoena or their agent.

6.5.7.1. In the absence of specific direction from a military judge, government counsel should ordinarily be listed on DD Form 453 as the individual to whom requests for relief should be directed.

6.5.7.2. While neither government counsel nor the convening authority have statutory ability to grant relief, government counsel is responsible for forwarding requests for relief to the detailed military judge or JAT to request a military judge be detailed to address any such requests.

Section 6E—Stored Communications Act Data (R.C.M. 309 and 703A; Article 30(a), UCMJ)

6.6. General Provision. A detailed military judge, upon application by government counsel in connection with an ongoing investigation of an offense under the UCMJ, may issue a warrant to a qualifying provider of electronic communications service or remote computing service for the disclosure of the contents of wire or electronic communications, both pre-referral (including pre-referral) and post-referral. See R.C.M. 703A. In addition, a military judge may issue a warrant or order for disclosure of non-content data and information pertaining to subscribers or customers of those services. See R.C.M. 703A; Articles 26 and 30a, UCMJ; *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). See also 18 U.S.C. § 2701, et seq. This does not limit the ability of government counsel (if authorized by the GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information. Templates can be found on Knowledge Management under the Government Trial Counsel section.

6.6.1. Preservation Requests. Upon learning of the existence of evidence maintained by a provider of wire or electronic communication services or remote computing services, government counsel should coordinate with law enforcement to request that the provider preserve the pertinent records. A preservation request requires retention of records for 90 days and may be renewed once, for a maximum preservation period of 180 days. Preservation requests are not prospective; requests apply only to data already in existence, not data created after the preservation request. See R.C.M. 703A(f).

6.6.2. Warrants Required for Content Data. Judicial orders may not be used to compel a provider of electronic communication service to disclose the content of any wire or electronic communication that is in electronic storage in an electronic communication system. In accordance with *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), warrants are required for disclosure of the content of any wire or electronic communication in electronic storage in an electronic communications system, regardless of the length of time the content is maintained. Military judges may only issue warrants upon probable cause for such disclosures.

6.6.3. Providers of Services to the Public. Practitioners who intend to apply for a warrant or order for wire or electronic communications should first identify whether the entity that possesses the content is a public electronic communications or remote computing service. See 18 U.S.C. § 2711, *Definitions for chapter*.

6.6.4. Location of Data Storage. To the extent possible, practitioners, in coordination with applicable law enforcement, should also identify the location of the server in which the communications are stored in order to determine whether there is an executive agreement in place that would allow the execution of the warrant or order. See 18 U.S.C. § 2522.

Enforcement of the Communications Assistance for Law Enforcement Act and 18 U.S.C. § 2523, Executive agreements on access to data by foreign governments.

6.6.5. Request for Military Judge. Government counsel is responsible for requesting a military judge be detailed and for submitting the application for a warrant or order to the military judge, regardless of the author of the affidavit. **(T-0).**

6.6.6. Real Time Interception Not Affected. Neither this section nor R.C.M. 309 or 703A, or Article 30(a), apply to “real-time” interception of wire, electronic and oral communications in accordance with DoDI 5505.09, *Interception of Wire, Electronic and Oral Communications for Law Enforcement* and 18 U.S.C. § 2511, *Definitions for chapter.*

6.7. Warrants for Stored Communications Act Data.

6.7.1. General Provision. A warrant is a writ, supported by probable cause, issued by a military judge directing an electronic communications service or remote computing service to provide the content of stored electronic or wire communications (e.g., the body of text messages and emails, cell-site location information, etc.). Such warrants may be applied for and issued by a military judge both pre-referral (including pre-preferral) and post-referral. See R.C.M. 703A. Content data, regardless of the length of time it is stored, must be obtained with a warrant. A court order, as discussed in [paragraph 6.8](#), is not sufficient. See *U.S. v. Warshak*, 631 F.3d 266 (6th Cir. 2010); 18 U.S.C. § 2703(b)(1)(A), *Required disclosure of customer communications of records*; R.C.M. 703A(b).

6.7.2. Warrant Request. To obtain a warrant, government counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare a warrant application and draft warrant. Government counsel must submit the application, draft warrant, and supporting evidence, which may include sworn witness testimony, to the military judge.

6.7.3. Request for Non-Disclosure Order. If government counsel asserts that a non-disclosure order is necessary, government counsel indicate such on the warrant application and submit, in writing, the reasons for the request. Government counsel must also prepare a draft non-disclosure order. See [paragraph 6.9](#); 18 U.S.C. § 2705(b).

6.7.4. Issuance by Military Judge. If the military judge determines there is probable cause to believe the information sought contains evidence of a crime, the military judge will issue the warrant to the requesting federal law enforcement officer or government counsel. **(T-0).** See 18 U.S.C. § 2703(b)(1)(A); R.C.M. 703A(b). If a request for a non-disclosure order is submitted with the warrant application, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing. **(T-0).**

6.7.5. Forms. Warrant applications are accomplished via DD Form 3057, *Application for Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703* and DD Form 3056, *Search and Seizure Warrant Pursuant to 18 U.S.C. § 2703.*

6.8. Court Order for Stored Communications Act Data.

6.8.1. General Provision. An order, supported by reasonable grounds to believe that the records or information sought are relevant and material to an ongoing criminal investigation, may be issued to an electronic communications service or remote computing service for data

other than content (e.g., name, telephone number, address, length of service, services utilized, payment data, etc.). Consult current case law to determine whether an order is sufficient to obtain the data sought.

6.8.2. Order Request. To obtain an order, trial counsel must submit a request in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial. The requesting party (government counsel or federal law enforcement) must prepare an order application. Government counsel must submit the application and supporting evidence, which may include sworn testimony, to the military judge. The federal law enforcement agent or government counsel completing the order application should annotate whether delayed notification to the subscriber is requested. See 18 U.S.C. § 2705(b). The party seeking the order must notify the subscriber of the application for the order unless the party requests the military judge grant delayed notification. **(T-0)**. The federal law enforcement agent or government counsel completing the order application must prepare a draft disclosure order and any draft delayed notification orders in writing for the military judge. If granted, the disclosure order and any delayed notification orders must be in writing.

6.9. Non-Disclosure Order to Electronic Communications Service or Remote Computing Service. In accordance with 18 U.S.C. § 2703(b)(1)(A), 18 U.S.C. § 2705(b) and R.C.M. 703A(d)(2), government counsel may request the military judge order the electronic communications or remote computing service not to disclose the existence of a warrant or order to any third party, including the subscriber. See also *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). The non-disclosure order must be issued by the military judge consistent with R.C.M. 703A. **(T-0)**. If a request for a non-disclosure order is submitted, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing for provision to the electronic communications service or remote computing service, whichever is applicable.

6.10. Ex Parte or In Camera Nature of the Proceeding. Proceedings related to requests for investigative subpoenas and warrants/orders for wire or electronic communications will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. The record of proceedings will consist of all documents considered or issued by the detailed judge in acting upon such requests. The military judge has discretion as to whether to hold a hearing in relation to requests for investigative subpoenas and warrants/orders for wire or electronic communications.

6.11. Contempt for Failure to Comply. Failure of an electronic communications service or remote computing service provider to comply with a warrant or court order subjects the service provider to being held in contempt. See Article 48, UCMJ, and [Section 19J](#).

6.12. Defense Requests for Warrants or Orders for Wire or Electronic Communications. Defense counsel may request that government counsel make an application for a warrant or order both before and after referral. See R.C.M. 703(g)(3)(D) and 703A(a). Government counsel must submit the defense application to the military judge, and the military judge has discretion to grant defense counsel an opportunity to be heard. Government counsel should also consult with the investigating agency to determine the appropriateness of sending a preservation request at that time.

6.13. Requests for Relief from Subpoena or Other Process. Individuals in receipt of investigative subpoenas or service providers in receipt of a court order to disclose information regarding wire or electronic communications may request relief on the grounds that compliance is

unreasonable, oppressive or prohibited by law. The military judge will then make a determination as to whether the party must comply or will modify or quash the subpoena or order. See R.C.M. 703A(c)(2).

6.14. Post-Referral Requests for Warrants or Orders. An Article 30a, UCMJ, proceeding is only required pre-referral. Requests for court orders or search warrants post-referral may require an Article 39(a), UCMJ.

Section 6F—Immunity (R.C.M. 704, M.R.E. 301(d)).

6.15. Grants of Immunity.

6.15.1. General Provision. A GCMCA possesses the authority to grant immunity to witnesses. The GCMCA may delegate the authority to grant immunity to subordinate SPCMCA. Any such delegation must be in writing, and the authorization may not be further delegated. **(T-0)**. If the GCMCA delegates authority to grant immunity to the SPCMCA, the SPCMCA SJA must consult with the GCMCA SJA before requesting a grant of immunity from the SPCMCA. All grants of immunity must be in writing and attached to the record of trial (ROT). When another GCMCA retains administrative control over the witness to be immunized, prior coordination with the retaining GCMCA or delegee, if applicable, is recommended. Grants of immunity should include language stating the immunity grant takes effect on the date the witness receives a copy of it. Sample grants of immunity and order to testify are available on the VMJD.

6.15.2. National Security Cases. Process immunity requests for witnesses suspected of criminal activity involving national security according to [paragraph 6.15.4](#), regardless of whether the witness is subject to the UCMJ. JAJG is responsible for coordinating such cases with the Department of Justice and other interested United States agencies.

6.15.3. Cases Involving the Department of Justice. If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity, prepare the immunity request, regardless of whether the witness is subject to the UCMJ. **(T-0)**. The GCMCA or delegee, if applicable, must indicate the intent to approve a request for immunity to the Department of Justice. A written memorandum from the GCMCA or delegee is then forwarded to JAJG, who will staff the package to the Department of Justice. The Department of Justice (or other authority designated under 18 U.S.C. § 6004) will then either authorize the GCMCA to offer immunity or will disapprove the request. If authorized, the GCMCA may then offer the person immunity. Prepare requests for Department of Justice authorization in accordance with [paragraph 6.15.4](#).

6.15.4. Requests for Department of Justice Authorization.

6.15.4.1. In cases requiring Department of Justice authorization, the SJA whose office is prosecuting the court-martial initiates the request for Department of Justice authorization. When the GCMCA, or delegee, indicates in a memorandum the intent to grant immunity, the GCMCA SJA or SPCMCA SJA, if the authority to grant immunity has been delegated to the SPCMCA, forwards the request with written endorsement, by e-mail, directly to JAJG, with information copies to the MAJCOM SJA. The SJA should consult with JAJG prior to forwarding the request as the Department of Justice requires requests be forwarded in a specific format. Requests are forwarded no less than 30 days in advance of the date

the witness is expected to testify. SJAs should consider requesting a delay pursuant to R.C.M. 707(c)(1) while authorization is pending.

6.15.4.2. The written request should include the following information:

6.15.4.2.1. Case name and nature of the proceeding for which requesting immunity;

6.15.4.2.2. Nature of the charges against the accused and anticipated date of the proceeding;

6.15.4.2.3. Name, social security number (SSN), date and place of birth, and address of the witness;

6.15.4.2.4. The witness's military status and organization, if any;

6.15.4.2.5. Whether the defense or prosecution requested the immunity;

6.15.4.2.6. Name, grade, organization, and mailing address of the GCMCA or delegee who will grant the immunity after receiving Department of Justice authorization, and a statement that the GCMCA or delegee supports the immunity request. **Note:** Immunity is not actually granted until approved by the GCMCA or delegee after receiving Department of Justice authorization;

6.15.4.2.7. An explanation of why immunity is necessary, including whether any state or federal charges are pending against the witness and a description of those charges, if any;

6.15.4.2.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;

6.15.4.2.9. A summary of the witness's expected testimony;

6.15.4.2.10. Factual basis for believing the witness will assert the privilege against self-incrimination, including the nature of the offenses in which the witness may be incriminated;

6.15.4.2.11. The likelihood of the witness testifying, should immunity be granted; and

6.15.4.2.12. Name, title, address and telephone number of the representative from the local State's Attorney's Office and United States Attorney's Office with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.

6.15.5. Preliminary Discussions of Immunity. Judge advocates and investigators are to be exceedingly careful in discussing the possibility of immunity with anyone involved in an investigation or potential prosecution. Avoid creating a perceived expectation of immunity that may be unfounded. The best practice is to first coordinate potential grants of immunity with the appropriate convening authority, and when appropriate, JAJG.

Chapter 7

PRE-REFERRAL JUDICIAL PROCEEDINGS (ARTICLE 30A, UCMJ; R.C.M. 309)

7.1. General Provision. A pre-referral proceeding may occur at any point prior to referral, to include pre-referral.

7.2. Detailing of Military Judges for Pre-Referral Proceedings. Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

7.3. Covered Matters. See Article 30a, UCMJ, and R.C.M. 309 for matters which may be addressed in pre-referral judicial proceedings. Additional requirements are discussed in this chapter.

7.4. Pre-Referral Investigative Subpoenas. If issuance of an investigative subpoena is requested from a military judge pre-referral, the military judge determines whether or not a hearing is required. See [Section 6D](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of The Air Force Courts-Martial.

7.5. Pre-Referral Warrants or Orders for Stored Communications Act Data. If issuance of a warrant or order is from a military judge requested pre-referral, the military judge determines whether or not a hearing is required. See [Section 6E](#) for further information and procedures. Proceedings will ordinarily be conducted by the detailed judge ex parte and in camera, without a hearing. See Uniform Rules of Practice Before Department of The Air Force Courts-Martial.

7.6. Requests for Relief from Subpoena or Other Process. Prior to referral, only the entities listed in R.C.M. 309(b)(3) may request relief from subpoenas or other judicial process.

7.7. Recording of Pre-Referral Proceedings. All hearings conducted pursuant to Article 30a, UCMJ, must be recorded verbatim and transcribed. For recording purposes, follow the procedures in [paragraph 12.8](#) used for recording an Article 32, UCMJ, preliminary hearing. See DAFMAN 51-203 for guidance on preparation of the record of proceedings required in R.C.M. 309. The trial counsel must ensure that the record of proceedings is maintained on behalf of or by the appropriate convening authority or commander, and such record will be included in the ROT if applicable.

Chapter 8

PROVISION OF INFORMATION TO DEFENSE AND VICTIMS' COUNSEL

Section 8A—Provision of Information to Defense Counsel

8.1. Release of Information to Defense Counsel. SJAs and government counsel are strongly encouraged to provide matters to defense counsel as soon as practicable. This may be prior to preferral of charges. At preferral, government counsel must, at a minimum, provide defense counsel copies of the matters listed in R.C.M. 404A(a)(1). **(T-0)**. If it is impractical to provide these matters, government counsel must permit the defense to inspect them. The provisions in this section are not intended to create any additional substantive right to discovery, which is described in the MCM. After referral of charges to trial, both trial and defense counsel conduct discovery in accordance with R.C.M. 701 and 703.

8.2. Distinction Between Discovery and Freedom of Information Act (FOIA)/Privacy Act Release. When stating that certain documents are protected from release, or that certain discoverable documents should be redacted before being provided to defense counsel, government counsel should distinguish between rules pertaining to discovery and rules pertaining to the release of information to a third party (such as FOIA or Privacy Act). Trial counsel should maintain an unredacted copy of any redacted items provided to defense in the event unredacted items must later be provided to defense.

8.2.1. Releasing Privacy Act Material to Defense Counsel. When releasing Privacy Act material to defense counsel, government counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this is SSNs of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. When Privacy Act material is not redacted in discovery material, defense counsel must take appropriate steps to guard against improper release of this information. Additionally, if government counsel elect not to redact Privacy Act material when providing discovery to civilian defense counsel, government counsel should obtain a signed statement from the civilian defense counsel stating the defense counsel agrees not to release Privacy Act information to others not involved with the defense of the case, using the format set forth at the VMJD.

8.3. Coordination for Review and Analysis of Child Pornography Evidence. When there is evidence of child pornography, refer to 34 U.S.C. § 20911 et seq., *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*, commonly known as “The Adam Walsh Act,” and 18 U.S.C. § 3509, *Child victims’ and child witnesses’ rights*, with regard to discovery. Review and analysis of all evidence of child pornography must be coordinated with the OSI detachment investigating the case. **Note:** Responsibility for handling of child pornography differs based on the status of the child pornography. See [Section 16C](#).

Section 8B—Provision of Information to Victims’ Counsel

8.4. Release of Records to VCs. Requests from DAF VCs and VCs from other services for records pertaining to a court-martial proceeding involving their clients are properly addressed as “official use” requests under the Privacy Act and FOIA. See 5 U.S.C. § 552a(b)(1); DoD 5400.11-

R, *Department of Defense Privacy Program*, paragraph C4.2.1. Victims may also hire civilian attorneys to serve as VC. In such cases, a civilian VC may request information pursuant to the “routine use” provision of the SORN “Military Justice and Civilian Criminal Case Records,” DoD 0006, consistent with law and policy as to victims’ rights and access to information.

8.5. SJA Release of Information.

8.5.1. An SJA’s decision to release information is limited in scope to information generated and maintained by the servicing legal office in accordance with law and policy. See also F051 AFJA I, Military Justice and Magistrate Court Records.

8.5.2. An SJA’s decision to release information pursuant to an official request or routine use request is discretionary, unless the SJA is otherwise required by law or policy to provide that information to the victim or victim’s counsel. See MCM; DAFI 51-207.

8.5.3. Pursuant to an official or routine use request, SJAs have discretion to release records that are minimally required to accomplish the VC’s intended use as articulated in the request. See DoD 5400.11-R, paragraph C4.2.1. Such records may include but are not limited to the following items:

8.5.3.1. Copies of the VC’s client’s statements and documents provided by the client.

8.5.3.2. Copies of or access to statements by the accused or another witness implicating an Article 6b, UCMJ right or privilege of VC’s client. For example, evidence that could potentially be covered under M.R.E. 412 or a privilege.

8.5.3.3. Copies of or access to any evidence or information that could suggest a safety concern to the VC’s client. Any victim or witness should immediately be informed of any information that suggests a safety concern for that victim or witness.

8.5.3.4. Copies of any evidence directly relating to or derived from the VC’s client. For example, photos, medical records, or communications by the VC’s client.

8.5.3.5. Copies of or access to evidence or information that could indicate retaliation against or ostracism towards the VC’s client.

8.5.3.6. Copies of or access to evidence directly relating to an alleged offense against the VC’s client.

8.5.4. Releasing Privacy Act Material to VC. Government counsel should redact Privacy Act information regarding individuals other than the attorney’s client. An example is SSNs of other victims, which have no relevance to the case. When Privacy Act material is not redacted in official use material, VCs should take appropriate steps to guard against improper release of this information. SJAs should consider obtaining agreement from civilian counsel that they will return the Report of Investigation at the conclusion of the case or post-trial consistent with the admonitions of *Gray v. Mahoney*, 39 M.J. 299 (C.M.A. 1994), or in the alternative merely providing access to the report. Further, SJAs must obtain a signed statement from the civilian victims’ counsel stating counsel agrees not to release any protected information to others not involved with representing the victim. A template is available on the VMJD.

8.5.5. Releasing Privacy Act Material to Victims. When a victim is making the request on their own and is otherwise unrepresented, Government may provide access to requested material as a routine use under the Privacy Act system of records notice for “Military Justice

and Civilian Criminal Case Records,” DoD 0006. If the government chooses to provide copies, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

8.5.6. Law Enforcement Records.

8.5.6.1. Draft Documents and Unpublished Reports of Investigations. SJAs may not release unpublished law enforcement ROIs (or portions of ROIs, to include statements and summaries of statements) without prior coordination with the relevant law enforcement agency. SJAs may either forward the request or direct the requester to the commander or equivalent for the law enforcement agency that generated the draft/unpublished report.

8.5.6.2. Published ROIs. SJAs must consult with the commander or equivalent for the law enforcement agency that generated the report before releasing published law enforcement ROIs or portions thereof to any DC or VC. The law enforcement commander or equivalent shall have the opportunity to object or raise any concerns (e.g., tradecraft, privileged matters) prior to the SJA carrying out discovery or disclosure requirements of such material as articulated in the UCMJ, R.C.M., and DoD and DAF policies.

8.5.7. Decisions to release any documents or portion thereof over the objection of the law enforcement commander, or to deny such release, must be memorialized in writing.

8.5.8. The responsibilities in this section are delegable no lower than the DSJA unless otherwise stated herein.

8.6. Victims’ Counsel Responsibilities. All requests must be in writing and sufficiently detailed to allow the SJA to respond to the request. All counsel must take necessary steps to protect information from improper release. See [paragraph 8.5.4](#).

Chapter 9

PRETRIAL CONFINEMENT (R.C.M. 305)

9.1. General Provision. No person may be ordered into pretrial confinement except for probable cause as defined in R.C.M. 305(d). **(T-0).** Normally, offenses intended to be disposed of by a SCM do not warrant pretrial confinement. **Note:** Imposition of pretrial confinement or restraint will trigger the speedy trial clock under R.C.M. 707 and the speedy trial analysis under Article 10, UCMJ.

9.2. Limitation on Confinement Location. Military members may not be placed in confinement in immediate association with enemy prisoners, or foreign nationals detained under the law of war who are not otherwise members of the armed forces. See Article 12, UCMJ. **(T-0).**

9.3. Required Victim Notifications. In cases involving a victim as defined by Article 6b, UCMJ, the SJA must ensure said victim is notified:

9.3.1. Upon the confinee's entering pretrial confinement. **(T-0).**

9.3.2. Upon the confinee's release from pretrial confinement. **(T-0).**

9.3.3. Additionally, the Pretrial Confinement Review Officer (PCRO), through the SJA or government representative, is required to ensure the victim has the opportunity to make a statement either personally or through counsel at the pretrial confinement review hearing. **(T-0).** See R.C.M. 305(i)(2). A template is provided on the VMJD.

9.4. Procedures. Once a member is ordered into pretrial confinement, follow the procedures required in R.C.M. 305, to include providing initial notifications to the accused.

9.5. 48-Hour Probable Cause Determination. Within 48 hours of the imposition of military pretrial confinement (including confinement at a civilian facility at the request of the military), a neutral and detached officer must review the adequacy of probable cause to continue pretrial confinement. **(T-0).** R.C.M. 305(i)(1); *Gerstein v. Pugh*, 420 U.S. 103, 124–25 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 45 (1991). The determination must be in writing and included in the ROT. A template is available on the VMJD. If the probable cause determination is not made within 48 hours, the government may have to establish the existence of a bona fide emergency or other extraordinary circumstances.

9.5.1. An officer is neutral and detached if they have not demonstrated personal bias or involvement in the investigative or prosecutorial process against the accused. *United States v. McLeod*, 39 M.J. 278 (C.M.A. 1994). Factors to consider in determining whether an officer is neutral and detached include whether the officer is the formal accuser on the charge sheet, the officer who ordered the accused into confinement, or is directly or particularly involved in the command's law enforcement functions. *United States v. Rexroat*, 38 M.J. 292, 298 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394, 397 (C.M.A. 1982).

9.5.2. The PCRO's seven day review in [paragraph 9.7](#) may satisfy the 48-hour probable cause determination requirement if the PCRO's decision memorandum is completed within 48 hours of the imposition of confinement. In such cases, the PCRO's memorandum must specifically state when the probable cause determination was made. **(T-0).** Likewise, the 72-hour commander's decision and memorandum in [paragraph 9.7](#) may satisfy the 48-hour

probable cause requirement if the commander's memorandum is completed within 48 hours of the imposition of confinement.

9.5.3. If a military member is arrested by civilian authorities and subsequently transferred to military custody and placed in military pre-trial confinement, a 48-hour probable cause determination is still required regardless of whether civilian authorities made a probable cause determination. **(T-0)**. If civilian authorities made a probable cause determination, include that in the ROT in addition to the 48-hour determination required under R.C.M. 305(i).

9.6. 72-Hour Commander's Decision and Memorandum. The commander shall decide whether to continue pretrial confinement no later than 72 hours after (a) a military member is ordered into pretrial confinement, or (b) after the commander's receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable. **(T-0)**. The commander must address the requirements for confinement in R.C.M. 305(h)(2)(B) and should consider the factors in the Discussion to that section. When deciding to continue pretrial confinement, the commander must prepare a written memorandum in accordance with R.C.M. 305(h)(2)(C). The memorandum is then forwarded to the PCRO, through the SJA and SPCMCA. If a court-martial results, the commander's memorandum is included in the ROT. A template is available on the VMJD.

9.7. Pretrial Confinement Review (R.C.M. 305(i)(2)). Within seven calendar days of the member being placed in military pretrial confinement, the PCRO reviews the probable cause determination and makes a decision about the necessity for continued pretrial confinement. The day placed in confinement counts as day one and the date of review counts as one day.

9.7.1. Appointment of a Pretrial Confinement Review Officer (PCRO) (R.C.M. 305(i)(2)). The SPCMCA appoints, in writing, a reasonable number of qualified officers to serve as PCROs. Chaplains, legal office personnel, law enforcement personnel, and court-martial convening authorities may not serve as PCROs. When the situation warrants, a PCRO from another military service may be appointed. Similarly, an otherwise qualified Air Force or Space Force member may serve as a PCRO for another military service. SJAs must ensure PCROs are briefed on their duties when appointed, and updated as appropriate thereafter.

9.7.2. The PCRO reviews the 72-hour commander's decision to continue pretrial confinement and considers any matters submitted by the pretrial confinee.

9.7.3. Hearing. The PCRO conducts a hearing at which the pretrial confinee and defense counsel, if practicable, are allowed to appear and make a statement before the PCRO. The accused does not have a right to have defense counsel appear in person before the PCRO. Defense counsel may represent their client at the hearing via telephone or video teleconference technology as long as there is a mechanism for defense counsel and accused to have private and confidential communication as necessary. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the pretrial confinement review is not an adversarial proceeding, the PCRO may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. The PCRO completes a written summary of the relevant testimony of any witnesses, including information elicited by defense counsel. The only rules of evidence that apply are M.R.E. 302, 305, and 501-514.

9.7.3.1. If custody classification does not dictate a distinctive uniform, a pretrial confinee is allowed to wear a duty uniform for the hearing rather than civilian confinement attire. See AFMAN 31-115, Vol 1, *Air Force Corrections System*.

9.7.3.2. The pretrial confinee, defense counsel, or both may present evidence related to confinement conditions in apparent violation of Articles 12 or 13, UCMJ. If such evidence is presented, the PCRO summarizes the evidence in the PCRO memorandum and informs the SJA. The SJA reviews the evidence pertaining to allegedly illegal confinement conditions and works with the member's commander and the local Security Forces commander or other confinement officials to remedy the situation as necessary.

9.7.4. Upon completion of the PCRO's review, the PCRO approves continued confinement or orders immediate release. The PCRO must find the requirements of R.C.M. 305(h)(2)(B) have been proven by a preponderance of the evidence in order to continue pretrial confinement. **(T-0)**. If the requirements of R.C.M. 305(h)(2)(B) have not been proven, the PCRO orders immediate release of the pretrial confinee. The PCRO may not impose conditions on release but may recommend the commander impose a less severe form of pretrial restraint.

9.7.5. The PCRO must convey their pretrial confinement decision within seven days of the imposition of confinement. See R.C.M. 305(h)(2)(C). Within 24 hours of conveying the pretrial confinement decision, the PCRO must complete a memorandum of the PCRO's conclusions and the findings on which they are based. See R.C.M. 305(i)(2)(D). A copy of all documents and summaries of all oral statements considered by the PCRO are attached to the memorandum. The memorandum with attachments is provided to the SPCMCA, the SPCMCA's SJA, the confinement officer, the pretrial confinee, and the pretrial confinee's defense counsel. A sample format for the PCRO's memorandum is listed on the VMJD.

9.8. Pretrial Restraint Upon Release From Confinement. A commander may impose any alternative lesser form of pretrial restraint authorized by R.C.M. 304(a)(1)-(3), if release is ordered by the PCRO. Re-confinement after release is limited to circumstances provided in R.C.M. 305(1). *United States v. Mahoney*, 36 M.J. 679 (A.F.C.M.R. 1992) (dictum). The requirements of this chapter apply to a member upon imposition of re-confinement.

9.9. Suicide Prevention. Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement or pretrial restraint. Such an accused should be referred to mental health practitioners for evaluation and treatment and, if necessary, involuntary commitment in a mental health facility. *United States v. Doane*, 54 M.J. 978, 982 (AFCCA 2001).

9.10. Pretrial Determination of Mental Competence. A convening authority may determine the place and condition of pretrial detention, including confinement in a civilian facility, for the purpose of evaluating the competency of the accused. The conditions may not be more harsh than necessary to ensure the accused's presence at trial, and the facility must be capable of conducting the competency evaluations and providing care and treatment of the accused. Article 13, UCMJ; R.C.M.s 706 & 909; *Short v. Chambers*, 33 M.J. 49, 52 (C.M.A. 1991); 18 U.S.C. § 4241.

Chapter 10

CONSIDERATIONS PRIOR TO DETERMINING DISPOSITION OF CHARGES

Section 10A—Victims of Sexual Offenses: Views on Prosecutorial Jurisdiction

10.1. Consideration of Victim’s Views on Jurisdiction and Disposition (R.C.M. 306(e)).

10.1.1. Victim Preference for Civilian or Military Prosecution. Victims of any sex-related offense that occurs in the United States have the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

10.1.1.1. Sex Related Offenses. For purposes of this requirement, qualifying sex-related offenses are allegations arising under Articles 120, 120a, 120b, 120c, or 125, UCMJ, including attempts thereof, which occurred prior to 1 January 2019; or any allegation arising under Articles 120, 120b, 120c, or 130, UCMJ, including attempts thereof, which occurred on or after 1 January 2019.

10.1.1.2. Obtaining Victim’s Preference for Jurisdiction. In all cases where a sex related offense is alleged to have occurred in the United States, the SJA must obtain the victim’s preference as to whether the case should be prosecuted by the military or civilian prosecutors as early in the process as possible. **(T-0).** Such preference will be obtained on the template found on the VMJD. If the victim declines to complete the form, the SJA must document on the template that the victim declined to complete the form. If seven days have passed from solicitation of the victim’s preference without a response from the victim (or detailed VC), the SJA may presume that the victim does not wish to express a preference. A copy of the notification memorandum and the indorsement with the victim’s preference must be maintained in the case file. Template notification memoranda are available on the VMJD.

10.1.2. Disposition Preference. Where the SPCMCA is considering taking no action or disposition by means other than court-martial, the SPCMCA will, through the SJA, solicit the victim’s inputs prior to rendering a final decision. The SPCMCA should consider the victim’s preferences prior to rendering a final decision. **(T-0).** If seven days have passed from solicitation of the victim’s preference without a response from the victim (or detailed VC), the SJA may presume that the victim does not wish to express a preference as to disposition. Refer to DAFI 51-207 for additional information.

10.1.3. Civilian Prosecution Preferred.

10.1.3.1. If the offense was committed in an area of concurrent jurisdiction and the victim indicates a preference for civilian prosecution, the SJA should determine whether the victim has a preference for prosecution by the state or federal government or has no preference.

10.1.3.2. In the event the victim indicates they prefer civilian prosecution of the sex related offense, the SJA must notify the prosecutorial agency or agencies in that jurisdiction of the victim’s preference. If the offense was committed in an area of exclusive federal jurisdiction and the victim indicates a preference for civilian prosecution, the SJA must

notify the United States Attorney's Office. The SJA must then notify the victim of the civilian agency's response. Forms for accomplishing both notifications are on the VMJD.

10.1.4. Although the victim's preference is not binding, the convening authority exercising IDA must consider the victim's views before taking action.

Section 10B—Initial Disposition of Qualifying Sex-Related Offense Allegation(s) (R.C.M. 306)

10.2. Initial Disposition of Qualifying Sex-Related Offense Allegation(s) (R.C.M. 306).

10.2.1. The Secretary of Defense has withheld IDA from all commanders within the DoD who do not possess at least SPCMCA and who are not in the grade of O-6 or higher, with respect to any of the following alleged offenses (regardless of the date the offense was allegedly committed):

10.2.1.1. Rape or sexual assault, in violation of Article 120, UCMJ;

10.2.1.2. Forcible sodomy, in violation of Article 125, UCMJ (which was in effect prior to 1 January 2019); and

10.2.1.3. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

10.2.2. For those offenses for which IDA is withheld, the subordinate commander forwards the case file, along with a written recommendation, to the convening authority with IDA.

10.2.3. The convening authority with IDA is responsible for determining what initial disposition action is appropriate, including whether further action is warranted. **(T-0)**. R.C.M. 306 describes initial disposition as no action, administrative action, NJP, or disposition of charges (dismissing, referring, or forwarding for disposition to a superior or subordinate authority). The initial disposition by the convening authority with IDA may be to permit the subordinate commander to take action in the case in accordance with the subordinate commander's recommendation. **Note:** Preferral is not an initial disposition action, thus a subordinate commander may prefer charges before forwarding them to the convening authority with IDA for disposition.

10.2.3.1. The convening authority with IDA shall base the disposition decision upon review of the following:

10.2.3.1.1. Matters transmitted;

10.2.3.1.2. Court-martial charges, if any;

10.2.3.1.3. Any independent review and recommendation received;

10.2.3.1.4. Matters submitted by the accused, if any;

10.2.3.1.5. Victim input, if any;

10.2.3.1.6. Consultation with a judge advocate; and

10.2.3.1.7. The factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense's Non-Binding Disposition Guidance).

10.2.4. The convening authority with IDA must provide the GCMCA (who would have been in the position to refer charges) in the grade of O-7 or above written notice of initial disposition

within 30 days following the date of the initial disposition decision. See [paragraph 10.3](#) The SJA supporting the convening authority with IDA should consider coordinating with the GCMCA/SJA to determine whether convening authority with IDA should await a GCMCA review decision prior to taking further action (e.g., send the case back to the subordinate commander for appropriate action or otherwise dispose of a case).

10.2.5. Collateral Misconduct. The withholding of IDA applies to all alleged offenses arising from or relating to an allegation of a qualifying offense as listed in paragraphs [10.2.1.1](#) – [10.2.1.3](#) This includes collateral misconduct by the accused or victim.

10.2.6. Safe-to-Report Policy. If there are allegations of collateral misconduct committed by a victim of an alleged sexual assault, the Safe-to-Report Policy required by section 539A of the FY 2021 NDAA, and implemented by the DoD prescribes how such misconduct will be handled. For purposes of the Safe-to-Report Policy, “sexual assault” is more broadly defined than for IDA purposes as described above: alleged penetrative and non-penetrative violations of the applicable version of Article 120, UCMJ; alleged violations of Article 125, UCMJ for acts of forcible sodomy of a victim age 16 years old or older, occurring before 1 January 2019; and alleged attempts and conspiracies to commit any of these offenses.

10.2.6.1. The Safe-to-Report Policy is applicable to any allegation of sexual assault, regardless of whether the victim has filed a restricted or unrestricted report. The threshold issue for the applicability of the Safe-to-Report Policy is determining whether the alleged collateral misconduct in question is “minor” or “non-minor.” The IDA’s determination is discretionary based on the totality of the circumstances involved in the case, but IDA must assess the alleged collateral misconduct against the delineated aggravating and mitigating circumstances at a minimum.

10.2.6.2. If the alleged collateral misconduct is deemed minor, then the Safe-to-Report Policy applies and the victim shall not be disciplined.

10.2.6.3. If the alleged collateral misconduct is non-minor, then the Safe-to-Report Policy does NOT apply and the victim could be subject to disciplinary action.

10.2.6.4. In addition to evaluating the nature of the alleged collateral misconduct itself, commanders shall take into account the following factors in determining whether the alleged collateral misconduct is minor or non-minor.

10.2.6.4.1. Aggravating circumstances include, but are not limited to, whether the alleged misconduct intentionally or unintentionally: (a) Threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged perpetrator(s) of an assault; (b) Resulted or imminently threatened to result in failure of a specified military mission or objective; or (c) Resulted in significant damage to government property, or to the personal property of others, except when such damage was the collateral result of an assault and/or resulted from an act of self-defense.

10.2.6.4.2. Mitigating circumstances include, but are not limited to: (a) The victim’s age and military experience level; (b) Whether the suspect is in a position of authority over the victim or a higher grade than the victim; (c) Whether the suspect engaged in actions to stalk, harass, haze, coerce and/or otherwise influence the victim to engage in sexual behavior; (d) Whether the alleged collateral misconduct was known to command

prior to the report of sexual assault, and if not known, the likelihood that the alleged collateral misconduct would have otherwise been discovered, but for the victim disclosing or reporting the sexual assault; (e) The victim engaging in misconduct after the sexual assault, which may be related to symptoms of exposure to trauma; e.g., the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms.

10.2.6.5. Convening authorities exercising IDA retain discretion to make the final determination of whether the alleged collateral misconduct is minor or not, based on their analysis of aggravating and mitigating factors. Commanders shall consult with their servicing Staff Judge Advocate in reaching these determinations and shall make such determinations in writing. SJAs are required to track all such determinations to include why the collateral misconduct was deemed non-minor, or why the collateral misconduct was considered minor and subject to the Safe-to-Report Policy.

10.2.6.5.1. If the final determination is made that the alleged collateral misconduct is minor, the individual shall not be disciplined. In this context, the term “discipline” includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including: letters of reprimand, counseling, or admonishment; written records of individual counseling in official personnel files; imposition of NJP; preferral of charges; initiation of involuntary administrative separation proceedings; or administrative demotion. This also includes discipline under cadet/midshipman regulations at the Military Service Academies.

10.2.6.5.2. This policy does not preclude the commander from fulfilling certain administrative requirements, for example: referral to substance abuse screening if the minor collateral misconduct involves any kind of substance abuse, referral to behavioral health or medical providers for a fitness for duty determination, or temporarily suspending access to critical positions such as positions in the personnel reliability program (PRP). It may be appropriate to temporarily decertify the victim from PRP status or other critical positions until appropriate evaluations can be conducted.

10.2.6.6. If the victim is a military member who falls under a separate chain of command, the convening authority exercising IDA shall consult with the SPCMCA in the victim’s chain of command and shall document such consultation in writing before making the determination as to whether the collateral misconduct is minor or not.

10.3. GCMCA Review of Initial Disposition Decision for Qualifying Sex-Related Offenses.

10.3.1. If the convening authority with IDA recommends no qualifying specifications under paragraphs [10.2.1.1](#) through [10.2.1.3](#) as to a victim be referred, see [Section 13C](#) for documentation and review requirements. Forwarding charges and specifications for referral to the GCMCA in the grade of O-7 or above satisfies this requirement, even in cases where the GCMCA subsequently declines to refer the charges.

10.3.2. When disposition of the alleged offense is complete, the GCMCA signs the written acknowledgment of the action by the convening authority with IDA. This responsibility is not delegable. A copy of this review serves as a notice of disposition and is forwarded by the legal

office supporting the SPCMCA to OSI. Refer to [Chapter 15](#) for additional information on disposition data submission to law enforcement. Templates are located on the VMJD.

10.3.3. If the convening authority assesses there is insufficient evidence to support the prosecution of a qualifying sex-related offense and decides not to refer such specification to a general or special court-martial, consult DAFI 51-207 for notification requirements to victims.

Section 10C—Coordination on All Cases Involving Separate but Concurrent Prosecution

10.4. Required Coordination for Cases Involving Concurrent Military and Civilian Prosecutions. Additional coordination is required before proceeding in cases where the military will prosecute some specifications and the local civilian authorities prosecute other offenses.

10.4.1. The servicing legal office shall coordinate with AFSC and JAJG on the terms of the arrangement before entering into an arrangement or agreement with civilian authorities regarding the order in which the military and civilian cases will proceed and the order in which the accused will serve confinement, if convicted.

10.4.2. Specifically, the following matters should be considered and discussed with AFSC and JAJG, as appropriate:

10.4.2.1. The impact the order of prosecution will have on the subsequent prosecution.

10.4.2.1.1. Estimated trial dates for the military or civilian authorities.

10.4.2.1.2. Likelihood of a delay.

10.4.2.1.3. Potential for loss of evidence and/or witnesses between investigation, first trial, and the second trial.

10.4.2.1.4. Impact of result of first trial on the prosecution of the second.

10.4.2.1.5. Impact of the order of military and civilian prosecutions may have on a plea agreement with the accused, if any.

10.4.3. The accused, if convicted, will remain in the military until the duration of military confinement is served. Therefore, if civilian confinement is served prior to military confinement, the accused will remain in the military for the duration of both the civilian confinement and the military confinement.

10.4.4. The impact a delay in serving military confinement may have on appellate rights of the accused.

Section 10D—Unlawful Command Influence (Article 37, UCMJ; R.C.M. 104)

10.5. Independent Command Authority. The military justice system must promote the independence of command authority and operate free of unlawful command influence. To ensure a fair and just outcome in every case, court-martial convening authorities, commanders, SJAs, and all personnel involved in the military justice process should be sensitive to unlawful command influence and circumstances that might lead to it. See Article 37, UCMJ.

Section 10E—Non-Binding Disposition Guidance

10.6. Non-Binding Disposition Guidance. Factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense’s Non-Binding Disposition Guidance) must be considered in all disposition decisions. The guidance is non-binding in that it does not counsel for any particular outcome in a given case, but it does provide a consistent set of factors for commanders and JAGs to consider. Commanders and JAGs should treat each case individually, giving more or less weight to certain factors depending on the unique circumstances involved in each case.

Chapter 11

PREFERRAL OF CHARGES (ARTICLE 30, UCMJ; R.C.M. 307)

Section 11A—Miscellaneous Considerations Prior to Preferral of Charges

11.1. Secretary of Defense Non-Binding Disposition Guidance. The Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the MCM provides guidance which must be considered prior to disposition of charges by convening authorities, commanders, and legal practitioners.

11.2. Accuser is Senior to the Convening Authority. Consult R.C.M. 504(c)(2) and (3) when the accuser is senior in rank to the convening authority.

11.3. Effect of Preferral on Statute of Limitations in Lengthy Absence Cases. Effective 14 November 1986, SCMCAs are no longer required to receipt for charges alleging either desertion or absent without leave in order to toll the statute of limitations. Article 43, UCMJ. Therefore, where an unauthorized absence began after 14 November 1986, the statute of limitations is automatically tolled. With the exception of those cases involving desertion or absent without leave during a time of war, if the unauthorized absence began before or on 14 November 1986, the statute of limitations was tolled only (1) upon receipt of sworn charges and specifications by an officer exercising summary court-martial convening authority within the statute of limitations period; or (2) if the accused was absent from territory in which the United States has authority to apprehend the accused, in the custody of civil authorities, or in the hands of the enemy. Thus, charges are not viable in a case alleging desertion or an unauthorized absence which began before 14 November 1986, where preferral and receipt of charges was not accomplished, unless desertion or absence occurred during a time of war.

11.4. Involuntary Extension Beyond ETS.

11.4.1. DAF members may be involuntarily retained beyond their ETS to undergo court-martial. The involuntary extension may be done in anticipation of the preferral of charges to include cases still in the investigative stage. The SJA notifies the Air Force Personnel Center's (AFPC) Separations Branch in writing through the local Force Support Squadron Career Development Section. Contact the Force Support Squadron Career Development Section to ensure the written notice was sent to AFPC and the involuntary extension was completed. AFPC/JA is available to assist SJAs with involuntary extensions of expiration of term of service. **Note:** An "administrative hold" may affect a member's date of separation and prevent a permanent change of station or temporary duty, but it does not affect a member's expiration of term of service or equate to an involuntary extension. See AFI 36-2606; AFI 36-3208, *Administrative Separation of Airmen; Webb v. United States*, 67 M.J. 765 (AFCCA 2009).

11.4.2. Time spent in confinement is considered "lost time" or non-creditable service if the member is currently serving on an original enlistment, reenlistment or a voluntary extension of an enlistment. Time spent in confinement is not considered lost time if the member is serving on an involuntary extension of an enlistment. The member's expiration of term of service date will be adjusted to reflect either the amount of time the member spent in confinement, or the amount of time from date of confinement until the member reached their expiration of term of service in confinement, thereby extending the member's ETS. This is a result of the fact that a member signs a contract for a period of time, and the member still owes

the government the amount of time that was lost to confinement. This is an automatic process that cannot be waived.

11.5. Retirement Holds and Other Actions Taken to Suspend or Cancel Separation Processing. If a member has applied to retire or has been approved to retire, the retirement may be suspended or cancelled by contacting the AFPC Retirements Branch with notice that the member is under investigation. If charges do not materialize or a punitive discharge is not adjudged at trial, the member's retirement may be reinstated or they may reapply for retirement. Note that the common "administrative hold" may stop a member's permanent change of station or temporary duty, but it does not prevent a member from retiring on an approved retirement date or separating on an approved separation date. See AFI 36-3203, *Service Retirements*.

11.6. Accused With Prior Adjudged Punitive Discharge. If an accused has an adjudged but unexecuted punitive discharge, the SJA for the SPCMCA immediately notifies JAJM concerning preferral of new charges, with information copies sent to the appropriate GCMCA and MAJCOM SJA. This notice enables JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

11.7. Recoupment. If an accused received education assistance, special pay, or bonus money and faces separation or discharge before completion of the agreed-upon period of active duty, notice of recoupment should be given when court-martial charges are preferred, in accordance with 10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirement*, or 37 U.S.C. § 303a(e), *Special Pay: general provisions*. The member should sign a statement of understanding regarding recoupment. A template is located on the VMJD. This notice is included in the ROT as an attachment in accordance with DAFMAN 51-203, *Records of Trial*.

Section 11B—Preferral of Charges (Article 30, UCMJ; R.C.M. 307)

11.8. Preparing the Charge Sheet for Preferral (DD Form 458, Charge Sheet).

11.8.1. Prepare charges and specifications on the DD Form 458, *Charge Sheet*. The Charge Sheet is prepared by inputting the data into AMJAMS and printing the electronic version of the DD Form 458. (**Note:** If AMJAMS is unavailable, a charge sheet may be accomplished manually but must be updated immediately in AMJAMS once it becomes available.) Information in AMJAMS is reflected as follows:

11.8.1.1. Blocks 1, 2, 3, and 4. Autofill information in AMJAMS from AFPC and ensure its accuracy. Make pen and ink changes to the charge sheet to reflect any change in the accused's grade prior to arraignment by lining through and keeping the information legible. Government counsel should initial and date any changes. Changes should be updated in AMJAMS.

11.8.1.2. Block 5. Enter the accused's assigned organization under the "Duty Status" tab. The address should reflect the base name, state and zip. Ensure the correct pull down is selected for the applicable MAJCOM or FLDCOM. For the squadron, enter "111th Civil Engineer Squadron," not "111th Civil Engineer Squadron Section." For ARC members serving on extended active duty, use the organization to which they are attached for active duty.

11.8.1.3. Block 6. The accused's current service is the date the current enlistment began for enlisted personnel or the Total Active Federal Military Service Date (TAFMSD) for officers. Extensions do not change the current enlistment date. This information can be found in the accused's personnel records or in the record review listing prepared by the servicing personnel office. Double check the Reports on Individual Personnel (RIPs) against the information auto-filled from AFPC.

11.8.1.4. Block 7. The accused's current pay per month, to include cents, is entered automatically based on the listed grade and should be updated if necessary. If the accused's grade changes prior to the announcement of sentence, the pay may be corrected with a pen and ink change and initials. **Note:** Pay may also require correction if the incorrect grade is listed, the accused is promoted or demoted, or the accused is brought to trial in a subsequent calendar year.

11.8.1.5. Blocks 8 and 9. Include any form of restraint, including restraint by civilian authorities at the request of the Air Force. An example of this is when a member in "absent without leave" or "deserter" status is apprehended by civilian police and incarcerated or detained until DAF officials take custody of the accused. This is accomplished by adding the pretrial restraint folder under the pretrial information data in AMJAMS.

11.8.2. Charges and Specifications. Consult R.C.M. 307 and refer to the sample specifications in the MCM, Part IV, and the Military Judges' Benchbook, DA Pamphlet 27-9. AMJAMS will autofill the charge and specification indicators. When alleging Article 134, UCMJ, offenses, ensure the specification alleges the terminal element, as required by R.C.M. 307(c)(3). Use caution when reviewing lesser included offenses (LIOs) listed in the MCM, Part IV, to ensure the LIOs comport with the elements test set forth in *United States v. Jones*, 68 M.J. 465 (CAAF 2010) or, for offenses committed on or after 1 January 2019, are lesser included offenses designated by the President. 10 U.S.C. § 879.

11.8.2.1. Format. Type the words "CHARGE" and "ADDITIONAL CHARGE" in all capital letters. "Specification" includes upper and lower case letters. Where more than one charge or specification is alleged, charges are numbered with Roman numerals (e.g., I, II, III) and specifications with Arabic numbers (e.g., 1, 2, 3). A single charge or specification is not numbered.

11.8.2.2. Additional Charges. When additional charges are preferred, add an "Additional Charges Preferred" Folder in AMJAMS. If more charges are preferred after preferral of additional charges, add another "Additional Charges Preferred" folder in AMJAMS. AMJAMS will label each new set of charges with written numbers (e.g., SECOND ADDITIONAL CHARGES, THIRD ADDITIONAL CHARGES).

11.8.2.3. Identification of the Accused. In the specifications, identify the accused by present grade, followed by the grade on the date of the alleged offense, if different. Use all capital letters. List known aliases. List the member's armed force. Do not include the MAJCOM or FLDCOM. For example. "In that TECHNICAL SERGEANT ADAM P. SMITH, United States Air Force, alias CAPTAIN JACK P. SMITH, United States Air Force, 401st Maintenance Squadron, did,..." **Note:** Change the accused's rank from the current rank to the rank at the time of the allegation only if pertinent to the offense charged. R.C.M. 307(c)(3), Discussion.

11.8.2.4. Identification of Victim. If the alleged victim is identified in the specification, do not put the victim's name or rank in all capital letters.

11.8.2.4.1. Victims of Sex-Related Offenses. Do not substitute initials for the name of sex offense victims. Initials will be substituted in an expurgated Statement of Trial Results (STR) and EoJ, if applicable.

11.8.2.4.2. Minors. Do not substitute initials for the name of children or minors listed in specifications, regardless of the nature of the offense charged. Initials will be substituted in an expurgated STR and EoJ, if applicable.

11.8.2.5. Pleading Check Cases. Where the offense involves use of a worthless check rather than a forged check, the contents need not be pled verbatim. See the Military Judges' Benchbook, DA Pamphlet 27-9, and the sample specifications on the VMJD.

11.8.2.6. Pleading Child Pornography Cases. Exercise care in drafting specifications in a case involving multiple images of child pornography. See *United States v. Piolunek*, 72 M.J. 830 (AFCCA 2013), *aff'd*, 74 (CAAF 2015). The best method of pleading a child pornography case will depend on the facts unique to that case.

11.8.2.7. Pleading Article 93a, UCMJ, Cases. SecAF has promulgated required definitions for the offenses chargeable under Article 93a, UCMJ, in AFI 36-2909, *Air Force Professional Relationships and Conduct*. Counsel for the government must carefully review these definitions prior to drafting charges and specifications for such offenses to ensure the alleged misconduct fits under these definitions.

11.9. Forwarding of Charges (R.C.M. 401). The commander forwards the charges to the convening authority by attaching an indorsement to the charge sheet. Attach a personal data sheet on the accused and a copy of the report of investigation or other evidence supporting the charges. The base legal office should redact Privacy Act information not relevant to the charges from documents before forwarding them to the convening authority. The commander signs and dates the indorsement when preferring charges or when forwarding charges preferred by another. The first indorsement must give each attachment a descriptive name (e.g., "Report of Investigation dated 1 January 2019" or "AF 1168 of Amn Snuffy", not "Evidence"). Address the indorsement to the officer exercising special court-martial convening authority over the accused. If additional charges are later added, forward them with a new indorsement.

11.10. Receipt of Charges (R.C.M. 403). A judge advocate may receipt for charges on behalf of the SPCMCA if the convening authority delegates that authority in writing. If delegated, receive the charges "FOR THE COMMANDER."

Chapter 12

ARTICLE 32, UCMJ, PRELIMINARY HEARINGS

12.1. Applicable Rules. Conduct preliminary hearings in accordance with the guidance and procedures prescribed in R.C.M. 405, this chapter, and the PHO's Guide. In the recommendation required by R.C.M. 405(1)(2)(J), the PHO must include a discussion of relevant factors in Appendix 2.1 to the MCM (The Secretary of Defense's Non-Binding Disposition Guidance).

12.2. Preliminary Hearing Personnel.

12.2.1. PHO.

12.2.1.1. The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the PHO. **(T-0).**

12.2.1.2. The accuser may not serve as the PHO.

12.2.1.3. The PHO shall be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing unless the SJA expressly determines this to be impracticable. **(T-0).**

12.2.1.4. The PHO shall be certified under Article 27(b), UCMJ. If precluded by military necessity or other compelling circumstances, the PHO may be a judge advocate who is not certified under Article 27(b), UCMJ.

12.2.1.5. The PHO may be a military judge. Requests for a military judge to serve as a PHO are coordinated with JAT. No judge who has served on a pre-referral proceeding pursuant to Article 30a, UCMJ, may be detailed to an Article 32, UCMJ, preliminary hearing in the same case.

12.2.1.6. An ARC judge advocate may be detailed to serve as a PHO while on active duty or performing IDT. Article 136(b), UCMJ, authorizes AFR judge advocates to administer oaths while on active duty or performing inactive duty training. ANG judge advocates must be on Title 10 orders. **(T-0). Note:** Recommend all installations verify the certification status of a AFR or ANG judge advocate before appointment. Certification status of all judge advocates may be verified via the AF/JAX Knowledge Management page utilizing the annually published JAG Order 1 and JAG Order 2.

12.2.2. Counsel.

12.2.2.1. Counsel for the Government. A judge advocate, who is not the accuser, serves as counsel to represent the United States. The judge advocate serving as the counsel for the government need not be certified under Article 27(b), UCMJ.

12.2.2.2. Counsel for the Accused. The accused has the right to be represented by military defense counsel certified under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ. The accused may also be represented by civilian defense counsel at no expense to the government. Article 38, UCMJ. Civilian defense counsel must take an oath to perform their duties faithfully when representing an accused. The PHO administers this oath. Upon request of the accused, the accused is entitled to a reasonable time to obtain civilian counsel and have civilian counsel available for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for the accused to obtain and have present civilian

counsel. **(T-0)**. See R.C.M. 405(d)(3). The accused may represent him or herself, but this right is not absolute. See *United States v. Bramel*, 29 M.J. 958 (A.C.M.R. 1990), *aff'd*, 32 M.J. 3 (C.M.A. 1990).

12.2.3. **Court Reporter.** A court reporter is not normally detailed to a preliminary hearing. A court reporter may be detailed by JAT. See DAFMAN 51-203.

12.2.4. **Interpreter.** An interpreter may be requested and detailed by the appropriate convening authority.

12.3. Pre-Hearing Matters.

12.3.1. **Appointment of PHO (R.C.M. 405(b)).** A convening authority directs an Article 32, UCMJ, preliminary hearing by appointing the PHO in writing. A template is available on the VMJD.

12.3.2. **Delays and Resulting Speedy Trial Issues.** The convening authority may approve a delay of the Article 32, UCMJ, preliminary hearing. The period of time of such approved delays are excluded when determining whether the period in R.C.M. 707(a) has run. The convening authority may delegate the authority to grant a delay to an Article 32, UCMJ, PHO. The convening authority may also grant the PHO the authority to exclude time under R.C.M. 707(c). The PHO has no independent authority to exclude time under R.C.M. 707(c).

12.3.3. Disclosures Prior to Preliminary Hearing.

12.3.3.1. R.C.M. 404A Disclosures. As soon as practicable, but no later than five days after the convening authority directs the preliminary hearing, counsel for the government must provide the defense copies of the matters listed in R.C.M. 404A. **(T-0)**. If provision of copies is impracticable, counsel for the government must permit the defense to inspect the matters listed in R.C.M. 404A. **(T-0)**.

12.3.3.2. Should government counsel fail to comply with the provisions of R.C.M. 404A, the PHO shall note the issue in the preliminary hearing report. Further, if the convening authority has given the PHO the authority to grant delays, the PHO may grant a reasonable delay to allow government counsel to comply with the above disclosure requirements.

12.3.3.3. R.C.M. 405(h) Disclosures. Prior to the preliminary hearing, government and defense counsel shall provide to opposing counsel and the PHO notice of the matters listed in R.C.M. 405(h). The PHO may set earlier timelines for such disclosures which must be followed by counsel. **(T-0)**.

12.4. Victims' Rights Regarding the Preliminary Hearing. See DAFI 51-207 and the Article 32, UCMJ, PHO Guide on the VMJD for further guidance on specific victims' rights.

12.5. VC Access to Hearing. VCs are entitled to attend all open sessions (i.e., open to the public) and all closed sessions (i.e., not open to the public) involving their clients. **(T-0)**.

12.6. Production of Witnesses. Follow the rules and procedures in R.C.M. 405(h) for the production of witnesses. See DAFI 51-207 for additional guidance.

12.7. Production of Evidence. Follow the rules and procedures in R.C.M. 405(h) for the production of evidence.

12.8. Recording the Preliminary Hearing.

12.8.1. **Video and Audio Recording of the Preliminary Hearing.** Government counsel shall ensure the preliminary hearing is recorded by a suitable government recording device. Government counsel shall also use a secondary suitable recording device to create a back-up recording.

12.8.2. **Transcribing the Preliminary Hearing.** The SJA may authorize the completion of a verbatim transcript following the hearing; though a verbatim transcript is not required.

12.8.3. **Providing Preliminary Hearing Recording to the Victim(s).** Upon written request from a victim or VC of a victim named in one of the specifications, government counsel shall provide the victim or VC with access to, or a copy of, the recording. **(T-0)**. Do not provide any portions of the recording ordered sealed by the PHO to the victim or VC. **(T-0)**. Trial counsel is not normally required to redact the recording except as indicated below. However, to maintain compliance with the Privacy Act, the government should release the recording in the following manner:

12.8.3.1. If the victim is represented by a VC, the unredacted recording should be provided to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2. The VC must maintain the recording in accordance with the Privacy Act. **(T-0)**.

12.8.3.2. If the victim is represented by a civilian VC, the recording should be provided to the VC in accordance with [paragraph 8.5.5](#) See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2. The civilian VC must maintain the recording in accordance with the Privacy Act. **(T-0)**.

12.8.3.3. An unredacted recording may be provided directly to the victim only if the victim is not represented by counsel. The recording is provided to an unrepresented victim as a routine use disclosure under the Privacy Act system of records notice for Air Force court-martial records. See SORN, DoD 0006.

12.8.3.4. The Government may, in its discretion, provide a transcript to the victim or VC instead of a recording. See R.C.M. 405(j)(5). Personally identifiable information should be redacted from transcripts provided directly to victims.

12.8.4. **Providing Preliminary Hearing Recording to the Accused.** The accused will receive a copy of the preliminary hearing report, which includes a copy of the recording. **(T-0)**. Do not provide any portions of the recording ordered sealed by the PHO to the accused or counsel. **(T-0)**.

12.9. Conducting the Preliminary Hearing. Conduct the preliminary hearing in accordance with R.C.M. 405(j) and the Article 32, UCMJ, PHO's Guide.

12.9.1. **Public Access.** Ordinarily, preliminary hearings are open to the public, including access by news media, whenever possible. See R.C.M. 405 and the Article 32, UCMJ, PHO's Guide on the VMJD for further guidance.

12.9.2. **Potential Witnesses.** Although potential witnesses are normally excluded from watching the proceedings, the PHO has the authority to permit some potential witnesses (e.g., experts) to be present if the PHO considers their presence helpful to the proceedings. Victims

have an Article 6b, UCMJ, right to be present at the preliminary hearing regardless of whether they testify.

12.9.3. Uncharged Offenses.

12.9.3.1. Authority to Examine Other Offenses. The PHO may consider uncharged offenses as outlined in R.C.M. 405(e)(2).

12.9.3.2. Later Preferral of Uncharged Offenses Examined at Preliminary Hearing. If an uncharged offense examined by the PHO in the preliminary hearing is later preferred, the GCMCA may refer the offense to court-martial without convening an additional preliminary hearing, provided the SJA's Article 34, UCMJ pretrial advice addresses the offense. See R.C.M. 601(d)(2).

12.9.4. The Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance the convening authority should consider before referring charges. In making their recommendation, the PHO is encouraged to address all factors in Appendix 2.1 that are relevant to the facts and charges in the case under review.

12.10. Supplementary Information. No later than 24 hours after the preliminary hearing closes, supplemental matters may be submitted in accordance with R.C.M. 405(k). **(T-0)**. The parties and the victim(s) must follow the procedures in R.C.M. 405(k) when submitting supplemental information to the PHO. **(T-0)**. The PHO must follow the procedures in R.C.M. 405(k) for the handling, sealing and examination of supplementary information. **(T-0)**.

12.11. Assembly of the PHO Report. The PHO shall assemble the preliminary hearing report in accordance with R.C.M. 405(l). **(T-0)**. In addition to those items listed in the rule, the preliminary hearing report will contain: DD Form 457, *Preliminary Hearing Officer Report*, and any attachments; DD Form 458, *Charge Sheet*, and any attachments; and the PHO appointment letter. Additionally, the PHO must include a copy of the preliminary hearing recording. **(T-0)**.

12.12. Distributing the PHO Report. The PHO shall deliver the PHO Report to the appropriate SJA within eight days after the closure of the preliminary hearing or timely receipt of supplementary information under R.C.M. 405(k), whichever is later. The SJA, in turn, delivers the report to the convening authority who directed the preliminary hearing. The convening authority must cause the PHO Report to be served on the accused and defense counsel. **(T-0)**. Government counsel must obtain a receipt from the accused upon service of the PHO Report. VC requests for copies of the PHO Report shall be processed as a For Official Use disclosure under the Privacy Act. **(T-0)**. See [Section 8B](#); DoD 5400.11-R, *Department of Defense Privacy Program*. The VC must maintain the recording in accordance with the Privacy Act. Likewise, civilian victim's counsel requests should be processed in accordance with [paragraph 8.5.5](#).

12.13. Objecting to the PHO Report. Any objections to the PHO Report must be submitted in accordance with R.C.M. 405(l)(5) within five days of receipt. **(T-0)**. The day the accused receives the report is not counted in calculating the five-day window in which the accused may raise objections. The convening authority may refer the charge(s) or take other action within this five-day period. R.C.M. 405(l)(5).

12.14. Forwarding the PHO Report to a Superior Convening Authority.

12.14.1. If the convening authority who directed the preliminary hearing decides to forward the PHO report to a superior convening authority for disposition, the convening authority who

directed the hearing must prepare a forwarding letter providing a recommendation for disposition of the charge(s). The forwarding letter will include the following attachments: the charge sheet, the commander's indorsement to the charge sheet, and the PHO Report, with the attachments appended to the report. This letter is forwarded to the superior convening authority through the superior convening authority's SJA.

12.14.2. If the subordinate convening authority recommends disposition by court-martial, then the subordinate convening authority's SJA should provide a list of court member nominees and member data to the superior convening authority in the event the superior convening authority decides to refer the case.

12.15. Reviewing Sealed Materials in or Attached to a PHO Report. Refer to R.C.M. 1113 for authority, limitations, and procedures relevant to review of sealed materials in or attached to a PHO Report.

Chapter 13

FORWARDING AND DISPOSITION OF CHARGES

Section 13A—Pretrial Advice

13.1. Pretrial Advice in General Courts-Martial. The convening authority's SJA must prepare written pretrial advice for every GCM in accordance with R.C.M. 406. **(T-0).** A person other than the SJA may prepare the pretrial advice, but the SJA is, unless disqualified, responsible for and must personally sign the pretrial advice. The DSJA or other assistant staff judge advocate performing the duties of the SJA, in the absence of, or because of the disqualification of the SJA, signs "Acting as the Staff Judge Advocate."

13.1.1. Required Contents. The required contents for pretrial advice are prescribed in R.C.M. 406(b). SJAs should understand the difference between a specification that is supported by probable cause but carries litigation risk versus a specification that is not supported by probable cause. A finding that there is not probable cause to believe the accused committed the offense charged in a specification prohibits that convening authority from referring that specification. SJAs should make such a finding only when advising the convening authority that the specification cannot be referred to trial. See Article 34(a)(1)(B), UCMJ, and *United States v. Murray*, 25 M.J. 445 (C.M.A. 1988).

13.1.2. Format and Length. Pretrial advice need not contain any underlying analysis or rationale for the conclusions contained in it. In addition, lengthy summaries of evidence, detailed explanations of elements of offenses, and extensive discussions of possible defenses are not required. A sample format for pretrial advice is available on the VMJD.

13.1.3. Capital Cases. In order to refer a case as capital, the pretrial advice must specify whether there is probable cause to establish any of the aggravating factors required under R.C.M. 1004(c). **Note:** A special instruction must be included on the charge sheet in order to put the accused on notice of the capital nature of the case. **(T-0).** See R.C.M. 201(f)(1)(A)(iii); R.C.M. 1004(b)(1)(A).

13.1.4. Distribution. The government shall provide a copy of the pretrial advice to the defense for service upon the accused if charges are referred to a general court-martial. **(T-0).**

13.2. Pretrial Advice in Special Courts-Martial (Article 34, UCMJ; R.C.M. 406A). Before referral of charges to a SPCM, to include a SPCM by a military judge alone, the convening authority shall consult a judge advocate on relevant legal issues. **(T-0).** Pretrial advice by a judge advocate in a SPCM does not need to be in writing and does not need to come directly from the SJA. However, any pretrial advice reduced to writing must be provided to defense counsel if charges are referred.

13.3. Pretrial Advice in Summary Courts-Martial. Pretrial advice is optional for SCMs.

13.4. Non-Binding Disposition Guidance. In addition to the pretrial advice, the Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance the convening authority should consider before referring charges. The Non-Binding Disposition Guidance must be discussed either in the pretrial advice or directly with the convening authority.

13.5. Forwarding of Pretrial Advice in General Courts-Martial. The charge sheet, the commander's indorsement, forwarding letters or other indorsements, and, if applicable, the PHO's appointment letter with attachments (including the Article 32, UCMJ, preliminary hearing report, receipts of report, and any objections) should be forwarded with the pretrial advice to the GCMCA. If the preliminary hearing is waived, forward the accused's waiver along with the documentary evidence that the SJA relied upon when drafting the pretrial advice, such as investigative reports, witness statements, and other documents containing relevant information. If the GCMCA must detail members to a court-martial to try the forwarded case, appropriate documentation should be forwarded for court-member selection. See [Section 14A](#).

Section 13B—Dismissal of Charges

13.6. Annotating the Charge Sheet for Charges Dismissed Prior to Referral. If the convening authority determines some or all of the charges or specifications will be dismissed instead of referred to court-martial, the dismissed charges or specifications should be "Z-ed" out on the charge sheet and annotated with the dismissal date and the initials of the person who lined through the charges (e.g., "Dismissed on 15 Sep 18, [initials]"). This may be accomplished by the convening authority, a judge advocate authorized to sign referrals on the convening authority's behalf, or the trial counsel at the direction of the convening authority. Such delegation does not have to be in writing. The remaining charges, if any, are renumbered as necessary. **Note:** Charges or specifications dismissed by a military judge are not ordinarily lined out on the charge sheet. See the VMJD for guidance on how to complete post-trial paperwork to reflect such dismissals.

Section 13C—Superior Review of Convening Authority Decision Not to Refer Specific Sex Offense Charges

13.7. General Court-Martial Convening Authority Decision Not to Refer Certain Sex Offense Charges.

13.7.1. In cases where the GCMCA does not refer any covered specifications for a particular victim, the GCMCA forwards the decision to a superior convening authority for review as described below. **(T-0)**. If at least one covered specification is referred as to each victim, then the review is not required. This requirement is victim-specific. See [paragraph 10.2](#) for the list of covered sex offenses. See also FY 2014 NDAA, Section 1744(d).

13.7.2. Superior General Court-Martial Convening Authority (GCMCA) Review of Non-Referral Decision. In any case where the SJA's pretrial advice recommends against referring a covered charge or specification to a court-martial and the GCMCA concurs, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined at [paragraph 13.7.4](#), to the next superior GCMCA for review. Template notifications and responses are on the VMJD.

13.7.3. SecAF Review of Non-Referral Decision. In any case where the GCMCA SJA's pretrial advice recommends referring a covered charge or specification to a court-martial and the GCMCA non-concurs, such that the effect of that non-concurrence is that no covered offense as to that victim would be referred to trial, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined in [paragraph 13.7.4](#), to SecAF for review. The case file is transmitted to JAJI through functional channels. A template for SecAF's response is located on the VMJD.

13.7.4. Request for SecAF Review of Non-Referral Decision. In addition to the circumstances mandating SecAF review described in [paragraph 13.7.3](#), the Chief, JAJG, may request SecAF review in any case where the GCMCA decides not to refer the charge and any specification described in [paragraph 10.2](#).

13.7.4.1. Case File Required Contents. The case file that is forwarded to SecAF or GCMCA under [paragraph 13.7.3](#) shall include: **(T-0)**.

13.7.4.1.1. All charges and specifications preferred;

13.7.4.1.2. All reports of investigations, including but not limited to the Article 32, UCMJ, PHO report, the OSI report of investigation, and any report of investigation by a military or civilian criminal investigative organization;

13.7.4.1.3. A certification that the victim of any alleged offense described in [paragraph 10.2](#) was notified of the opportunity to express a preference as to disposition of the alleged offense for consideration by the convening authority. See [paragraph 10.2](#) A template is located on the VMJD.

13.7.4.1.4. All statements from the victim provided to OSI and to the victim's chain of command relating to any alleged offense described in [paragraph 10.2](#);

13.7.4.1.5. Any statement provided by the victim to the convening authority expressing the victim's view on the preferred disposition of the pertinent alleged offense(s);

13.7.4.1.6. The SJA's Pretrial Advice pursuant to Article 34, UCMJ;

13.7.4.1.7. A written statement from the GCMCA explaining the reasons for the decision not to refer charges or specifications for trial by court-martial; and

13.7.4.1.8. A certification that the victim of any alleged offense described in [paragraph 10.2](#) was informed of the GCMCA's decision to forward the case for review under [paragraph 13.7.3](#).

13.7.4.2. Additional Matters. Additional matters may be included in the case file.

13.7.4.3. Applicable templates for the contents of the case file can be found at the VMJD.

13.7.5. Victim Notification of Results of Superior Review. The SJA ensures the victim of any offense described in [paragraph 10.2](#) is notified of the forwarding of the case for superior GCMCA or SecAF review. The victim must be notified of the results of the review conducted by SecAF or superior GCMCA. Templates for these documents can be found on the VMJD.

Section 13D—Referral of Charges

13.8. Referral of Charges to Court-Martial (R.C.M. 601). The convening authority must sign either the referral section on the DD Form 458, *Charge Sheet*, or another document reflecting the intention to refer charges to trial by court-martial. Such other documents may include concurrence with an SJA's pretrial advice and recommendation to refer the case to trial by a specified court-martial.

13.8.1. Completing the Referral Block on Charge Sheet. The designation of the convening authority on the charge sheet should be the same as on the convening order. The date should

be the date the convening authority referred the charges. If the convening authority personally signs the referral, the language of “By... Command or Order ... of...,” should be stricken and the convening authority’s signature block should be included. If the convening authority delegated authority to sign the referral block on the charge sheet to a judge advocate, the judge advocate signs the referral “FOR THE COMMANDER.”

13.8.1.1. Special instructions should be included in the referral block when appropriate. See R.C.M. 601(e). For example, when additional charges are referred, the following language should be included: “To be tried with the original (charge) (charges), dated [date of referral of original charge(s)].” When a case is referred as a capital case, the following language should be included: “To be tried as a capital case.”

13.8.1.2. When a case is referred to a SPCM by military judge alone under Article 16(c)(2)(A), UCMJ, the following language should be included: “To be tried by a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), UCMJ.”

13.8.1.3. The SJA to the SPCMCA ensures the accused’s records are examined to ascertain the accused’s nationality no later than twenty-four hours after referral, even if a claim of foreign nationality has not been made. See [Section 23D](#).

13.8.1.4. The SJA to the SPCMCA ensures that OSI and SF/S2I are sent copies of referred charge sheets within five duty days of referral.

13.8.1.5. A copy of the referred charge sheet must be served upon the accused in accordance with R.C.M. 602.

13.8.2. **Disqualification of Convening Authority (R.C.M. 601(c)).**

13.8.2.1. Convening authorities may not refer charges to a GCM or SPCM if they are also the accuser of those charges. **(T-0)**. Further, a convening authority with “an interest other than an official interest in the prosecution of the accused” is disqualified from referring that case to court-martial. **(T-0)**. Article 1(9), UCMJ.

13.8.2.2. If the SPCMCA is disqualified, the case is forwarded to the GCMCA. If the GCMCA is disqualified, the GCMCA’s superior convening authority determines who shall act as the convening authority. If there is not an appropriate GCMCA within the command, the MAJCOM or FLDCOM SJA requests assistance from JAJM in the designation of a commander to serve as the GCMCA.

13.8.3. **Referral Authority for Certain Sex Offenses (R.C.M. 201(f)(1)(D))** . Only a GCM has jurisdiction over the following offenses if committed on or after 24 June 2014:

13.8.3.1. Rape or sexual assault, in violation of Article 120, UCMJ;

13.8.3.2. Rape of a child or sexual assault of a child, in violation of Art 120b, UCMJ;

13.8.3.3. Forcible sodomy, committed prior to 1 January 2019, in violation of Article 125, UCMJ (2016 and earlier editions); and

13.8.3.4. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

13.8.3.5. For offenses committed on or after 1 January 2019, conspiracy to commit the above offenses, in violation of Article 81, UCMJ. See Article 56, UCMJ.

13.9. “Re-referral” of Charges. After charges are referred to trial by court-martial, it may become necessary to withdraw and refer them anew on the same charge sheet. The following procedures are used for re-referring charges in rehearings and other cases, including withdrawn charges:

13.9.1. **Withdrawal of Previous Charges.** Prior to “re-referral,” the SJA or trial counsel must “Z-out” Block V on the back of DD Form 458, then annotate “withdrawn” and initial and date. See [paragraph 16.2.1](#).

13.9.2. **New Referral.** After withdrawal of the previous charges, the new referral is documented in the same format as that on page two of the charge sheet, following the rules in [paragraph 13.8.1](#). The new referral is accomplished by using the referral section from page two of a blank DD Form 458. When completed, the new referral section should be cut out and attached to the charge sheet by stapling it immediately above the original referral section. A prior referral should never be removed or destroyed. If a third or subsequent referral is necessary, it should be attached in the same way as the second. Any new referral must include service on the accused.

13.9.3. **Special Instructions for Rehearings.** When a case is referred for a rehearing (whether in full, for a limited purpose, or for a new trial), the appropriate instructions should be incorporated in the referral section. R.C.M. 810. For example, in a rehearing on sentence only, the following special instruction should be included: “For a rehearing on sentence only, as ordered by General Court-Martial Order No. 17, Headquarters, 18 AF, dated 18 January 2019, as to the charge(s) and specification(s) affirmed by the Air Force Court of Criminal Appeals, dated 10 February 2019,” or a similar instruction.

Section 13E—Reporting Referral of Additional Charges in Cases Pending Appellate or Post-Trial Review

13.10. Notification of Referral of Later Charges in Pending Cases.

13.10.1. **Notification to JAJM.** If charges are referred to trial against a person who is the accused in a case under review under Articles 66, 67, 67a, or 69, UCMJ, the headquarters referring the new charges must notify JAJM immediately. The case currently under review is identified by the accused’s full name, rank, and SSN and the case’s Army Court-Martial number (ACM), if available. The following information should also be provided: the nature of the new charges, the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information that might affect disposition of the current review concerning the case.

13.10.2. **Follow-Up Messages.** Follow-up messages should be sent to JAJM to advise when trial is completed (including the result), if the charges are withdrawn, or if there are other significant developments which may affect disposition of the case currently under review.

Section 13F—Referral to Limited Special Court-Martial (Article 16(c)(2)(A), UCMJ)

13.11. General Provision. A limited special court-martial is a type of special court-martial that has a statutory sentence cap of six months of confinement and no ability to adjudge a punitive discharge. In a limited special court-martial, a military judge is always the finder of fact and sentencing entity; the accused may not request trial by members. No specification may be tried

by a special court-martial consisting of a military judge alone if, before arraignment, the accused objects on the grounds provided in R.C.M. 201(f)(2)(E)(i)(I-II) and the military judge determines that either of the grounds are met. The convening authority may only refer a case to this forum if all of the charged offenses occurred on or after 1 January 2019.

13.12. Required Language on Charge Sheet. See [paragraph 13.8.1.2](#).

13.13. Notice to Accused. Inclusion of the special language in [paragraph 13.8.1.2](#) serves as notice to the accused that the charges are being referred to a limited special court-martial.

13.14. Objection by Accused for Offenses Carrying More Than Two Years Maximum Confinement. If the specifications preferred include violations of offenses for which the maximum authorized confinement at a GCM exceeds two years, excluding wrongful use or possession of a controlled substance under Article 112a(b), UCMJ, the accused may object to the forum choice at any point prior to arraignment. R.C.M. 201(f)(2)(E)(I). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

13.15. Objection by Accused for Offenses Requiring Sex Offender Notification. If the specification preferred would result in notification as a sex offender, the accused may object at any point prior to arraignment. R.C.M. 201(f)(2)(E)(II). Though the accused may raise an objection at any time prior to arraignment in any manner, if the objection is raised at the arraignment proceedings, the objection must be articulated on the record.

Section 13G—Transferring Charges

13.16. Transferring Charges to Parallel Convening Authority (R.C.M. 601(g)). If it is impractical for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if already referred, to be transmitted to a parallel convening authority (defined as a convening authority of the same level, such as transfer from one SPCMCA to another SPCMCA). This transmittal must be in writing. The original convening authority's SJA coordinates with JAJM and the gaining convening authority's SJA to transfer the case.

Chapter 14

CONVENING COURTS-MARTIAL

Section 14A—Detailing Members (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ).

14.1. General Provision. Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(e)(2), UCMJ, and R.C.M. 502(a)(1). Convening authorities may detail members under their command or others made available by the appropriate commander. When detailing court members, convening authorities may consider nominees submitted by subordinate commanders.

14.2. Detailing Enlisted Members. If the accused is enlisted, the convening authority may detail a court-martial panel of entirely officer members, entirely enlisted members, or a combination of officer and enlisted members. Enlisted members may come from the same unit as the accused but may not be junior in rank to the accused. The convening authority may not detail enlisted members to a case where the accused is a commissioned officer or cadet. **(T-0).**

14.3. Detailing Reserve Members on Active Duty. For courts-martial involving Reservists, convening authorities should consider detailing Reserve members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

14.4. Advice to the Convening Authority. The SJA must guard against unlawful command influence in the court member selection process, which includes ensuring no involvement by trial counsel or assistant trial counsel in the identification of prospective court members. When advising the convening authority on court member detailing, the SJA reiterates the Article 25(e)(2), UCMJ, criteria. The SJA may prepare a list of proposed nominees. If such a list is used, the SJA also informs the convening authority that persons on the nomination list as well as any other eligible persons subject to their command or others made available by their commanders may be considered. The SJA maintains all documents submitted to the convening authority in the course of detailing members to a court-martial.

14.4.1. **Diversity.** Article 25, UCMJ, does not preclude a commander from taking gender or race into account if he or she is seeking in good faith to assure that the court-martial panel is representative of the Accused's race or gender, or of the military population as a whole. However, the SJA should ensure a review of relevant case law is provided to guard against improper panel stacking. See *United States v. Riesbeck*, 77 M.J. 154 (CAAF 2018).

14.5. Panel Requirements. Convening authorities should detail a sufficient number of members so that, after exercise of challenges, a capital case will be comprised of twelve voting members, a non-capital general court-martial will be comprised of eight voting members, and a special court-martial will be comprised of four voting members. **Note:** If the number of members in a non-capital general court-martial is reduced after impanelment, the trial may proceed so long as at least six members remain. See Article 29, UCMJ.

14.6. Alternate Members. The convening authority must state, in writing, whether or not alternate members are authorized. If the convening authority authorizes impanelment of alternate members, the convening authority must either specify a number of alternate members or authorize the military judge to impanel alternates only if excess members remain after exercise of challenges. **(T-0).** See R.C.M. 912A. Templates are located on the VMJD.

14.6.1. If the convening authority designates a specified number, the military judge must impanel that number of alternates in addition to the primary members on the fixed panel. Therefore, if after challenges there is an insufficient number of alternate members, the convening authority must detail additional members to the panel until the specified number of alternates are seated on the panel.

14.6.2. If the convening authority states that alternates may be impaneled only if excess members remain, the military judge shall impanel remaining members as alternates, but no more than three. If no excess members remain after challenges, then the convening authority is not required to detail additional members to serve as alternates.

14.7. Accused's Elections. An enlisted accused may request to be tried by a court-martial panel with no further specificity, or that a court-martial panel be comprised entirely of officer members or at least one-third enlisted members.

14.7.1. **Officer Panel Election.** If the accused requests a panel entirely of officer members, and the convening authority previously detailed enlisted members, then the convening authority must excuse the previously detailed enlisted members.

14.7.2. **At Least One-Third Enlisted Panel Election.** If the accused requests at least one-third enlisted members and officer members were already detailed, the convening authority may replace officer members with enlisted members or may detail enlisted members without excusing officer members. If the convening authority previously detailed a sufficient number of enlisted members, then there may be no need to replace or detail new members.

14.8. Replacing or Excusing Detailed Members (R.C.M. 505). Before the court-martial is assembled, the convening authority may excuse or replace detailed members of a court-martial without showing cause. The convening authority may delegate to the servicing SJA or other principal assistant the authority to excuse detailed members of a court-martial before a court is assembled. Any such delegation must be in writing. However, the SJA or other principal assistant may excuse no more than one-third of the detailed members. Only the convening authority may detail new members to a court-martial panel. See R.C.M. 505(c).

Section 14B—Preparing the Convening Order

14.9. Special Order Convening Courts-Martial. Convening orders are prepared in accordance with R.C.M. 504, 1302, and this chapter and shall designate the type of court-martial and detail the members, if any, in accordance with R.C.M. 503(a). A convening order may designate where the court-martial will meet based as determined by the convening authority. A sample convening order is provided on the VMJD.

14.9.1. **Authority Cited in Convening Order.** The current Department of the Air Force Special Order or Designation Memorandum (i.e., the “Worldwide Convening Order” or “Worldwide Convening Authority Designation Memorandum), or other document authorizing the commander to convene courts is cited as authority for convening the court-martial.

14.9.2. **Amendments.** Convening orders may be amended. A sample amended convening order is provided on the VMJD. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military judge or trial counsel announces the excusal on the record. No more than two amendments to the original order may

be issued. If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order with a savings clause is included on the VMJD. All amendments to a convening order and all convening orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders must be provided to the military judge and included in all copies of the ROT.

14.9.3. Numbering Convening Orders. Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The number follows an A-series letter prefix. Use an A letter prefix for general courts-martial, an AB letter prefix for special courts-martial, an AC letter prefix for summary courts-martial, and an AD letter prefix for special courts-martial by military judge alone under Article 16(c)(2), UCMJ. The convening order must be memorialized in the convening order log as noted in [Section 28A](#).

14.9.4. Identification of Members. Special orders convening a court-martial must contain the name, rank and unit of all persons detailed. Do not include personal information (e.g., SSN). If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member was detailed with the concurrence of the member's commander.

14.9.5. If the convening authority directs the military judge to appoint alternates, it must be so annotated on the convening order. A sample convening order including the authorization to impanel alternates is located on the VMJD.

14.9.6. If the convening authority convenes a special court-martial by military judge alone, it must be so annotated on the convening order. A sample convening order is located on the VMJD.

14.10. Docketing. JAT is responsible for docketing procedures, which are described in the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Chapter 15

COURT-MARTIAL COMPOSITION AND COURT REPORTERS

Section 15A—Military Judges (R.C.M. 503(b))

15.1. Detailing Military Judges. The Chief Trial Judge, TJAG's designee for detail of military judges, details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as a DAF military judge. A military judge with the authority to detail military judges may detail himself or herself to a court-martial. Orders detailing military judges may be oral or written. Any written orders are included in the ROT. The authority who detailed the military judge is announced on the record.

15.1.1. A military judge from another U.S. Armed Force may be detailed to a DAF court-martial according to the other Armed Force's regulations applicable to military judges and with the approval of TJAG.

15.1.2. TJAG has authority to make DAF military judges available for detail to trials convened by another U.S. Armed Force.

15.1.3. No judge may be detailed to a court-martial when that judge has previously acted as a PHO at a preliminary hearing. Military judges are requested and detailed to the pre-referral proceedings described in this chapter in accordance with the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Section 15B—Counsel (R.C.M. 503(c)).

15.2. Detailing of Defense Counsel.

15.2.1. The Chief, JAJD, has the authority to detail a CCDC, CDC, or ADC to any court-martial, and may delegate such authority.

15.2.1.1. A CDC may detail an ADC within that circuit to a court-martial outside of that circuit, with the concurrence of the Chief, JAJD, or a CCDC.

15.2.1.2. Military defense counsel will announce on the record by whom they were detailed.

15.3. Detailing of Trial Counsel.

15.3.1. An SJA, Circuit DTO, Circuit Trial Counsel, or the Chief or DTO, JAJG, may detail trial counsel or assistant trial counsel to a court-martial. The order detailing trial counsel may be oral or written. Announce orders detailing counsel orally on the record at trial. Attach written or message orders, if any, to the ROT.

15.3.2. R.C.M. 503(c)(3) and other Armed Forces' regulations govern detailing counsel from other Armed Forces to DAF courts-martial. The Chief, JAJM, is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to JAJD, available for detail to trials convened by another Armed Force. JAJD exercises this authority over defense counsel.

15.4. Qualifications of Counsel.

15.4.1. **General Courts-Martial.** Only attorneys certified according to Article 27(b), UCMJ, may be detailed as trial counsel, defense counsel, or assistant defense counsel for a general court-martial. Any person detailed as assistant trial counsel must be designated as a judge advocate in accordance with AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*.

15.4.2. **Special Court-Martial.** Only attorneys certified according to Article 27(b), UCMJ, and AFI 51-101 may be detailed as defense counsel or assistant defense counsel for a special court-martial. Any person detailed as trial counsel or assistant trial counsel for a SPCM must be designated as a judge advocate under AFI 51-101 in order to be competent for purposes of Article 27(c)(2), UCMJ.

15.4.3. **Capital Cases.** Where possible, in capital cases at least one defense counsel should have knowledge and/or experience in capital litigation. See Article 27(d), UCMJ. The Chief, JAJD will continue to identify capital litigation training opportunities for defense counsel.

15.4.4. **ARC Members.** See [Chapter 3](#) for ARC-specific requirements.

15.4.5. **Civilian Counsel (R.C.M. 502(d)(2)(b)).** When a civilian counsel represents an accused at a court-martial, the counsel's qualifications to serve as defense counsel, including information about the counsel's bar membership and standing, should be included in the record. Ordinarily, the military judge will have the civilian counsel announce their qualifications on the record during court-martial proceedings.

15.5. Disqualifications (Articles 26(d) and 27(a)(2), UCMJ; R.C.M. 502(d)(43)).

15.5.1. A PHO who conducted an Article 32, UCMJ, preliminary hearing may never serve as a member of the prosecution or as military judge in the same case.

15.5.2. No person who, with respect to a case, has served as a PHO, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

15.6. Request for IMDC (R.C.M. 502(d)(2)(B) and 506(b)). An accused may request representation by IMDC for any administrative discharge board proceeding, court of inquiry, Article 32, UCMJ, preliminary hearing, and/or at a court-martial. The requested counsel represents the accused, if reasonably available.

15.6.1. **Format of IMDC Requests.** An IMDC request must be in writing and signed by the accused or detailed counsel. The request shall include the following, as applicable:

15.6.1.1. The date of the discharge board, Article 32, UCMJ preliminary hearing or trial;

15.6.1.2. Any special qualifications of the requested counsel relevant to the case;

15.6.1.3. Whether the accused is represented by other counsel (not the requested counsel) and, if so, the name of that counsel;

15.6.1.4. Whether the accused has entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried (including any statement required by [paragraph 15.6.4](#));

15.6.1.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the discharge board, Article 32, UCMJ, preliminary hearing, or trial; and,

15.6.1.6. A statement acknowledging the accused's understanding that, if the IMDC request is granted, detailed defense counsel may be excused from further participation in the case at the sole discretion of the detailing authority.

15.6.2. Non-Availability of Certain Counsel. In addition to those persons listed in R.C.M. 506(b)(1), the following persons are not ordinarily reasonably available to serve as IMDC because of the nature of their duties, positions, or geographic locations:

15.6.2.1. Medical Law Consultants and Advisors;

15.6.2.2. Attorneys in the National Capital Region assigned to JAJ, JAC, JAO, or subordinate divisions, excluding any individual detailed to perform duties as a Circuit Defense Counsel or Area Defense Counsel;

15.6.2.3. Attorneys attending an Air Force Institute of Technology sponsored program such as a Master of Laws program;

15.6.2.4. Attorneys assigned or attached to the OSI;

15.6.2.5. Attorneys detailed to perform duties as a CTC, detailed trial counsel, and assistant trial counsel in the same or an allied case;

15.6.2.6. ARC attorneys not on extended Title 10 active duty tours. See [Chapter 3](#) for additional guidance.

15.6.2.7. SJAs, and for legal offices responsible for advising commands having a GCMCA, DSJAs.

15.6.3. Reasonably Available. A counsel is "reasonably available" if not considered unavailable by the terms of the MCM or this instruction, and the appropriate approval authority determines if the requested counsel can perform the duties of an IMDC without unreasonable expense or detriment to the United States and without unreasonable delay in the proceedings. In determining the reasonable availability of a counsel, the approval authority may consider the following:

15.6.3.1. The duties, workload, and assignment status of the requested counsel;

15.6.3.2. The experience level, duties, and workload of the military counsel already detailed to represent the accused;

15.6.3.3. The nature and complexity of the charges and legal issues involved in the case;

15.6.3.4. Whether a certified assistant trial counsel is detailed to the case;

15.6.3.5. The workload of the office to which the requested counsel is assigned, and the availability of personnel to meet those demands;

15.6.3.6. The distance from the expected site of the proceedings; and

15.6.3.7. Whether requested counsel is likely to be a necessary witness at trial or is otherwise conflicted from representing the accused under the DAF Rules of Professional Conduct or DAF Standards for Criminal Justice.

15.6.4. Exception to Non-Availability: Existing Attorney-Client Relationship. When an attorney-client relationship exists, as determined by the approval authority, exceptions to non-availability based upon assignment to a position identified in R.C.M. 506(b)(1) and [paragraph 15.6.2](#) should ordinarily be granted. An attorney-client relationship exists when, at the time of the accused's IMDC request, the accused and the requested attorney had a bilateral understanding as to the nature of services to be provided in the case, and the requested attorney was actively engaged in the preparation and pretrial strategy of the case. *United States v. Spriggs*, 52 M.J. 235 (CAAF 2000). A statement, signed by the requested attorney and accused, asserting the attorney-client relationship and providing an overview of the relationship must accompany the request. See [paragraph 15.6.1.4](#).

15.6.5. Processing IMDC Requests for ADC and CDC.

15.6.5.1. IMDC requests for ADC and CDC are forwarded through defense channels to the appropriate approval authority as follows:

15.6.5.2. The Chief, JAJD, has the authority to act on any IMDC request for any CCDC, CDC, or ADC, and may delegate such authority.

15.6.5.3. If the Chief, JAJD chooses to delegate such authority, an accused may appeal the disapproval of an IMDC request to the Chief, JAJD, whose decision is final. There is no appeal from an IMDC request disapproved by the Chief, JAJD.

15.6.6. Processing IMDC Requests for Other Counsel. IMDC requests for all other counsel (not addressed in [paragraph 15.6.4](#) and [paragraph 15.6.5](#)) are forwarded to the convening authority through the trial counsel, if any. See R.C.M. 506(b)(2). Because JAJD is responsible for defense services throughout the Air Force and Space Force, it is incumbent upon those IMDC who are not assigned to JAJD to notify the Chief, JAJD, of their association with a case as soon as practicable. These IMDC should also keep CCDC informed about the progress of the case. Additionally, the IMDC must coordinate in advance any anticipated expenditure of JAJD funds for travel or other reasons.

15.6.6.1. Disposition When Counsel is Not Reasonably Available. If the requested counsel is not reasonably available for a reason identified in R.C.M. 506(b)(1) or [paragraph 15.6.2](#), and the accused does not assert an attorney-client relationship, the convening authority will deny the request and notify the accused.

15.6.6.2. Disposition When Counsel May Be Available. If the requested counsel appears to be reasonably available (i.e., not apparently unavailable in accordance with R.C.M. 506(b)(1) or [paragraph 15.6.2](#)), the convening authority forwards the request to the appropriate approving authority identified below. The approving authority evaluates availability (see [paragraph 15.6.3](#)), decides whether to grant the request, and informs the forwarding convening authority of the decision and the reasons for the decision. The convening authority notifies the accused of the decision.

15.6.6.2.1. Attorneys Assigned to Headquarters Department of the Air Force. Send requests for attorneys assigned to JAC, JAJ, JAQ, JAO, JAS, AFJAGS, or HAF

Directorates to the respective Director. Requests for ADC and CDC shall be forwarded per **paragraph 15.6.5**.

15.6.6.2.2. Master of Laws Students. Send requests for attorneys in a Master of Laws program to JAX.

15.6.6.2.3. SJAs. Send requests for SJAs to the SJA's commander.

15.6.6.2.4. All Others. Send requests for all other attorneys to the requested counsel's SJA, supervising officer, or commander.

15.6.7. **Appeals.** The accused may request review of a disapproved IMDC request (other than those covered by **paragraph 15.6.5**) by the next higher level of supervision of the officer who denied the request. Appeals are forwarded to the convening authority through the trial counsel.

15.6.7.1. If the convening authority originally denied the request, and declines to grant the request on appeal, the appeal is forwarded to the convening authority's superior officer for review and decision. The final decision is returned to the convening authority, who notifies the accused. There is no appeal from an IMDC request initially disapproved by a MAJCOM or FLDCOM commander or higher authority.

15.6.7.2. With the exception of attorneys assigned to JAJD, if an approval authority originally denied the request, the appeal is forwarded by the convening authority to that approval authority. If the approval authority declines to grant the request on appeal, the appeal is forwarded to the approval authority's superior officer for review and decision. DJAG reviews denials by Headquarters DAF Directorates. There is no further review of denials by DJAG. The final decision is returned to the convening authority, who notifies the accused of the decision.

15.6.7.3. A military judge may, for good cause, determine that a particular IMDC is reasonably available, notwithstanding any provision of this instruction.

Section 15C—Oaths (Article 136, UCMJ; R.C.M. 807)

15.7. One-Time Oath. The following personnel take a one-time oath: military judges certified according to Article 26(b), UCMJ; military counsel, certified according to Article 27(b), UCMJ; and court reporters.

15.7.1. Any person authorized by Article 136, UCMJ, may administer the one-time oath. The person administering the oath completes a certificate indicating the place and date the oath was administered. The oath contains the typed name, signature, and qualifications of the person administering the oath. Give a copy to the person taking the oath.

15.7.2. For military judges, send the original and one copy to JAX. Use the following oath: "I (name of military judge), do (swear) (affirm) that I will faithfully and impartially perform the duties of military judge in any proceeding under the UCMJ to which I am detailed to perform such duties, (so help me God)."

15.7.3. For military counsel, the SJA or designee should ensure the original and one copy is sent to JAX. The following oath is used: "I [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the UCMJ to which

I am detailed to perform such duties or in any court-martial in which I am to perform duties of individual defense counsel, (so help me God).”

15.7.4. For court reporters, the SJA or designee should give the original to the reporter and file one copy in the office where the individual is assigned. If the individual transfers to another DAF legal office, the SJA should forward a copy of the oath to the receiving SJA. Use the following oath: “I (name of reporter), do (swear) (affirm) that I will faithfully perform the duties of (reporter) in any proceeding under the UCMJ to which I am detailed, (so help me God).”

15.8. Uncertified Military Counsel and Civilian Defense Counsel. Military counsel not certified according to Article 27(b), UCMJ, and civilian defense counsel are sworn for each court-martial. In a GCM or SPCM, the military judge administers the oath. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding.

15.9. Court Members. Court members are sworn for each court-martial to which they are detailed. The trial counsel administers the oath. See R.C.M. 807.

15.10. Interpreters. In a general court-martial or special court-martial, the trial counsel or military judge administers an oath to the interpreter. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding. An interpreter is properly sworn after an affirmative response to the following oath: “Do you, [name of interpreter], (swear) (affirm) that you will faithfully perform the duties of interpreter in this proceeding, (so help you God)?”

Section 15D—Court Reporters

15.11. Court Reporter Duties. Court reporters are detailed in accordance with JAT guidance to all GCMs and SPCMs.

15.12. Transcription Requirements. See DAFMAN 51-203 for transcription requirements for Article 30(a), UCMJ, proceedings and courts-martial.

Chapter 16

PRE-TRIAL MATTERS

Section 16A—Changes to and Withdrawal of Charges and/or Specifications

16.1. Changes to Charges or Specifications. Changes may be made to charges or specifications after referral as authorized and explained in R.C.M. 603. Changes should be made by lining through the charges or specifications in whole or in part, or writing in additional language while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel. Major changes are made only with the permission of the convening authority. This permission does not need to be in writing. Do not use white-out tape or liquid for any changes to the charge sheet.

16.1.1. **Minor Changes.** Minor changes may be accomplished without having the charge sworn anew by the accuser. Trial counsel shall provide the accused and defense counsel with copies of the charge sheet with the changes. After arraignment, only a military judge may authorize minor changes to the charge sheet. R.C.M. 603(a) and its accompanying Discussion provides a definition of a “minor change.”

16.1.2. **Major Changes.** Major changes or amendments to a referred charge or specification may not be made over the objection of the accused. If such changes need to be made the charge(s) and specification(s) must be withdrawn and referred anew. In the case of a GCM, a new Article 32, UCMJ, preliminary hearing may be required if the charge(s) or specification(s), as changed, were not covered in the prior preliminary hearing. See R.C.M. 603(d). If a charge is withdrawn and amended, follow the re-referral procedures outlined in [paragraph 13.9](#).

16.1.2.1. Even if an accused does not object to a major change or amendment to a referred charge or specification, it may be prudent to prefer anew.

16.1.2.2. New preferral and 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 (C.M.A. 1990).

16.2. Withdrawal of Charges or Specifications. Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. R.C.M. 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 or specifications must be disposed of (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 or specifications at the direction of the convening authority. **Note:** If a discharge, resignation, or retirement in lieu of court-martial is approved, any pending charges must be withdrawn and dismissed.

16.2.1. **Complete Withdrawal.** To withdraw all charges and specifications from a court-martial, trial counsel should “Z-out” the referral section (Part V) of the charge sheet, specify the disposition and the date, and initial the action taken (e.g., “Withdrawn on 28 Aug 20, [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 28 Aug 20, [initials]”).

16.2.2. Partial Withdrawal. To withdraw a specific charge or specification from a court-martial, while allowing the other offense(s) to proceed to trial, trial counsel should “Z” out the charge and specification and annotate the dismissal date and the initials of the person who lined through the affected charge or specification. Specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 18 Jan 20, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, both actions should be reflected accordingly (e.g., “Withdrawn and Dismissed on 18 Jan 20, [initials]”). The trial counsel determines whether any remaining charges and/or specifications should be renumbered (and if renumbered, initials the renumbering). The following rules apply to renumbering charges and/or specifications:

16.2.2.1. When charges or specifications are withdrawn before arraignment, trial counsel ensures the remaining charges or specifications are renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

16.2.2.2. When charges or specifications are withdrawn after arraignment but before the court members are aware of the charges, the military judge directs whether the remaining charges or specifications are renumbered.

16.2.2.2.1. If the military judge directs renumbering, the new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. Withdrawn charges or specifications should not be brought to the attention of the members.

16.2.2.2.2. If the military judge does not direct renumbering, the remaining charges 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.

16.2.2.3. When charges 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 or specifications ordinarily are not renumbered. The military judge instructs the members that the withdrawn charges or specifications should not be considered for any reason.

16.2.3. Notification to the Accused. If charges are withdrawn and dismissed, the trial counsel must notify the accused, through the accused’s counsel, of such withdrawal and dismissal.

Section 16B—Evidentiary Matters

16.3. Warrants of Attachment. A warrant of attachment directs law enforcement personnel to seize a person or property, without consent, and deliver the person or property to the military judge or court-martial.

16.3.1. Requirements for a Warrant of Attachment. A Warrant of Attachment may be issued only if in compliance with the provisions set out in R.C.M. 703.

16.3.2. Processing a Warrant of Attachment.

16.3.2.1. In most cases, a Warrant of Attachment should be executed by the United States Marshals Service. Otherwise, anyone 18 years or older may execute a Warrant of Attachment. Military law enforcement may execute a Warrant of Attachment; however, military law enforcement should only be considered a last resort.

16.3.2.2. Provide the United States Marshals Service with the following:

16.3.2.2.1. A copy of the Warrant of Attachment;

16.3.2.2.2. A copy of the subpoena;

16.3.2.2.3. A copy of the certificate of service or receipt;

16.3.2.2.4. An affidavit indicating that appropriate fees and mileage were tendered to the witness where applicable, or that the witness was provided a means for reimbursement for fees and mileage, and the dollar amount;

16.3.2.2.5. The reasons that witness is material and why it is believed the witness refuses or willfully neglects to appear; and

16.3.2.2.6. A Military Interdepartmental Purchase Request number. Legal office personnel should consult with their local finance office to obtain this information.

16.3.2.3. The General Counsel's Office for the United States Marshals Service will review the Warrant of Attachment and determine the appropriate executing office. As this process can take some time, trial counsel or the Government representative may consider requesting relief pursuant to R.C.M. 707(c) if applicable.

16.3.2.4. If the United States Marshals Service is executing the Warrant of Attachment, it will make travel, lodging, and housing arrangements for the escorts and witness as appropriate. If the United States Marshals Service is not executing the Warrant of Attachment, the Government is responsible for making travel, lodging and housing arrangements for the escorts and witness. See DAFI 51-207 for further guidance regarding witness escorts, funding, and housing.

16.3.2.5. Only such non-deadly force as is necessary to bring the witness to the proceeding is authorized.

16.3.2.6. A convening authority may only issue a Warrant of Attachment to compel compliance with an investigative subpoena issued prior to referral. R.C.M. 703(g)(3)(H)(i) and Discussion. Military judges may also issue Warrants of Attachment as appropriate including when detailed under Article 30a, UCMJ.

16.4. Depositions.

16.4.1. **Requesting and Ordering a Deposition.** If it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial, government or defense counsel may request the convening authority order a deposition pursuant to R.C.M. 702(a).

16.4.1.1. The convening authority determines whether the requesting party has demonstrated that, because of exceptional circumstances and in the interest of justice, the testimony must be taken and preserved for use at trial. See R.C.M. 702(a). If the request is made after referral, either the military judge or convening authority may act upon it. A

victim's declination to testify at a preliminary hearing pursuant to Article 32(d)(3), UCMJ, or declination to submit to pretrial interviews shall not, by itself, be considered exceptional circumstances. See R.C.M. 702(a)(3).

16.4.1.2. When ordering a deposition, the convening authority details a deposition officer with the qualifications set forth in R.C.M. 702(d)(3)(A). A sample appointment memorandum is provided on the VMJD. The duties of the deposition officer are described in R.C.M. 702(e).

16.4.1.3. If the deposition is taken by agreement of both trial and defense counsel, the convening authority is not required to produce an order, but must still detail a deposition officer.

16.4.2. Counsel for Depositions. The rules governing qualification of counsel who may perform duties before courts-martial apply to counsel representing the parties at a deposition. The deposition should affirmatively indicate the qualifications of counsel.

16.4.3. Recording and Authentication of Depositions.

16.4.3.1. Written Depositions. Depositions taken on written interrogatories are recorded and authenticated using a DD Form 456, *Interrogatories and Depositions*. DD Form 456 is not used for oral depositions.

16.4.3.2. Oral Depositions. Oral depositions are conducted in accordance with the procedures in R.C.M. 702(g)(1) and DAFMAN 51-203. Formats for conducting, transcribing, and certifying oral depositions may be found in DAFMAN 51-203. The deposition officer is the custodian for the record of deposition.

16.5. Subpoena Limitations.

16.5.1. A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at a proceeding pre-referral (Article 30a, UCMJ or Article 32, UCMJ hearings).

16.5.2. Subpoenas to the Media. DAF policy requires the exercise of due care when issuing subpoenas to media organizations to avoid unnecessary imposition on the news gathering process and thereby protect the media's First Amendment role.

16.5.2.1. Prior to issuing a subpoena to a member of the news media, trial counsel will consult with the base-level SJA. The SJA forwards a request to the GCMCA's SJA addressing the following:

16.5.2.1.1. That all reasonable attempts were made to obtain the information sought from alternative sources;

16.5.2.1.2. That all reasonable alternative investigative steps were taken to obtain the information sought;

16.5.2.1.3. The results of negotiations with the media. Negotiations should make clear the government's needs in the particular case and its willingness to respond to particular concerns of the media;

16.5.2.1.4. That reasonable grounds exist to conclude, based on information obtained from other sources, that a crime has occurred and the information sought is essential to the case; and

16.5.2.1.5. That to the extent possible, the subpoena is directed at material information regarding a limited subject matter, will cover a reasonably limited period of time, and will avoid requiring production of a large volume of unpublished material.

16.5.2.2. The GCMCA's SJA approves or disapproves the issuance of the subpoena. The base-level SJA immediately files a SIR in accordance with **Chapter 31** of this instruction.

16.5.2.3. In the event exigent circumstances prevent prior consultation with the GCMCA's SJA, a trial counsel may issue a subpoena with the base-level SJA's approval. In that case, the base-level SJA immediately informs the GCMCA's SJA, MAJCOM SJA, and JAJM by email of the issuance of the subpoena and the exigent circumstances that precluded prior consultation.

16.5.2.4. The principles set forth in this guidance are not intended to create or recognize any legally enforceable right in any person.

Section 16C—Child Pornography Evidence and Exhibits

16.6. Distinction between Evidence and Exhibits. Evidence is retained by law enforcement. Exhibits are retained by the court. Child pornography seized and maintained by OSI as evidence of the crime is retained by OSI or other responsible law enforcement. Child pornography admitted as an exhibit at trial is separate and distinct from evidence seized and retained by law enforcement; such exhibits often consist of a forensic copy of the original evidence seized and retained by law enforcement. Child pornography admitted as exhibits in a court-martial are the property and responsibility of the court-martial (i.e., the court reporter and/or servicing legal office, depending on who is tasked with maintaining admitted exhibits while the ROT is being prepared and ultimately maintained in accordance with the Air Force Records Disposition Schedule located in AFRIMS. See 18 U.S.C. § 3509. Absent a written, advance agreement between the legal office and servicing OSI detachment, admitted exhibits shall not be transferred back to OSI for "safekeeping."

Section 16D—Defense Investigative Support

16.7. Defense Investigative Capability.

16.7.1. The Defense Investigative Capability provides direct investigative and litigation support to detailed defense counsel in a wide range of potential adverse actions. When detailed to the defense team, a defense investigator (DI) is a "lawyer's representative" within the meaning of M.R.E. 502, and works at the direction of the detailed military defense counsel on behalf of the client.

16.7.2. The Chief, JAJD, is responsible for providing defense investigatory capabilities to DAF defense counsel.

16.7.3. Chief Circuit Defense Counsel (CCDC) are responsible for detailing DIs to individual cases. The CCDC may delegate detailing authority to a supervising defense investigator. The detailing decision is protected work product insofar as it is based on privileged input from

defense counsel regarding each case's likely disposition, status of discovery, potential conflicts, investigative needs, potential case theories and strategies, etc. There is no appeal of a CCDC's decision whether or not to detail a DI to a particular case; nor is the decision subject to review by a military judge. The CCDC's decision to detail, or not detail, a DI to a particular case does not impede a detailed military defense counsel from requesting additional/alternative investigative support from the convening authority per [paragraph 16.8](#).

16.7.4. Once detailed, the investigative activities of a DI will be in support of the military defense counsel detailed to the case. As a member of the defense team, the DI must abide by the attorney-client and work product privileges. The efforts of the DI are work-product. See M.R.E. 502 and R.C.M. 701(f).

16.8. Defense Requests for Investigative Support from OSI.

16.8.1. If a DC representing a DAF member requests investigative support from outside JAJD, such requests are made in writing to the servicing SJA, who forwards the request along with a recommendation to the convening authority. The SJA may consider whether DC has made a sufficient case as to why investigative support is needed as well as whether DC has first requested support from JAJD in making the recommendation to the convening authority. If the convening authority grants the request and investigative resources are available within the convening authority's command that would satisfy the needs of the defense, other than OSI investigators, the convening authority appoints an investigator.

16.8.2. If the convening authority determines that other investigative resources are not available and appointment of an OSI special agent is necessary under the circumstances, the convening authority informs the local OSI detachment commander. The OSI detachment commander forwards the request through command channels for a determination of whether or not OSI investigative resources exist to support the defense request. If OSI/CC agrees that appointment of a special agent is appropriate and an agent is available, OSI/CC appoints a special agent. OSI/CC is the decision authority for appointment of OSI agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an OSI special agent. In all cases, the convening authority provides the requisite funding. See also *United States v. Pomarleau*, 57 M.J. 351 (CAAF 2002).

16.8.3. Contact OSI/JA with any questions regarding this policy or its application, including provisions that apply to permissible activities, access to law enforcement resources, and level of assistance which may be provided by special agents who are assigned to provide defense investigative support.

Chapter 17

PLEA AGREEMENTS AND CONDITIONAL GUILTY PLEAS

Section 17A—Conditional Guilty Plea

17.1. Conditional Guilty Plea. When approving a guilty plea conditioned on preserving review of an adverse determination of a pretrial motion, the military judge should make the following findings on the record: (1) the offer is in writing and clearly details the motion that the accused wishes to preserve on appeal; (2) the government’s consent is in writing and signed by an official authorized to consent; (3) the particular motion was fully litigated before the military judge; and (4) the motion is case dispositive. See R.C.M. 910(a)(2); *United States v. Monroe*, 50 M.J. 550 (AFCCA 1999); and *United States v. Phillips*, 32 M.J. 955 (A.F.C.M.R. 1991). The SJA, person “Acting as the Staff Judge Advocate” to the convening authority, or the trial counsel at the direction of the SJA is authorized to consent for the government to the accused entering a conditional guilty plea.

Section 17B—Plea Agreements (Article 53a, UCMJ, R.C.M. 705, and R.C.M. 910)

17.2. General Provision. Plea agreements may only be used in cases where all offenses occurred on or after 1 January 2019 or if the accused opts in to MJA 16 sentencing framework. If all offenses occurred prior to 1 January 2019, a Pre-Trial Agreement (PTA) must be used. For cases where at least one offense occurred prior to 1 January 2019 and at least one offense occurred on or after 1 January 2019, either: (1) apply the pre-MJA16 sentencing rules to the entire case and use a PTA; (2) separate the case into two proceedings, one for pre-1 January 2019 offenses (with a PTA) and one for on or after 1 January 2019 offenses (with a plea agreement); or (3) the Accused may opt into the MJA16 sentencing rules and use a plea agreement.

17.3. Policy Considerations. SJAs have an obligation to preserve a military justice system that promotes good order and discipline and is fair, timely, and transparent to the military community and the public at large. SJAs should therefore be able to articulate to the convening authority the benefits to the government and the accused as well as the costs to the military justice system of entering an agreement in order to properly balance the considerations. Such agreements should not be used to mask case-processing inefficiencies.

17.3.1. The use of a plea agreement may be advisable in the following situations:

17.3.1.1. Cases where the victim has indicated support for the plea agreement, though a victim’s preference is not binding.

17.3.1.2. Cases where sensational information involving persons other than the accused can be avoided through a negotiated plea.

17.3.1.3. Cases where several accused are involved, and the testimony of one is required in the trial of one or more of the others. In this case, a plea agreement may be more desirable than a grant of immunity.

17.3.1.4. Cases where essential witnesses are located at exceptional distances, are not amenable to process or are not otherwise available. Current operations, in some circumstances, may make critical witnesses unavailable.

17.3.1.5. Cases involving national security where harm to the government of a fully litigated trial should be avoided. In these cases, plea agreements can be used so that evidence involving exposure of national security information can be protected.

17.3.2. Cost, expediency, collateral consequences, forum selection, and litigation risk are all factors the SJA and the convening authority should consider in determining whether a plea agreement is warranted. However, individually they are not ordinarily factors that outweigh possible detrimental aspects of plea agreements.

17.3.3. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met. For example, when an accused enters a no-pay status upon the expiration of their term of service (or expiration of his/her Title 10 federal active duty orders, in the case of ARC members), there will be no pay available to forfeit, and therefore, no amount to waive for the benefit of dependents. An agreement predicated upon terms including a waiver that is thwarted due to no pay entitlement may render pleas by an accused improvident and result in reversal of a conviction. *United States v. Mitchell*, 58 M.J. 251 (CAAF 2003); *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

17.3.4. **Defense Offer.** Although discussions about plea agreements or alternate disposition agreements may occur at any time in the trial process and may be initiated by trial counsel or defense counsel, ordinarily, the initial written offer will be provided by the defense. The SJA, trial counsel and counsel for the accused may clarify the terms of a defense offer to obtain sufficient information to enable the convening authority to decide whether to accept or reject the offer.

17.4. Plea Agreements in National Security and Related Cases.

17.4.1. The SJA must obtain permission from the Chief, JAJM to enter into plea agreement discussions in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive rules or regulations and criminal statutes concerning classified information or the foreign relations of the United States. JAJM ensures coordination with the Department of Justice according to DoDI 5525.07. JAJM permission is not required for the convening authority to reject a plea agreement offer.

17.4.2. **Request for Permission to Negotiate.** The GCMCA personally or through the SJA requests by the most expeditious means available permission from JAJM to negotiate a plea agreement. The following information should be included in the request:

17.4.2.1. Background information on the accused including name, rank, and organization;

17.4.2.2. The offenses charged;

17.4.2.3. A summary of evidence against the accused;

17.4.2.4. Terms of the accused's plea agreement offer; and,

17.4.2.5. Factors warranting a plea agreement.

17.4.3. **Permission to Proceed.** A grant of permission to enter into plea agreement discussions does not amount to approval of the terms or conditions of any plea agreement, which may result from the negotiations.

17.5. Authority to Approve a Plea Agreement. The decision to accept or reject a plea agreement offer submitted by an accused is within the sole discretion of the convening authority that referred the case to trial. *United States v. Caruth*, 6 M.J. 184 (C.M.A. 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. *United States v. Upchurch*, 23 M.J. 501 (A.F.C.M.R. 1986). A convening authority, through the servicing SJA, must provide the victim(s), their Article 6b, UCMJ, representative and/or counsel, if applicable, an opportunity to submit views before accepting the plea agreement offer. **(T-0)**. See R.C.M. 705(e)(3)(B) and DAFI 51-207.

17.6. Plea Agreement Terms (R.C.M. 705(b)-(d)).

17.6.1. Accused Opt-in to MJA 16 Sentencing Rules. In straddling cases (at least one offense prior to 1 January 2019 and at least one offense on or after 1 January 2019), the accused can agree to opt in to MJA 16 sentencing rules as a term of the plea agreement.

17.6.2. Sentencing Range. The parties can agree to a limit on the maximum and minimum amount of punishment. See R.C.M. 705(d)(1). **Note:** R.C.M. 705 prohibits disclosure of the existence of a plea agreement to the members unless one of the enumerated exceptions applies. In the event of sentencing by members, the military judge provides appropriate instruction on any sentencing limitations that exist in a case.

17.6.3. Segmented Sentencing by Military Judge. A plea agreement that requires sentencing by a military judge and includes sentencing limitations must specify any agreed upon limitations regarding confinement and fines, if any, for each enumerated offense. See [paragraph 17.6.2](#) and R.C.M. 1002(d)(2). The plea agreement may also specify whether any terms of confinement are to be served concurrently or consecutively. See R.C.M. 1002(d)(2)(B).

17.6.4. Unitary Sentencing by Members and Summary Court Officers. Any plea agreement that permits sentencing by members or a summary court officer and includes sentencing limitations must specify a single maximum, minimum, or maximum and minimum punishment for the offenses for which the accused is pleading guilty. See R.C.M. 1002(d)(1).

17.6.5. Plea Agreement Format. Plea agreements must be in writing and signed by the accused and counsel. When a convening authority accepts a plea agreement, the convening authority personally signs it, unless the convening authority previously authorized in writing another individual such as the SJA or trial counsel to sign. If the SJA or trial counsel signs the plea agreement, an authority line such as “FOR THE COMMANDER” must accompany the signature. Oral plea agreements are prohibited, as are promises to intervene on the accused’s behalf in any manner in exchange for a guilty plea. **(T-0)**. The SJA or designee ensures all documentation pertaining to a plea agreement is included in the ROT.

17.6.6. Changes to Plea Agreements. If at any point after the plea agreement is signed by the accused and convening authority, further negotiation results in an agreement for different relief or different terms than that included in the original offer, an updated plea agreement must be drafted and signed anew.

17.6.7. Stipulations of Fact. In order to make members and the military judge, when sitting alone, sufficiently aware of the circumstances of the offenses with which an accused is charged, the convening authority may require the accused and counsel to enter into stipulations of fact or testimony as a part of the plea agreement. See R.C.M. 705(c)(2)(A).

17.6.8. Withdrawal from Plea Agreements. Either party may withdraw from a plea agreement as provided in R.C.M. 705(e)(4).

17.6.8.1. Withdrawals by the convening authority should be in writing and signed by the convening authority. The SJA or designee gives a copy of any withdrawal to the accused and defense counsel.

17.6.8.2. Withdrawals by the accused should be in writing and given to the SJA or trial counsel.

17.6.8.3. The SJA or designee ensures the plea agreement and the withdrawal, by either side, is included in the ROT or, if not in writing, is discussed on the record. See DAFMAN 51-203.

17.6.9. Accused's Failure to Satisfy Plea Agreement Condition. If the accused does not fulfill a promise to satisfy certain conditions before action or during any period of suspension of the sentence as agreed to in the plea agreement, the convening authority may be relieved of the obligation to fulfill the agreement, provided that the accused's promise was included in the agreement and the hearing requirements in R.C.M. 1108 have been satisfied. See R.C.M. 705(c)(2); *United States v. Smith*, 46 M.J. 263 (CAAF 1997); *United States v. Hunter*, 65 M.J. 399 (CAAF 2008); *United States v. Shook*, 70 M.J. 578 (AFCCA 2011).

17.6.10. Convening Authority's Failure to Satisfy Plea Agreement Condition. Plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met (e.g., to ensure that there are forfeitures to waive, in the event the accused is an ARC member or the accused's ETS is going to run during the period of possible confinement). See [paragraph 17.3.4](#), [paragraph 20.12](#), and [Section 20F](#).

17.6.11. In-Court Inquiry. Trial counsel should notify the military judge or summary court officer of a plea agreement before arraignment, or as soon as practicable thereafter. The military judge or summary court officer must question the accused prior to accepting the plea to determine whether the accused understands and agrees to the meaning and effect of each plea agreement condition and the agreed upon sentence limitations.

17.6.11.1. Where there is a plea agreement, the sentence limitations should be inquired into by the military judge or summary court officer and included within the plea agreement. R.C.M. 910(f)(3).

17.6.11.2. Plea agreements that are subject to in-court inquiry, whether or not accepted by the military judge or summary court officer, are appellate exhibits in the ROT if a ROT is required. See DAFMAN 51-203.

Chapter 18

RESIGNATION, RETIREMENT, AND SEPARATIONS IN LIEU OF COURT-MARTIAL

Section 18A—Officer Resignation in Lieu of Trial by Court Martial (RILO)

18.1. General. Officers (including USAFA cadets) may submit a RILO request with the understanding that SecAF may direct a discharge under other than honorable conditions when their conduct makes them subject to trial by court-martial. A RILO is a type of resignation for the good of the service and is addressed in AFI 36-3207, *Separating Commissioned Officers*. A template is located on the VMJD.

18.2. Considerations. Commanders should not recommend SecAF accept a RILO for expediency when the alleged offense(s) would be more appropriately resolved at trial. Before making any recommendation, reviewing commanders at all levels should consider the best interests of the DAF and the effect a resignation would have on good order and discipline. The time and expense of a court-martial is rarely the deciding factor.

18.3. Timing.

18.3.1. Pre-Referral RILOs. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to submit RILO requests before charges are referred to trial by court-martial. Any reviewing commander may deny a RILO request submitted prior to the referral of charges. If denied, the officer may resubmit the request after referral of charges. Pre-referral RILO requests supported by all reviewing commanders' are forwarded expeditiously to JAJI through functional channels.

18.3.2. Post-Referral RILOs. If a request is submitted after referral and prior to arraignment, the request may only be acted upon by SecAF. RILO requests are forwarded expeditiously to JAJI through functional channels. A RILO request may not be submitted post-arraignment.

18.4. Defense Counsel. Before submitting a RILO request, officers may consult with counsel and are provided military defense counsel unless they expressly decline one.

18.4.1. If an officer refuses military counsel, the officer should so state in the request.

18.4.2. The DAF does not pay for or reimburse members for the costs of retaining civilian defense counsel.

18.5. Recoupment. Officers should understand that if SecAF accepts their resignation, they may be required to reimburse a portion of advanced education assistance, special pay, or bonuses received if they leave active duty before completing the period of active duty they agreed to serve. See AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*. Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their request. A template is located on the VMJD.

18.6. Resignation in Lieu of Trial by Court-Martial Request and Additional Documents. The RILO package includes all of the documents and recommendations listed in the Comprehensive RILO Checklist on the VMJD. This includes the views of any victims on the alternate disposition. See DAFI 51-207.

18.7. Review and Recommendation. The wing commander or equivalent authority reviews and makes a recommendation and forwards the package to the GCMCA (or to the SPCMCA if the wing commander or equivalent authority does not exercise special court-martial convening authority). A template is located on the VMJD.

18.7.1. The GCMCA reviews and makes a recommendation and forwards the package to the requesting officer's MAJCOM or FLDCOM commander, if applicable.

18.7.2. The MAJCOM or FLDCOM commander (or vice commander, if delegated), if applicable, reviews and makes a recommendation and forwards the package to JAJI with an information copy of the officer's request to HQ AFPC's Retirements and Separations Section (HQ AFPC/DP2SSR).

18.7.3. The wing or equivalent commander or any superior reviewing commander may return to an officer, without action, a request that is conditioned on the characterization of discharge SecAF may direct or on a specific date of separation.

18.8. Legal Review. The required legal review is done by the base-level legal office supporting the initial reviewing commander and should address the views of any victims on whether the resignation in lieu of trial by court-martial should be approved. Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Written coordination indicating concurrence is required.

18.8.1. JAJI reviews the entire package, writes a comprehensive legal review, and processes the RILO package for Headquarters DAF review and action by SecAF or designee.

18.8.2. Headquarters AFPC/DP2SSR schedules the officer's date of separation as soon as possible upon receiving notification from JAJI that a RILO request has been approved.

18.8.3. The processing of a court-martial and court-martial charges should not be delayed solely because a RILO request may be or has been submitted, subject to [paragraph 18.9](#).

18.9. Permission to Proceed to Trial Pending Action on a RILO Request. For offenses committed after 24 June 2014, Article 60, UCMJ, prevents a convening authority from setting aside the findings of court-martial even if the Secretary later accepts a RILO. *In re Vance*, 78 M.J. 631 (ACCA 2018).

18.9.1. Prior permission from JAJI is required before a case proceeds to trial if the officer accused has submitted a RILO on which action is pending. For purposes of this paragraph, the start of trial is defined as the acceptance of pleas at or after arraignment. SJAs should consider requesting permission to proceed prior to arraignment. The SJA for the SPCMCA decides whether to request permission to proceed. A request for permission to proceed should include a justification for why the trial should proceed while the RILO request is pending action, such as witness availability for the scheduled trial date.

18.9.2. Permission to proceed is not required to conduct preliminary sessions pursuant to Article 39(a)(1), (2) and (4), UCMJ, including evidentiary hearings, and other motion practice that may expedite case processing in the interest of judicial economy, if such sessions occur prior to acceptance of pleas.

18.9.3. Thirty-Day Rule. JAJI will normally approve requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request more than 30 calendar

days after service of charges under R.C.M. 602. In such cases, it is sufficient to justify the request for permission to proceed by citing the untimely submission of the RILO request. However, additional justification should be submitted if such justification exists.

18.9.3.1. JAJI will normally disapprove requests for permission to proceed to trial while a RILO request is pending if the officer submitted the request within 30 calendar days of service of charges under R.C.M. 602, unless circumstances warrant trial while the RILO request is pending.

18.9.3.2. A RILO request will be processed and not stopped, delayed, returned or rejected solely because it was submitted more than 30 calendar days after service of charges unless submitted after arraignment.

18.9.4. RILO requests pending action upon findings.

18.9.4.1. A resignation cannot be substituted for a finding of guilt. Instead, the RILO will automatically convert to a request for sentence relief under Article 74, UCMJ.

18.9.4.2. If an officer is fully acquitted prior to action on the RILO, the RILO becomes moot and SecAF loses the ability to act upon the RILO.

18.10. Subsequent Resignation in Lieu of Trial by Court-Martial Requests. The wing commander (or equivalent), or any superior reviewing commander, may return to an officer a subsequent RILO request that is based on the same grounds, supported by the same evidence, or is similarly insufficient as a previously disapproved resignation in lieu of trial by court-martial request, with the following exceptions:

18.10.1. An officer whose RILO request has been disapproved prior to referral of charges may resubmit the request after charges are referred to trial. A resubmitted request should be processed expeditiously to the command level that disapproved the original request. Additional indorsements or recommendations should not be attached unless different from those accompanying the original request or required by changed circumstances.

18.10.2. The Show Cause Authority (as defined in AFI 36-3206) may determine that circumstances warrant processing the subsequent RILO request.

18.11. Withdrawing RILO Requests. If an officer who submitted a RILO request subsequently submits a request to withdraw it, the wing-level or equivalent SJA or designee must notify JAJI and intermediate legal offices of the request to withdraw as soon as practicable.

18.11.1. If the withdrawal notification is made to JAJI prior to JAJI forwarding the RILO request for review and action by SecAF, JAJI will not forward the RILO request for review. If the RILO request has not yet been submitted to JAJI, the office in possession of the RILO request suspends further processing of the RILO request.

18.11.2. If the withdrawal notification is made to JAJI after JAJI forwarded the RILO request for review and action by SecAF, JAJI must notify reviewing agencies that a request to withdraw has been made and to suspend further processing of the RILO request. The request to withdraw is processed in the same manner as the RILO request and forwarded to JAJI through functional channels. See the RILO Withdrawal Checklist on the VMJD for minimum package requirements and detailed processing instructions. JAJI will forward the withdrawal request as soon as it is received.

18.12. RILO Processing Time Management. Expeditious processing of RILOs is essential to preventing judicial inefficiency, unnecessary trial delay, wasted resources, disruptions for victims and witnesses, prolonged uncertainty and anxiety for the accused, and impairment of mission accomplishment. The following measures are established for RILO processing:

18.12.1. Process a RILO request within 60 calendar days from the date the officer submits the request to the date the officer is notified of final action on the request. The 60 days are allotted as follows (all timelines are calendar days as opposed to duty days):

18.12.1.1. Wing-level (or equivalent) legal office processes and forwards the RILO package to JAJI with electronic copies for review and processing by legal offices at intermediate levels of command within ten days from the date the officer submits the RILO request.

18.12.1.2. NAF/FLDCOM-level or GCMCA (or equivalent) legal office processes and forwards the GCMCA's recommendation within seven days, in accordance with the RILO Checklist on the VMJD, after the wing-level legal office provides the electronic copy.

18.12.1.3. GCMCA legal office processes and forwards the MAJCOM or FLDCOM commander's recommendation, in accordance with the RILO Checklist on the VMJD, within seven days after the NAF-level or equivalent legal office (if applicable) provides an electronic copy of the GCMCA's recommendation.

18.12.1.4. JAJI and JAJ process and forward the RILO package to AF/JA within seven days after receipt of the complete package, including required recommendations by reviewing commanders and legal reviews.

18.12.1.5. AF/JA processes and forwards the RILO package for Headquarters DAF coordination within five days after receipt of the package from JAJ.

18.12.1.6. This leaves 24 days for Headquarters DAF coordination, SAF/MRBP recommendation, and SAF/MRB action or recommendation followed by SecAF action.

18.12.2. Failure to meet these time measures at any stage of resignation in lieu of trial by court-martial processing does not confer any rights or benefits on the accused.

18.13. Withdrawal and Dismissal of Charges. If a RILO request is pending action and the convening authority withdraws and dismisses all charges, the legal office must notify JAJI. The RILO request becomes void on the date the charges are dismissed. If charges are later preferred anew and the officer submits another resignation in lieu of trial by court-martial request, the process also begins anew.

18.14. Retirement in Lieu of Trial by Court-Martial (RetILO). If an officer or enlisted member submits a RetILO request, the wing/garrison-level (or equivalent) SJA or designee immediately contacts JAJI for further guidance.

18.14.1. In order to be eligible to request a RetILO, the member must be otherwise eligible to retire. This includes either meeting 20 years of TAFMS (and ten years of TAFMS to retire as an officer if requesting to retire as an officer) or equivalent ARC requirements for retirement as of the date the member submits the RetILO. AFI 36-3203, *Service Retirements*. **Note:** That the requesting member is pending trial by court-martial and trial has not yet begun is a retirement restriction that may be waived by SecAF or delegee in the best interest of the DAF.

The RetILO request is considered both a request to RetILO and a request for waiver of the retirement restriction of a pending trial by court-martial.

18.14.2. If the member is not retirement eligible, the RetILO may be denied at the local level. If the member is retirement eligible, generally, a RetILO request is processed in the same manner as a RILO request. See RetILO Checklist on the VMJD for package and processing requirements.

Chapter 19

TRIAL MATTERS

Section 19A—Rules of Court-Martial Practice (R.C.M. 108)

19.1. Authority to Prescribe Rules of Court-Martial Practice. TJAG designates the Chief Trial Judge as the official responsible for making and disseminating rules for the conduct of DAF court-martial proceedings. JAT publishes the Uniform Rules of Practice Before Department of the Air Force Courts-Martial.

Section 19B—Arraignment and Pleas

19.2. Arraignment and Pleas (Article 39(a), UCMJ). When an Article 39(a), UCMJ, session is conducted by the military judge, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter findings of guilty on an accepted plea of guilty at that time.

Section 19C—Trial by Members

19.3. Impanelment. For all cases referred on or after 1 January 2019, there is a fixed-panel requirement. Capital GCMs require impanelment of 12 members and any alternates required by the convening authority; non-capital GCMs require impanelment of eight members and any alternates required by the convening authority; and SPCMs require impanelment of four members and any alternates required by the convening authority. The composition of a non-capital GCM can be reduced to no fewer than six members after impanelment as a result of challenges or excusals. See R.C.M. 501.

19.3.1. After the exercise of challenges for cause, members are assigned random numbers in accordance with procedures prescribed by JAT. See R.C.M. 912(f). After the assignment of numbers, the parties may exercise peremptory challenges. Members are then impaneled in accordance with R.C.M. 912A. Alternates, if required or authorized by the convening authority, are also seated in accordance with R.C.M. 912A.

19.3.2. Under the impanelment process prescribed in R.C.M. 912 and 912A, it is possible that a panel for an enlisted accused will be comprised entirely of enlisted members.

Section 19D—Trial by Military Judge Alone at the Request of the Accused

19.4. Requesting Trial by Military Judge Alone (R.C.M. 903). To request a trial by military judge alone, the accused should use the DD Form 1722, *Request for Trial Before Military Judge Alone*. If the DD Form 1722 is used, the military judge admits it as an appellate exhibit. See DAFMAN 51-203.

Section 19E—Audiovisual and Teleconferencing Technology

19.5. Use of Audiovisual and Teleconferencing Technology. The use of audiovisual and teleconferencing technology is authorized by the SecAF to the extent and under the conditions allowed for in R.C.M. 804(b), 805(a), 805(c), 914A, and 914B.

Section 19F—Classified, Confidential and Privileged Matters

19.6. General Provision. See M.R.E. 501-514 for a general discussion of evidentiary privileges that apply in the military justice system. This section is intended only to clarify application of certain rules and discuss privileges or confidential matters not included in the rules of evidence.

19.7. Classified or Controlled Information (M.R.E. 505). Special procedures and requirements apply in cases where classified information may be used as evidence. In all such cases, JAJM should be contacted as soon as possible for guidance on how to proceed.

19.7.1. **Declassification.** At the earliest stage practicable, government counsel should coordinate with the original classification authority to request declassification of potential evidence.

19.7.2. **Asserting the M.R.E. 505 Privilege.** Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a non-DAF government agency for documents owned by agencies outside the DAF, may claim the privilege from disclosure of classified information. See M.R.E. 505(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on the person's behalf. Requests for assertion of the privilege are forwarded through command channels to JAJI.

19.7.3. **Classified Material in the Record.** When a ROT contains classified material, the SJA or designee takes appropriate steps to declassify the material when proper. 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 DoDM 5200.01V1_AFMAN16-1404V1, *Information Security Program: Overview, Classification, and Declassification* and DoDM 5200.01V2_AFMAN16-1404V2, *DoD Information Security Program: Marking of Information*. DAFMAN 51-203 provides additional guidance.

19.7.4. **Controlled Material in the Record.** When a ROT contains controlled material (e.g., promotion testing materials, professional military education test materials, and career development course exams), the materials should be safeguarded to prevent further disclosure or unauthorized access. DAFMAN 51-203 provides additional guidance.

19.8. Government Information Other than Classified Information (M.R.E. 506).

19.8.1. **Asserting the M.R.E. 506 Privilege.** Only SecAF, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a government agency in the case of documents/information owned by agencies outside the DAF, may claim the privilege from disclosure of government information other than classified information. The privilege for records and information of The Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, The Inspector General, or any other superior authority. See M.R.E. 506(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on their behalf. Requests for assertion of the privilege are forwarded through command channels to JAJI.

19.8.2. Requests for assertion of the safety privilege should be forwarded through command channels and the Air Force Safety Center Office of the SJA (AFSC/JA) to JAJI.

19.9. Lawyer-Client Privilege with the Air Force or Space Force as the Client. Contact JAJI before asserting any privilege on behalf of the Air Force or Space Force.

19.10. Restricted and Unrestricted Reports of Sexual Assault.

19.10.1. **Restricted Reporting.** Restricted reporting allows a sexual assault victim to confidentially disclose the details of the assault to specified individuals and receive medical treatment and counseling without triggering the official investigative process. In cases where a victim selects the restricted reporting option by completing and signing Department of Defense (DD) Form 2910, *Victim Reporting Preference Statement*, providers authorized to receive such reports under AFI 90-6001, *Sexual Assault Prevention and Response Program* or DoDD 6495.01, *Sexual Assault Prevention and Response Program*, may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by DoDI, DAF policy or the law. **(T-0)**. A sexual assault victim may elect to convert a restricted report to an unrestricted report at any time by completing a DD Form 2910 and selecting the unrestricted reporting option.

19.10.2. The SARC, assigned Victim Advocate, and health care providers must consult with the servicing legal office, in the same manner as other recipients of privileged information, to determine if an exception applies permitting disclosure of identifying information. Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter is resolved in accordance with AFI 90-6001, Chapter 3.

19.10.3. **Unrestricted Reporting.** Officially, an unrestricted report of a sexual assault can only be made via DD Form 2910. M.R.E. 514 protects statements made by the victim to specified individuals such as the SARC or a victim advocate, enabling the confidential disclosure of a sexual assault, but the filing of an unrestricted report triggers a notification to OSI.

19.10.4. **Independent Investigation.** An independent investigation is an official law enforcement investigation not initiated by a victim's report of sexual assault (via completion of DD Form 2910). An independent investigation may be initiated based on independently acquired information, such as when a commander immediately notifies OSI or the appropriate MCIO with information about a sexual assault from a source other than the victim or from other sources to law enforcement (e.g., friend of the victim or witness to the crime). Refer to [Section 33C](#) for DSAID reporting requirements associated with unrestricted reports and independent investigations of sexual assault. OSI or the appropriate MCIO will follow the guidance in DoDI 5505.18 when they receive a third-party report of a sexual assault

19.11. Restricted and Unrestricted Reports of Domestic Abuse.

19.11.1. **Restricted Reporting.** Restricted reporting is a process allowing an adult victim of domestic abuse, who is eligible to receive military medical treatment the option of confidentially reporting an incident of domestic abuse to a DAVA, FAP staff member, or any MTF healthcare provider for the purpose of receiving medical care, supportive services, and/or advocacy and information without initiating the investigative process or notification to the victim's or alleged offender's commander. See DAFI 40-301, *Family Advocacy Program*; DoDI 6400.06. M.R.E. 514 protects statements made by an alleged victim to victim advocates.

19.11.2. **Unrestricted Reporting.** A process allowing a victim of domestic abuse to report an incident using chain of command, law enforcement or AFOSI and the FAP for clinical intervention. Victims of domestic abuse who choose to pursue an official command or criminal investigation of an incident should use these reporting channels. See DAFI 40-301.

19.12. Psychotherapist-Patient Privilege (M.R.E. 513).

19.12.1. The M.R.E. 513 privilege does not apply if access to the confidential communications between a military member and a psychotherapist is sought for a non-UCMJ-related purpose. In these situations, confidential communications should be disclosed to persons or agencies with a proper and legitimate need for the information and authorized by law or regulation to receive them. When UCMJ proceedings are pending against the member whose confidential communications are being sought for a non-UCMJ-related purpose, no privilege applies for the non-UCMJ-related purpose.

19.12.2. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. In such circumstances, release of mental health records, like all protected health information, is made in accordance with DoDM 6025.18, *Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DOD Health Care Programs*, AFI 41-200, *Health Insurance Portability and Accountability Act (HIPAA)*, and other applicable law. The SJA in possession of any crime victim's mental health records related to a UCMJ case guards against improper disclosure of inadmissible evidence to investigators and trial counsel that may disqualify them from participating in a case.

19.12.3. See [paragraph 19.14](#) for guidance on the Limited Privilege Suicide Prevention Program, if applicable.

19.13. Confidential Drug or Alcohol Abuse Treatment Records. Federal statutes and regulations restrict the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with a federal drug and alcohol abuse education, prevention, training, treatment, rehabilitation, or research program. Refer to 42 U.S.C. § 290dd-2, *Confidentiality of Records*, and 42 C.F.R. § 2.1, *Statutory authority for confidentiality of substance use disorder patient records*.

19.13.1. Although the interchange of records entirely within the Armed Forces is exempt from the prohibitions in [paragraph 19.13](#), the DoD adopted the standards as a matter of policy to the extent it provides such records may not be used to initiate or substantiate any criminal charges against the rehabilitant, except as authorized by a court order issued under 42 U.S.C. § 290dd-2 and as allowed in DAFMAN 44-197, *Military Drug Demand Reduction Program*.

19.13.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient, in the following circumstances:

19.13.2.1. As evidence for the defense before findings.

19.13.2.2. As evidence in mitigation or extenuation in pre-sentencing proceedings.

19.13.2.3. After trial in support of clemency or clemency petitions to TJAG or SecAF.

19.13.3. 42 C.F.R. § 2.31 outlines the procedures to be followed in authorizing release of the records by the accused-patient. Discussion of the records in open court should be avoided to the extent feasible.

19.13.4. An accused may limit release to necessary and relevant records, but an accused cannot selectively authorize disclosure of the records to mislead the court or other parties to the trial (e.g., disclosing favorable early records, but not later ones indicating regression). If there is reason to believe an accused is selectively authorizing disclosure, the matter may be resolved among counsel or by an in camera review of the records by the military judge.

19.13.5. Drug and alcohol abuse records may be disclosed at trial without the consent of the accused to rebut or impeach evidence presented by the accused. See *United States v. Evans*, 20 M.J. 504 (A.C.M.R. 1985); *United States v. Fenyo*, 6 M.J. 933 (A.C.M.R. 1979), *pet. denied*, 7 M.J. 161 (C.M.A. 1979).

19.14. Limited Privilege Suicide Prevention (LPSP) Program.

19.14.1. **Overview & Responsibilities.** The LPSP program is designed to facilitate timely mental health treatment for Airmen and Guardians facing adverse actions who are at risk of suicide. Counseling, therapy or treatment, and admissions can all qualify under this program if provided by a military mental health provider (MHP) licensed in accordance with AFI 44-172, *Mental Health*.

19.14.1.1. **Mental Health Facility Responsibilities.** Mental health facilities provide patient care in accordance with their own regulations and guidance.

19.14.1.2. **Commander Responsibilities.** Commanders direct mental health evaluations in accordance with DoDI 6490.04 and AFI 44-172, paragraph 6.3. **(T-0)**.

19.14.1.3. **Legal Office Responsibilities.** Legal offices or military legal consultants provide legal advice to the mental health facility and treatment providers regarding the LPSP program. Legal offices are responsible for training those involved in the military justice process on the LPSP program.

19.14.2. **Program Objective.** The objective of the LPSP program is to identify and treat Airmen and Guardians who, because of the stress of impending disciplinary action under the UCMJ, are at risk for suicide. Experience has shown that military members are often discouraged from seeking or participating in mental health treatment due to a perceived risk that doing so may result in worse outcomes in a future disciplinary action. In order to encourage and facilitate treatment, the LPSP program limits the use of certain confidential communications in disciplinary actions and service characterization in administrative separations.

19.14.3. **Program Eligibility.** Any Airman or Guardian who has been officially notified, verbally or in writing, that he or she is under investigation or is suspected of having committed an offense under the UCMJ is eligible for the LPSP program. Eligible Airmen and Guardians should be informed of the LPSP program and, when appropriate, encouraged to seek treatment from a mental health provider. Any person may inform the member about the program, including defense counsel and defense paralegals, commanders, First Sergeants, supervisors and all those involved in the military justice process.

19.14.4. **Initiation.** An Airman or Guardian enters the LPSP program when, subsequent to the notification described in [paragraph 19.14.3](#), the Airman or Guardian receives treatment or care from a mental health provider (MHP). This may be the result of a command directed

mental health evaluation, on the Airman's or Guardian's own initiative, or a continuation of ongoing or previous treatment.

19.14.5. **Duration.** The limited protections provided by the LPSP program shall apply until the member is no longer receiving mental health treatment or until the investigation and subsequent disciplinary action, if any, is closed. **(T-1)**. However, matters that were disclosed while the member was in the LPSP program remain protected.

19.14.6. **Limited Protection.** Members in the LPSP program are granted limited protection with regard to information revealed in, or generated by, their clinical relationship with MHPs. Such information may not be used in any existing or future UCMJ action or when weighing characterization of service in an administrative separation. Commanders or persons acting under their authority, such as staff judge advocates, squadron executive officers, or first sergeants, may use the information for any other purposes authorized by law, this instruction, and other AFIs and programs.

19.14.7. The limited protection provided by the LPSP program does not apply to:

19.14.7.1. The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which evidence, generated by and during the LPSP relationship, has first been introduced by the member.

19.14.7.2. Disciplinary or other action based on independently derived evidence (other than from communications falling under the LPSP program).

Section 19G—Pre-sentencing Matters (R.C.M. 1001)

19.15. Personnel Records of the Accused. “Personnel records of the accused,” as referenced in R.C.M. 1001, includes those records made or maintained in accordance with DAF directives that reflect the past military efficiency, conduct, performance, and history of the accused, as well as any evidence of disciplinary actions, including punishment under Article 15, UCMJ, and previous court-martial convictions.

19.15.1. Relevant material contained in an accused's personnel record may be admitted pursuant to R.C.M. 1001(b) if:

19.15.1.1. Counsel provided a copy of the document or made the document available to opposing counsel prior to trial; and

19.15.1.2. There is some evidence that:

19.15.1.2.1. The accused received a copy of the correspondence (a document bearing the signature of the accused, or a witnessed statement regarding the accused's refusal to sign) and had the opportunity to respond to the allegation; and,

19.15.1.2.2. The document was not over five years old on the date the charges were referred to trial.

19.15.1.3. Relevant material contained in an accused's personnel information file that does not comply with **paragraph 19.15.1** may be admitted under R.C.M. 1001 for rebuttal purposes if, in the military judge's discretion, other competent means of authenticating the material have been presented to the court. *United States v. Strong*, 17 M.J. 263 (C.M.A. 1984).

19.15.2. **NJP.** Records of NJP under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted if not over five years old on the date the charges were referred. This time period is measured from the date the commander notified the accused of the commander's intent to impose NJP. Periods in which the accused was absent without authority are excluded in computing the five-year period. If the personnel information file contains an Air Force Form 366, *Record of Proceedings of Vacation of Suspended NJP*, that meets this five-year requirement, a copy of the underlying record imposing the NJP is also admissible, regardless of whether the original Article 15, UCMJ, action was served on the accused within this time period. Nothing in this paragraph precludes use of Article 15, UCMJ, actions over five years old as rebuttal evidence pursuant to R.C.M. 1001.

19.15.3. **Performance Reports.** Trial counsel offers all enlisted or officer performance reports maintained according to departmental directives, as evidence of the character of the accused's prior service. See R.C.M. 1001(b)(2); *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988).

19.15.3.1. USAFA cadets do not have official performance reports. Counsel should consult with a USAFA cadet's chain of command to obtain equivalent USAFA-specific training records that record a USAFA cadet's performance.

19.15.4. **Previous Convictions.** The DD Form 493, *Extract of Military Records of Previous Convictions*, may be used to introduce evidence of an accused's previous conviction. Evidence of a previous conviction by SCM in which counsel did not represent the accused may not be introduced unless the accused waived the right to counsel. **(T-0).** See *United States v. Booker*, 5 M.J. 238, 246 (C.M.A. 1977). A conviction by SCM is not admissible until reviewed pursuant to Article 64(a), UCMJ. See R.C.M. 1001(b)(3).

19.16. Hate Crimes Evidence. Trial counsel may present evidence in aggravation that the accused intentionally selected a victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person. See R.C.M. 1001(b)(4).

19.17. Appeals by the United States from an Adverse Ruling by a Military Judge (R.C.M. 908).

19.17.1. Trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and R.C.M. 908, only after consultation with JAJG. The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

19.17.2. After filing a notice of appeal conforming to the requirements of R.C.M. 908(b) with the military judge, trial counsel sends notice to JAJG within 20 days, requesting that office file the appeal with AFCCA. In the request, trial counsel will identify the ruling or order to be appealed and include the following:

19.17.2.1. A copy of the charges and specifications;

19.17.2.2. An original and two copies of the certified verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;

19.17.2.3. Trial counsel's certification that the appeal is not taken to delay the case;

19.17.2.4. Trial counsel's certification that, if the order or ruling excludes evidence, the excluded evidence is substantial proof of a fact material in the proceeding; and

19.17.2.5. A memorandum opinion on the law applicable to the issues appealed, including an explanation why the issues appealed are significant enough to require appeal by the United States.

19.17.3. JAJG decides whether to file the appeal with AFCCA, and notifies the trial counsel, SJA, and JAJM Appellate Records Branch.

19.18. Extraordinary Writs by TC or VC. A petition for extraordinary relief by the prosecution or VC in a court-martial is a rare course of action. In the event a base legal office receives or intends to file an extraordinary writ, contact JAJG for guidance.

Section 19H—Sentencing

19.19. Applicable Sentencing Rules. Only one sentencing system applies in a court-martial—either the sentencing rules effective prior to 1 January 2019, or the sentencing rules prescribed under MJA 16. **(T-0).** See R.C.M. 902A. The date the referred specifications occurred will dictate whether the old or new sentencing rules apply. If any referred offenses occurred prior to 1 January 2019, contact JAJM for guidance, as the pre-MJA 16 sentencing rules will apply. **Note:** In cases where some, but not all referred offenses, occurred prior to 1 January 2019, the accused may elect to use the new sentencing rules for all specifications.

19.20. Plea Agreements and Sentencing Rules. If any offense was committed prior to 1 January 2019, the accused can opt-in to MJA 16 sentencing rules for all offenses. This includes opting into MJA 16 plea agreement rules to cover all of the offenses. In such cases, if the accused does not opt in to MJA 16 sentencing rules in a straddling case, then the parties may not enter into a plea agreement under Article 53a, UCMJ. **Note:** If all offenses occurred before 1 January 2019, then the accused may not opt-in to the Military Justice Act plea agreement framework regardless of when the case is referred. See [Section 17B](#) for additional sentencing considerations related to pretrial agreements and plea agreements.

19.21. Sentencing by Members. Any sentence by military members will be a single, unitary sentence for all offenses of which the accused was found guilty in that court-martial. **(T-0).** See R.C.M. 1002; Article 53, UCMJ.

19.22. Sentencing by Military Judge Alone.

19.22.1. **Segmented Sentencing.** For cases applying MJA 16 sentencing rules, military judges assign a separate term of confinement, if any, and fine, if any, for each specification of which the accused is found guilty. If multiple terms of confinement exist, the military judge determines if the terms run concurrently or consecutively. See R.C.M. 1002(d)(2). In making this determination, a military judge considers the requirements of R.C.M. 1002(d)(2).

19.22.2. **Default Military Judge Sentencing.** For cases applying MJA 16 sentencing rules, if an accused elects members for findings but does not affirmatively elect members for sentencing, the military judge will sentence by default. See Article 53(b)(1)(B), UCMJ.

19.23. Announcement of the Sentence. The sentence, whether determined by military judge or members, is announced by the military judge.

19.24. Completion of the AF Form 304, *Request for Appellate Defense Counsel.* In all GCMs or SPCMs in which there was a finding of guilty, the accused must complete an AF Form 304. If not accomplished as part of the court-martial proceeding, an AF Form 304 must be completed as

part of the immediate post-trial paperwork. See [paragraph 24.2](#) If the member declines appellate representation, see [paragraph 24.3](#).

19.25. Recommendation for Suspension of Sentence. A military judge may make a recommendation that all or part of a sentence be suspended. R.C.M. 1109(f). The recommendation must be included, along with a statement explaining the recommendation and a specified time period for the recommended suspension, on the STR. If the military judge makes this recommendation, there is no requirement that it be announced on the record.

Section 19I—Waiver of Appellate Review

19.26. Waiver of Appellate Review (Article 61, UCMJ; R.C.M. 1115).

19.26.1. If an accused wishes to waive Article 66, UCMJ, appellate review, follow the procedures outlined in R.C.M. 1115. The request to waive must be filed after the EoJ. The waiver should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*.

Note: Ensure use of the correct version of DD Form 2330, which is dictated by referral date. See Appendix 13, MCM.

19.26.2. A valid waiver of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

19.26.3. In the event of waiver, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.4](#) and [paragraph 24.15](#).

Section 19J—Contempt Proceedings

19.27. General Overview of Contempt Proceedings. Any person who uses any menacing word, sign or gesture in the presence of the judicial officer during the proceeding; disturbs the proceeding by any riot or disorder; or willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding may be punished for contempt. See Article 48(a), UCMJ.

19.28. Punishment Authority. The following judicial officers have the authority to punish a person for contempt: an appellate judge of the CAAF or AFCCA, military trial judges detailed to a court-martial or any other proceeding under the UCMJ, or the president of a court of inquiry. See Article 48(b), UCMJ.

19.29. Contempt Punishment. The maximum punishment for contempt is confinement for 30 days, a fine of \$1,000 or both. Article 48(b), UCMJ. **Note:** When imposed by the president of a court of inquiry, the maximum punishment is a fine of \$500.00.

19.29.1. Military members may not be placed in confinement in immediate association with enemy prisoners or foreign nationals detained under the law of war who are not otherwise members of the armed forces. **(T-0)**.

19.29.2. A sentence to confinement begins when announced by the judicial officer unless the person held in contempt notifies the judicial officer of an intent to file an appeal, and the judicial officer, in the exercise of discretion, defers the sentence pending the decision of the reviewing authority. See R.C.M. 809(d) and 809(e)(4).

19.29.3. If issued by a court of inquiry, a fine does not become effective until approved by the convening authority.

19.30. Process. The process for imposition of punishment for contempt varies based on whether it was directly witnessed by the judicial officer authorized to impose punishment. See R.C.M. 809(b)-(c). To punish the alleged offender, the contempt must be proven beyond a reasonable doubt. **(T-0)**. See R.C.M. 809(c).

19.31. Record. A record of the contempt proceedings must be included as part of the record. **(T-0)**. If the offender was held in contempt, a separate record of the contempt proceedings must be prepared and forwarded for review. Contact JAJM for guidance with any record of contempt proceedings.

Chapter 20

STR THROUGH EOJ (POST-TRIAL PROCESS)

Section 20A—General Post-Trial Overview

20.1. Applicability. This chapter applies only to GCMs and SPCMs in which charges were referred on or after 1 January 2019. For SCMs, see [Chapter 23](#). For cases referred before 1 January 2019, contact JAJM for assistance.

20.2. Definition of “Victim” for Post-Trial. Practitioners should be cognizant of the changing definition of victim throughout the post-trial process. In certain circumstances, “victim” refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, “victim” refers only to named victims whose specifications resulted in a conviction.

20.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the STR and the EoJ. R.C.M. 1101(d), 1111(f).

20.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

20.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

Section 20B—STR

20.3. Requirement for a STR and Exceptions to Requirement. Following final adjournment in a GCM or SPCM, the military judge must ensure an STR is prepared and signed by the military judge. **(T-0)**. However, in cases where the accused was arraigned and the trial resulted in a full acquittal, mistrial, dismissal of charges, or is otherwise terminated without findings, there is no requirement for a STR. In such cases, complete and distribute an EoJ as outlined in [Section 20I](#). Do not complete a STR in SCMs. See [Chapter 23](#) for further guidance in SCMs.

20.4. Mandatory Contents of STR. The STR must contain the content required under R.C.M. 1101. **(T-0)**. **Note:** In cases where an expurgated STR is required, both an expurgated and unexpurgated STR must be prepared and signed by the military judge. See [paragraph 20.8](#) for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel and military judges must follow the format and checklists provided on the VMJD.

20.5. Military Judge Recommendation for Suspension of Sentence. See [paragraph 19.25](#) for guidance.

20.6. Requirement for First Indorsement to STR. Prior to distribution, the SJA must sign and attach to the STR a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; firearm prohibitions

are triggered; and/or sex offender notification is required. See [Chapter 29](#) and AFMAN 71-102 for further information. Templates are available on the VMJD. The first indorsement is distributed with the STR. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.7. Distributing the STR. The SJA distributes the STR and first indorsement to those recipients identified in the STR/EoJ distribution list on the VMJD.

20.8. Unexpurgated and Expurgated Statements of Trial Results.

20.8.1. An expurgated copy of the STR is required in every case that otherwise requires a STR when the contents of a STR includes classified or other matters implicating privacy interests, as annotated in the paragraphs below. In such cases, legal offices must prepare both an expurgated and unexpurgated copy. The version with the content replaced is called the expurgated STR. Only certain parties receive the unexpurgated version. See [paragraph 20.8.2](#) When making expurgated copies, the initials should match the way the name is written on the charge sheet (e.g., “Jane Doe” becomes “J.D.” and “Jane B. Doe” or “Jane Belinda Doe” becomes “J.B.D.”) Make the following substitutions in the expurgated STR:

20.8.1.1. Names of individuals who were children under 16 years of age at the time of the offense are replaced with initials, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR). **Note:** If offenses only contain names of victims listed in this paragraph, only an expurgated copy of the STR is required;

20.8.1.2. Names of victims who were under 18 years of age at the time of the offense are replaced with initials when the charged offense is a child pornography offense, regardless of the final outcome of the case (in both the expurgated and unexpurgated STR);

20.8.1.3. Names of adult sex offense victims are replaced with initials, regardless of the final outcome of the case. **Note:** For purposes of expurgation, a “sex offense” is any offense which requires sex offender notification in accordance with DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*.

20.8.1.4. Names of victims listed in paragraphs [20.8.1.1-20.8.1.3](#) when listed in other offenses on the charge sheet (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge) should be replaced with initials, regardless of the final outcome of the case; and

20.8.1.5. Classified information is replaced with asterisks.

20.8.2. Distribution.

20.8.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated STR contains classified information, ensure the STR is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. Provide the unexpurgated classified STR to JAJM as part of the original ROT, and maintain an unexpurgated classified copy in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see DAFMAN 51-203.

20.8.2.2. Unexpurgated STR—Unclassified Cases. For cases not involving classified information, distribute the unexpurgated STR to only the following parties within five duty days of completion of the STR:

20.8.2.2.1. JAJM, as part of the original ROT;

20.8.2.2.2. The confinement officer, noncommissioned officer, or commanding officer responsible for the confinement facility where the accused is held;

20.8.2.2.3. AFSFC/FC; and

20.8.2.2.4. AFSFC/FCV.

20.8.2.3. Expurgated Statements of Trial Results. All other individuals or organizations required to receive a STR are provided expurgated copies within five duty days of completion of the STR.

20.8.2.4. The full distribution list should be used on both versions of the STR. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list, add “*Recipients of unexpurgated STR.”

20.8.2.5. Refer to the STR Distribution Checklist on the VMJD for the most current guidance on distribution.

Section 20C—Accused’s Submission of Matters

20.9. General Requirement. The accused may submit written post-sentencing matters for the convening authority’s consideration in accordance with R.C.M. 1106. Submissions may not include matters that relate to the character of a victim unless such matters were admitted as evidence at trial. **(T-0)**. See R.C.M. 1106.

20.9.1. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority.

20.9.2. If a victim submits post-sentencing matters under R.C.M. 1106A and **Section 20D**, trial counsel shall serve those matters on defense counsel within two duty days to allow the accused an opportunity to provide a written rebuttal.

20.10. Time Periods for Submissions.

20.10.1. In a GCM or SPCM, the accused may submit matters within ten calendar days after the sentence is announced.

20.10.2. If a victim submits post-sentencing matters under R.C.M. 1106A, the accused has five calendar days from receipt of those matters to submit matters in rebuttal. A sample notice to the accused of the opportunity to submit rebuttal matters is located on the VMJD. The day on which the accused is served victim’s matters does not count against the five-day time period.

20.10.3. The convening authority may extend the time periods for submission up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted by the accused or defense counsel, in writing, to the trial counsel who will then provide it to the convening authority.

20.10.4. Notification to Accused. Immediately following the announcement of the sentence, the SJA or trial counsel notifies the accused of the right to submit matters under R.C.M. 1106. A template letter is provided on the VMJD. At a minimum, the notification letter must advise the accused:

20.10.4.1. The process for submitting matters to the convening authority;

20.10.4.2. That the convening authority will consider timely written matters submitted by the accused before deciding whether to grant the accused post-sentencing relief;

20.10.4.3. That the convening authority may not consider character evidence related to the victim unless such evidence was admitted at trial;

20.10.4.4. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;

20.10.4.5. That any matters submitted by the victim under R.C.M. 1106A and [Section 20D](#) will be provided to the accused for rebuttal;

20.10.4.6. That a failure to submit matters by the prescribed time constitutes a waiver;

20.10.4.7. That submission of any matters under R.C.M. 1106 shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limit is expressly reserved in writing;

20.10.4.8. That if the accused waives the opportunity to submit matters, the waiver may not be revoked; and

20.10.4.9. That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters. **Note:** There is no audio recording in a summary court-martial.

20.11. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the defense counsel or accused may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

20.11.1. The government shall not release the recording under R.C.M. 1106 unless the government receives a written request from the defense. Upon receiving such a request, trial counsel is only authorized to release the recording of open court-martial sessions. Trial counsel must not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any person or party (including defense counsel or VC). **(T-0).** Trial counsel is not required to further redact the recordings (e.g., for personally identifying information), but shall not provide such recordings directly to the accused, only to defense counsel. Defense counsel must maintain the recording to prevent the unauthorized release of third-party personal information to any other party, including to the accused.

20.11.2. The government must provide access to exhibits upon written request from the defense, but should not normally provide copies of exhibits. **Note:** See [paragraph 20.11.1](#) for discussion on sealed exhibits.

20.11.3. In the event an accused is not represented by either military or civilian defense counsel, contact JAJM for guidance.

20.12. Application to Defer Sentence and Waive Required Forfeitures. Before the convening authority makes a decision as to whether to grant relief in a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(b) and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA at the same time the accused submits post-sentencing matters, or any time after the sentence is announced and before action. The convening authority may not defer any portion of a sentence without a request from the accused, except for a sentence to confinement. See Article 57(b), UCMJ, and R.C.M. 1103. The convening authority may waive automatic forfeitures of pay and allowances without a request from the accused. **Note:** Automatic and adjudged forfeitures go into effect automatically 14 days after the announcement of the sentence. See **Section 20F** for additional guidance on deferring and waiving forfeitures of pay and allowances.

20.13. Return to Duty. The return to duty system may offer selected enlisted personnel with exceptional potential the opportunity for relief concerning the characterization of their discharges and possible return to duty. See AFMAN 31-115, Vol 1, and Attachment 18 of that instruction for additional guidance on applications and requirements for applications for return to duty.

Section 20D—Victim's Submission of Matters

20.14. Generally. In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the SJA must ensure the victim is provided an opportunity to submit written matters for consideration by the convening authority before the convening authority considers taking action. **(T-0)**. See R.C.M. 1106A.

20.14.1. Submissions may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial. **(T-0)**.

20.14.2. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority and the accused. The accused has an opportunity to rebut statements made by the victim in accordance with R.C.M. 1106(d)(3).

20.15. Time Periods for Submissions.

20.15.1. In a GCM or SPCM, the victim must submit any matters within ten calendar days after the sentence is announced. **(T-0)**.

20.15.2. The convening authority may extend the time period for submissions up to an additional 20 calendar days, if the victim shows good cause for the extension. Extension requests must be in writing and submitted by the victim or VC to the trial counsel, who will provide it to the convening authority.

20.16. Notification. Immediately following trial, the SJA or trial counsel must provide a letter to eligible victims as defined in **paragraph 20.14**, if any, notifying them of their right to submit matters under R.C.M. 1106A. A template letter notifying a victim of the right to submit a Victim

Impact Statement is provided on the VMJD. At a minimum, the notification letter must advise the victim:

- 20.16.1. That the convening authority will consider any timely written matters submitted by the victim before deciding whether to grant the accused post-sentencing relief;
- 20.16.2. That the convening authority may not consider character evidence related to the accused unless such evidence was admitted at trial;
- 20.16.3. That the convening authority may not consider character evidence related to the crime victim unless such evidence was admitted at trial;
- 20.16.4. That the convening authority may not consider evidence of offenses of which the accused was not convicted at trial;
- 20.16.5. The process for submitting matters to the convening authority;
- 20.16.6. That any matters submitted by the victim will be provided to the accused's defense counsel for rebuttal by the accused;
- 20.16.7. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;
- 20.16.8. That the victim is entitled to only one opportunity to submit matters, and that a failure to submit matters by the prescribed time constitutes a waiver;
- 20.16.9. That if the victim waives the opportunity to submit matters the waiver may not be revoked; and
- 20.16.10. That the victim is entitled to request a copy of the recording and copies of, or access to, the exhibits to assist in the preparation of matters.

20.17. Access to Court-Martial Recordings and Evidence. To facilitate preparation of matters, the VC or victim may request a copy of the court-martial recording and copies of, or access to, the exhibits.

20.17.1. The government may release the recording under R.C.M. 1106A only upon receiving a written request from the eligible victim or VC. Upon receiving such a request, trial counsel is only authorized to release the recordings of open court-martial sessions. Trial counsel may not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any other party or person (including defense counsel or VC). Trial counsel is not normally required to further redact the recording (e.g., for personally identifying information) except as indicated below. However, to ensure compliance with the Privacy Act, the government should release the recording in the following manner:

20.17.1.1. If the victim is represented by a VC, trial counsel should provide the recording to the victim's VC as an official use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*. The VC must maintain the recording in accordance with the Privacy Act. **(T-0)**. If the victim is represented by a civilian VC, trial counsel may provide the recording in accordance with the Privacy Act. See [paragraph 8.5.5](#).

20.17.1.2. An unredacted recording (e.g., a recording of all open sessions that has not been redacted for PII) may be provided directly to the victim only if the victim is not represented by counsel. **Note:** Such recording may not include any closed, sealed or classified sessions absent an order from the military judge. See [paragraph 20.17.1](#) The recording may be provided to an unrepresented victim as a routine use under the Privacy Act system of records notice for Air Force courts-martial records. See SORN, DoD 0006.

20.17.2. The government must provide access to exhibits upon written request from the VC, if the victim is represented, or to the victim if the victim is unrepresented, but should not normally provide copies of exhibits. If the government chooses to provide copies of exhibits, third-party personal information must first be redacted. **Note:** Victims should not be given access to or copies of sealed exhibits.

Section 20E—Convening Authority Decision on Action

20.18. Applicable Version of Article 60, UCMJ. The convening authority may grant clemency on a case depending on what version of Article 60, UCMJ, applies. To determine the applicable version of Article 60, UCMJ, look at the date the earliest offense resulting in a conviction was committed. The version of Article 60, UCMJ, in effect on that date applies to the entire case.

20.18.1. In any court-martial where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, a convening authority errs if he fails to take one of the following post-trial actions: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

20.19. Convening Authority Discretion. The convening authority may grant post-sentencing relief on the findings and/or sentence of a court-martial in accordance with the applicable versions of Articles 60, 60a, and 60b, UCMJ, and their associated R.C.M.s.

20.19.1. When deciding whether to grant relief under these rules, the convening authority has two options: act on the findings and/or sentence or not act on the findings and/or sentence. A decision to act, or take action, is tantamount to granting relief, whereas a decision not to act, or to take no action, is tantamount to granting no relief. Granting post-sentencing relief (i.e. a decision to act) is a matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. See [paragraph 20.18](#).

20.19.1.1. The process of documenting the convening authority's decision on whether or not to grant relief in general and special courts-martial is reflected in the convening authority's decision on action memorandum (CADAM). For summary courts-martial, refer to [paragraph 23.21](#) A template for the CADAM is located on the VMJD. The template includes language to address a potentially ambiguous development in Article 60, UCMJ with respect to the word, "action." Prior to MJA 16, a convening authority was required to take post-trial "action" in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. Following MJA 16, new Articles 60a and 60b, UCMJ, use the words, "act" and "action" differently. These terms mean granting any form of relief.

20.19.1.2. Where an accused is found guilty of at least one specification involving an offense that was committed before 1 January 2019, the convening authority must take

action in one of the following ways: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. For cases where an accused is found guilty only of offenses committed after 1 January 2019, the convening authority may choose to take no action—in which case no relief will be granted—or the convening authority may choose to act—in which case some relief will be granted in the form that the convening authority determines. See **paragraph 20.25** and *United States v. Brubaker-Escobar*, 81 M.J. 471 (CAAF 2021).

20.19.1.2.1. Drafting a reprimand that was announced as part of the sentence does not constitute action. Thus, even in a case where the convening authority does not take action (i.e., does not grant relief), the convening authority must still provide the language for the reprimand. Similarly, stating a requirement for the accused to be placed on excess leave is not action, but will be included in the CADAM. Finally, making a decision on deferment or waiver does not constitute action, but will be included in the CADAM.

20.19.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may recommend administrative, rather than punitive, discharge to SecAF under Article 74(b), UCMJ. If a convening authority is considering making such a recommendation, the convening authority's SJA should contact JAJI for assistance and coordination.

20.20. Military Judge Suspension Recommendation. In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge's recommendation as annotated on the STR. See Article 60a(c), UCMJ. However, the convening authority may not suspend a mandatory minimum sentence or exceed the suspension recommendation of the military judge. **(T-0)**. Further, the duration of the suspension may not be less than that recommended by the military judge. **(T-0)**. **Note:** Separation which terminates status as a person subject to the UCMJ will result in remission of the suspended portion of the sentence. See R.C.M. 1107(e).

20.21. Required Considerations. Before making a decision to take action or to take no action, the convening authority must:

20.21.1. Consult with a SJA or legal advisor **(T-0)**; and

20.21.2. Consider matters timely submitted by the accused under R.C.M. 1106 and the victim(s), if any, under R.C.M. 1106A. **(T-0)**.

20.22. Consultation with Staff Judge Advocate. For cases referred on or after 1 January 2019, legal advice should generally not be provided in writing, as it is not required. However, if written legal advice is prepared, then the SJA must serve it on the accused and accused's counsel, as well as on any victim(s). Likewise, if any subsequent legal reviews are prepared in writing and raise new matters to which the accused has not had an opportunity to provide rebuttal matters, such legal reviews must also be served on the accused and accused's counsel and on any victim(s).

20.23. Matters Adverse to the Accused. If the convening authority wishes to consider any matters adverse to the accused that were not admitted at trial, then the convening authority must first cause those matters to be served on the accused with an opportunity to rebut. **(T-0)**.

20.23.1. The SJA shall serve any such matters on the accused and the accused's counsel, and shall notify the accused, in writing:

20.23.1.1. That the convening authority may consider information adverse to the accused not previously admitted at trial;

20.23.1.2. That the accused has a right to rebut the information; and

20.23.1.3. The date on which the accused's rebuttal matters are due to the SJA, which should be no less than five calendar days from the date on which the accused is notified.

20.23.2. This notification memo will be attached to the record of trial, behind the memo documenting the convening authority's decision to take action or to take no action. See [paragraph 20.25](#).

20.23.3. Upon receiving rebuttal matters, if any, from the accused, the SJA provides those to the convening authority. The SJA does not have to prepare a corresponding written legal review or memo.

20.23.4. The convening authority indicates, in writing, whether such matters were considered and, if so, whether the accused submitted matters in rebuttal. This may be incorporated into the same memo the convening authority uses to document the decision to take action or to take no action. See [paragraph 20.21](#) and [paragraph 20.25](#). Templates are available on the VMJD.

20.24. Timing of Convening Authority Decision to Take Action/No Action. The convening authority must generally act before the EoJ. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the EoJ by accomplishing a new memorandum. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the EoJ, the GCMCA over the command to which the accused is assigned may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) is met.

20.25. Documenting Convening Authority Action/No Action in a GCM or SPCM.

20.25.1. For cases where all offenses resulting in a conviction occurred after 1 January 2019, the convening authority may either take action to reduce the findings or sentence, in accordance with Article 60, UCMJ, or take no action. The date of the earliest offense for which an accused is found guilty controls which version of Article 60, UCMJ, applies, and thus what a convening authority must do. See [paragraph 20.19](#).

20.25.2. In any case where an accused is found guilty of at least one specification where the offense was committed before 1 January 2019, a convening authority errs if he fails to take one of the following mandated post-trial actions in a case: approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part. See [paragraph 20.19](#).

20.25.3. If all offenses for which the accused is found guilty occurred after 1 January 2019, the convening authority does not need to take action to approve the findings or sentence. See [paragraph 20.19](#).

20.25.4. The convening authority's decision must be in writing. If the convening authority decides to take no action in a GCM or SPCM, no rationale is required. If the convening authority decides to take action in a GCM or SPCM, the convening authority's decision must include a paragraph explaining the reasons for the action. **(T-0)**.

20.25.5. The convening authority's written decision to take action or no action in a GCM or SPCM must be attached to the record of trial. Templates, checklists, and sample action language are located on the VMJD. At a minimum, the convening authority's written decision on action must:

20.25.5.1. Indicate the action taken, if any, on the findings or the sentence and the rationale (to include whether the action was taken as a result of a trial counsel substantial assistance recommendation);

20.25.5.2. Express the convening authority's decision on a military judge suspension recommendation, if any;

20.25.5.3. Annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and the dependent who will receive waived forfeitures;

20.25.5.4. Direct the member to be placed on excess leave pending appellate review if required under [Section 20M](#).

20.25.6. The CADAM must include any reprimand language in cases in which a reprimand was adjudged by the court, provided the convening authority does not disapprove the reprimand. See [paragraph 20.19](#).

20.26. Service of the CADAM in a GCM/SPCM. The SJA must serve the CADAM on the military judge, court reporter, counsel for the accused, and counsel for the victim. **(T-0)**. In the event the accused or victim is not represented by counsel, the CADAM must be served on the accused or victim, as applicable. If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0)**.

20.27. Documenting and Serving Convening Authority Action in an SCM. See [Chapter 23](#).

20.28. Disqualification of a Convening Authority. A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (CAAF 2002); *United States v. Voorhees*, 50 M.J. 494 (CAAF 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 2 C.M.R. 161 (C.M.A. 1952).

Section 20F—Forfeitures of Pay, Deferment and Waiver (Articles 57(b) and 58b, UCMJ; R.C.M. 1103)

20.29. Adjudged Versus Automatic Forfeitures. The ability of a convening authority to defer or waive forfeitures of pay and allowances hinges on whether the forfeitures are adjudged or automatic (the latter of which is also known as "mandatory forfeitures").

20.29.1. Adjudged forfeitures are those forfeitures imposed as part of a court-martial sentence. See Article 57(a), UCMJ, and R.C.M. 1103. Adjudged forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2. Automatic forfeitures are forfeitures that take effect by operation of law. See Article 58b, UCMJ. An accused must forfeit pay and allowances if sentenced to confinement for more

than six months or if sentenced to a punitive discharge or dismissal and any length of confinement.

20.29.2.1. Automatic forfeitures take effect 14 calendar days after the sentence is announced.

20.29.2.2. The amount of automatic forfeitures in a GCM is all pay and allowances otherwise due to the accused. The amount of automatic forfeitures in an SPCM is two-thirds pay otherwise due to the accused. Allowances otherwise due are not subject to mandatory forfeitures in an SPCM.

20.29.2.3. Automatic forfeitures only take effect if the following three conditions exist:

20.29.2.3.1. The adjudged sentence includes confinement for more than six months or death, or confinement for six months or less and a punitive discharge;

20.29.2.3.2. The accused is in confinement or on parole; and

20.29.2.3.3. The accused is otherwise entitled to pay and allowances that are subject to automatic forfeitures.

20.29.2.4. Automatic forfeitures do not apply to summary courts-martial. See R.C.M. 1003(a)(2), Discussion.

20.30. Deferment Versus Waiver. Deferment and waiver of forfeitures are distinct concepts that operate differently depending on whether the forfeitures are adjudged or automatic.

20.30.1. Deferment (Article 57(b), UCMJ). Deferment is a postponement of the running of a sentence. Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures until the EoJ or, in the case of a SCM, until a convening authority acts on the sentence. Deferred forfeitures are paid directly to the accused. The accused may apply for deferment regardless of whether the accused has dependents. The convening authority may rescind a deferment at any time.

20.30.1.1. The factors an accused must establish in a deferment request, and the factors a convening authority must consider, are provided in R.C.M. 1103(d)(2).

20.30.1.2. The convening authority's action on the deferment request must be in writing and must include the basis for any denial. **(T-0)**. Annotate whether the accused requested deferment of confinement, forfeitures or, reduction in grade. If the accused requested more than one deferment, address each. Specify the nature of the request, the convening authority's decision, the reason for the convening authority's decision (see, R.C.M. 1103(d)(2)), the effective date if approved, and the expiration date. A copy of the convening authority's action on the deferment request must be included in the record of trial and provided to the military judge and accused. **(T-0)**. Inclusion of the approved deferment in the CADAM satisfies this requirement.

20.30.1.3. If the convening authority grants deferment, the deferment continues until EoJ unless the convening authority mitigates, suspends or disapproves the adjudged forfeitures prior to EoJ, in which case the deferment or adjudged forfeitures ends at the time at which the convening authority acts, and are thereafter mitigated, suspended or disapproved.

20.30.2. Waiver (Article 58b, UCMJ). The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived

forfeitures are paid directly to the accused's dependents. Dependent is defined by 37 U.S.C. § 401, *Definitions*. See [paragraph 20.32](#).

20.30.2.1. The convening authority may not waive adjudged forfeitures. **(T-0)**. However, the convening authority may take action under Articles 60, 60a or 60b, UCMJ, to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any resulting automatic forfeitures. See *United States v. Emminizer*, 56 M.J. 441 (CAAF 2002). If the convening authority does not take action on adjudged forfeitures, then automatic forfeitures will take effect. Sample language the convening authority may use to defer, suspend, mitigate or disapprove all or part of adjudged forfeitures can be found on the VMJD.

20.30.2.2. The factors a convening authority may consider before granting a waiver are provided in R.C.M. 1103(h)(2).

20.30.2.3. The convening authority may waive automatic forfeitures for the purpose of providing support to the accused's dependents even if the accused does not apply for a waiver.

20.30.2.4. The convening authority may waive automatic forfeitures at any point before the EoJ. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

20.30.2.5. Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point. Practitioners shall always verify the accused is entitled to pay before recommending the convening authority waive forfeitures as a part of the plea agreement.

20.30.2.6. If the convening authority grants waiver of any portion of automatic forfeitures, the convening authority should specify the date on which the waiver is effective. The waiver may begin no later than the EoJ.

20.30.3. A request for a combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family members. For example, the accused may request that the convening authority defer automatic and adjudged forfeitures until the EoJ and then waive automatic forfeitures starting on the EoJ for a period not to exceed six months. However, a convening authority who waives automatic forfeitures starting at EoJ should also consider disapproving, commuting or suspending some or all of the adjudged forfeitures for the same period. *U.S. v. Emminizer*, 56 M.J. 44 (CAAF 2002). Transitional compensation is a separate and distinct application process from deferral and waiver; nevertheless, it is also an opportunity to assist victims and it begins when the EoJ is signed. See AFI 51-207 and AFI 36-3012, *Military Entitlements*, Chapter 8.

20.31. Mechanics of Deferring and Waiving Forfeiture of Pay. [Table 20.1](#) explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period.

20.31.1. **Accused's Deferment Request.** If an accused requests deferment of a reduction in grade, a forfeiture of pay and allowances, or sentence to confinement until EoJ, the convening authority may approve the request, in full or in part, or may disapprove the request. See [paragraph 20.30.1.2](#).

20.31.1.1. The accused's deferment request as to forfeitures should specify whether it is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferment of both.

20.31.1.2. The convening authority's decision on the request should be reflected in a signed and dated document. This includes the basis for any denial. See [paragraph 20.30.1.2](#).

20.31.1.3. The terms of approved deferment requests are reported in a 14-day memorandum and decision on action memorandum signed by the convening authority. Templates for both documents can be found on the VMJD. See [paragraph 20.30.1.2](#).

20.31.1.4. A deferment of forfeitures may be for adjudged forfeitures, automatic forfeitures or both, and for all pay and allowances to which the accused is entitled or a lesser sum. However, deferment does not extend beyond the time at which the EoJ is completed in a GCM or SPCM or beyond action in a SCM. R.C.M. 1103(f).

20.31.2. Waiver of Automatic Forfeitures. In cases where automatic forfeitures are waived, whether prior to or as part of the convening authority's action, the approved waiver should state the amount approved in dollar amounts per month, unless the waiver is for total pay and allowances in a general court-martial. If waiver of forfeiture of two-thirds pay is approved in a special court-martial, the total should be reflected in whole dollar amounts.

20.31.2.1. The convening authority must identify the dependents who will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other person on behalf of minor dependents, the SJA or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent and that the accused does not have access to the account. Legal offices should provide information described in AFMAN 65-116V1, *Defense Joint Military Pay System Active Component (DJMS-AC) FSO Procedures*, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

20.31.2.2. If automatic forfeitures are waived before the decision on action, the convening authority must reflect approval in a signed and dated document at the time forfeitures are waived. Such a waiver of automatic forfeitures is also reported in the 14-day memorandum and in the CADAM.

20.31.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. **Note:** These considerations could affect the enforceability of a plea agreement or pretrial agreement. A number of factors can impact the following entitlements:

20.31.2.3.1. Basic Allowance for Subsistence. The accused loses Basic Allowance for Subsistence upon entry into confinement, thus the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

20.31.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

20.31.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration. To the extent that it is allowed by law under Article 58a, UCMJ, a grade reduction can be deferred but cannot be waived.

20.31.2.3.4. Active Duty Spouse. A spouse who is also a Regular DAF member may receive only waived forfeiture of pay, not pay and allowances. **(T-0)**.

20.31.2.3.5. ETS. There are no forfeitures to waive on any date after the accused's ETS. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond their ETS may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. **(T-0)**. See *United States v. Perron*, 58 M.J. 78 (CAAF 2003).

20.31.2.3.6. Foreign Accounts. The Defense Finance and Accounting Services (DFAS) has experienced difficulties making deposits into certain foreign bank accounts. Plea agreement and pretrial agreement terms requiring deposits of pay into foreign account may be impractical to accomplish.

20.31.2.3.7. Title 10 Status. As with ETS, if a member's Title 10 status expires (e.g., members recalled to Title 10 active duty in order to be tried by court-martial), there are no forfeitures to waive after the status expires. See **Chapter 3** for further guidance.

20.32. Dependency Determinations under Article 58b, UCMJ.

20.32.1. Dependent is defined by 37 U.S.C. § 401.

20.32.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b, UCMJ, waiver. The nature of this evidence will depend on the status of the dependent.

20.32.2.1. Dependency status for a spouse or child may be established by their enrollment in the Defense Enrollment Eligibility Reporting System or by other competent evidence, such as, a marriage certificate, a birth certificate, or a court order establishing paternity or child support obligations for a child.

20.32.2.2. Dependency determinations for a child over 21 years of age, parents or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A precondition for waiving forfeitures for the benefit of one of these dependents should be an approval letter of dependency from DFAS. The accused, or other party requesting the waiver, should provide a copy of the DFAS approval letter with any request to waive mandatory forfeitures. If an accused is unable to qualify

one of these persons as a dependent with DFAS, then there will normally be insufficient evidence of dependency to support an Article 58b, UCMJ, waiver of mandatory forfeitures.

20.33. Required Adjustment of Forfeitures. If the convening authority takes action on a sentence that then creates an illegal punishment (e.g., no confinement but a forfeiture exceeding 2/3 pay per month), legal offices should ensure that this is corrected before EoJ.

20.34. Deferral and Waiver in Cases With Offenses Committed Prior to 1 April 1996. See the VMJD for information on forfeitures related to offenses committed prior to 1 April 1996. Contact JAJM for assistance.

Table 20.1. Relationship between Adjudged and Automatic Forfeitures.

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service.	Not in effect. Accused continues to be paid unless post expiration of term of service.
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED UNTIL EOJ	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents (in the case of a waiver). (See Notes 3 & 4)
EOJ	In effect unless the convening authority approves, disapproves, commutes or suspends the adjudged forfeitures in whole or in part.	In effect, except any portion the convening authority has waived. Waiver period may not exceed six months. (See Notes 4 & 5)

FORFEITURE PERIOD	ADJUDGED FORFEITURES	AUTOMATIC FORFEITURES (See Note 1)
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Automatic forfeitures only apply when the three conditions listed in paragraph 20.29.2.3 exist. 2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or automatic forfeitures 14 days after the date on which the sentence was adjudged until the EoJ. The accused should specify whether the deferment requested is for adjudged forfeitures, automatic forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused is paid a sum equal to entitled pay and allowances, minus any amounts not deferred. The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time. 3. The convening authority may waive available automatic forfeitures with or without a request from the accused. The convening authority may waive automatic forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above). 4. Automatic forfeitures may be waived until the earlier of: (1) a period not to exceed six months; (2) the accused's release from confinement; or (3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above). 5. If the convening authority acts on the sentence, the convening authority may waive all or a portion of the available automatic forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to enable the convening authority to waive any amount of automatic forfeitures. See <i>U.S. v. Emminizer</i>, 56 M.J. 441 (CAAF 2002). 		

20.35. Service of Legal Review on the Accused. There is no requirement to prepare written legal advice to a convening authority pertaining to a request for deferment or waiver. However, if written legal advice is prepared the legal office must understand the distinction between advice that must be served on the accused and advice where service is not required. Written legal advice pertaining to deferral requests need not be served on the accused. Written legal advice pertaining to waiver requests must be served on the accused. **(T-0)**.

20.35.1. **Article 57(a), UCMJ, Deferral of Forfeiture Requests.** In *United States v. Key*, 55 M.J. 537 (AFCCA 2001), the Court held that an SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority, where the SJA's review does not contact a "new matter." The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any decision by the convening authority on the request is included in the ROT.

20.35.2. **Article 58b, UCMJ, Waiver of Forfeiture Requests.** In *United States v. Spears*, 48 M.J. 768 (AFCCA 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a

clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. The SJA or designee is required to serve any written legal review on the accused and defense counsel before submission to the convening authority and must include it as an attachment to the completed ROT.

Section 20G—Contingent Confinement

20.36. Contingent Confinement. Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See R.C.M. 1003(b)(3). A fine-enforcement provision may be ordered executed in accordance with the procedures below.

20.36.1. **Authority to Execute Contingent Confinement.** A fine does not become effective, and the accused is not required to pay, until EoJ. See Article 57(a), UCMJ. The convening authority may not order an accused to serve contingent confinement until the EoJ is complete and the requirements of [paragraph 20.37](#) are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in [paragraph 20.37](#).

20.36.2. **Enforcement.** Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction. *Carter v. McClaghry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (C.M.A. 1973).

20.37. Procedures for Executing Contingent Confinement. Contingent confinement may be executed in accordance with the following procedures:

20.37.1. When the fine is ordered executed, the convening authority notifies the accused in writing the fine is due and payable. A specific due date must be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

20.37.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the SJA notifies the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a post-trial contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, a successor in command, or the officer exercising general court-martial convening authority over the command to which the accused is assigned. If the accused is no longer on active duty and is not a member of the ARC, AFDW/CC is the convening authority. The purpose of the hearing is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed.

20.37.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing. This detailing is accomplished in the same manner as detailing a military judge to a court-martial.

20.37.4. The SJA or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. See AFMAN 65-605V1, *Budget Guidance and Technical Procedures*, for appropriate funding authority. The notice informs the accused of the following:

20.37.4.1. The accused's alleged failure to pay the fine;

20.37.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

20.37.4.3. The accused's right to present witnesses and documentary evidence;

20.37.4.4. The accused's right to representation by military defense counsel; and

20.37.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

20.37.5. Unless the hearing is otherwise waived, the hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified in the approved sentence or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

20.37.6. Hearing Procedures.

20.37.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

20.37.6.2. The accused may testify and present witnesses and documentary evidence. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at Government expense unless the request is made to the hearing officer, in writing, before the hearing and the hearing officer determines:

20.37.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

20.37.6.2.2. The witness is available to testify; and

20.37.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

20.37.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

20.37.6.4. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the Government. The accused is also entitled to representation by either an ADC or military counsel of the accused's selection, if reasonably available. See [paragraph 15.6](#) The accused is not entitled to representation by more than one military counsel.

20.37.6.5. A court reporter records the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer.

20.37.6.6. The hearing officer submits a written report to the convening authority through the SJA, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

20.37.6.7. The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify, or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority specifies the evidence relied upon and the reasons for the decision.

20.37.6.8. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of contingent confinement executed. A sample order executing contingent confinement is provided on the VMJD. If the convening authority determines the accused has made good faith efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed. If electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the ROT.

20.37.6.9. The convening authority's action taken should be forwarded through the SJA to the military judge for completion of a new EoJ, which must be attached to the ROT.

20.37.6.10. Forward to JAJM a copy of the summarized record of the contingent confinement hearing for each copy of the ROT required by DAFMAN 51-203.

Section 20H—Notification of Adjudged Sentence, EoJ

20.38. 14 Day Memorandum and 24 Hour Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade, a 24 Hour Memorandum ([paragraph 20.38.2](#)) is required. In such cases, if the EoJ is not complete within 14 days, both a 14 Day Memorandum ([paragraph 20.38.1](#)), and a 24 Hour Memorandum ([paragraph 20.38.2](#)) must be accomplished and distributed. However, if the EoJ is completed within 14 days, a 14 Day Memorandum is not required.

20.38.1. **14 Day Memorandum.** The SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the EoJ, whichever

is earlier, via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

20.38.2. **24 Hour Memorandum.** If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F**. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. **Minimum Contents.** Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0).** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0).** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

20.40.2. **Expurgated and Unexpurgated Copies of the EoJ.** In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer to **paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the

first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

Section 20J—Post-Trial Confinement

20.43. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

20.44. Processing the DD Form 2707.

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

20.44.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

20.45. Effect of Pretrial Confinement. Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

20.45.3. Templates, instructions, and checklists are located on the VMJD.

20.46. Confinement Facility (R.C.M. 1101, 1102(b)(2)(F)).

20.46.1. AFSFC/FC, which oversees Air Force correctional facilities worldwide, selects the corrections facility for post-trial confinement and rehabilitation. Refer to AFMAN 31-115, Vol 1, for confinement rules and practices.

20.46.2. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. AFSFC/FC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The GCMCA of an inmate transferred to such a facility exercises the same responsibilities as those assigned in this chapter to AFDW/CC, for inmates in the Air Force Corrections System.

20.46.3. If a military confinement facility is not reasonably available, then the installation commander may authorize confinees to be placed in civilian correctional facilities in accordance with guidelines prescribed in AFMAN 31-115, Vol 1.

Section 20K—Preparing and Certifying the ROT (R.C.M. 1104)

20.47. Transcription Requirements. Transcription occurs simultaneous to the other post-trial phases (i.e. STR, CADAM, and EoJ). The transcript is not required before EoJ. Once the transcript is certified, it is attached to the ROT. For additional guidance, see DAFMAN 51-203.

20.47.1. **Verbatim Transcripts.** A certified verbatim transcript is required in cases that result in a dismissal, punitive discharge, or confinement for more than six months. **(T-0)**. See R.C.M. 1114(a).

20.47.2. **Summarized Transcripts.** A certified summarized transcript is required for all other cases. For cases resulting in a full acquittal, mistrial, dismissal of all charges, or cases otherwise terminated without findings an abbreviated summarized transcript may be completed. See the VMJD for further details. A verbatim transcript satisfies the requirement of a summarized transcript.

20.47.3. **Certification.** Prior to certification of the transcript by the court reporter, the court reporter must forward the transcript to the trial counsel, who examines it for accuracy and signs a memorandum verifying the examination was accomplished. **(T-1)**. A sample certification is located in AFMAN 51-203. The SJA must generally permit the defense counsel the reasonable opportunity to examine the transcript before certification. The transcript must be certified by the court reporter(s) who were detailed to the proceeding and included in the ROT prior to forwarding for appellate review. **(T-0)**. For certification requirements, refer to DAFMAN 51-203.

20.47.4. Following certification of the transcript, the court reporter shall notify trial counsel and the case paralegal that the transcript is ready for inclusion in the ROT. The court reporter must ensure, and the case paralegal must verify, that sealed exhibits, classified information and closed sessions are properly sealed in accordance with R.C.M. 1112(e)(3) and DAFMAN 51-203. **(T-0)**.

20.48. Preparing and Certifying the ROT in GCMs and SPCMs. The Court Reporter certifies the ROT after the military judge completes the EoJ and enters it into the record. The case paralegal or trial counsel must promptly send a copy of the EoJ to the court reporter. **(T-0)**. See R.C.M.

1112(b)(9). Failure to promptly provide the EoJ to the court reporter will delay post-sentencing processing and the certification of the ROT. See DAFMAN 51-203. For SCMs, see [Chapter 23](#), DAFMAN 51-203, and R.C.M. 1305.

Section 20L—Service and Forwarding of the ROT (R.C.M. 1104; 1112(e))

20.49. Service of the ROT Generally.

20.49.1. Upon certification of the transcript and the ROT, the SJA causes a copy of the certified ROT to be served on the accused and any eligible victim(s) in accordance with the below guidance and R.C.M. 1112(e) and obtains proof of service or substitute service in accordance with DAFMAN 51-203. Provide only the ROT items listed in R.C.M. 1112(b). **(T-0)**. Do not provide the ROT attachments listed in R.C.M. 1112(f). **(T-0)**.

20.49.2. Mandatory Substitution of Transcript for Recording. Further, do not provide the accused or victim(s) with a copy of the audio recording of open proceedings. Instead, replace the audio recording with a redacted copy of certified transcript.

20.49.3. Where this section calls for redactions, those redactions shall be made to copies of the ROT provided to the accused and victim(s) only. Legal offices shall not redact an original ROT or any copies provided for appellate review.

20.50. Serving the ROT on the Accused.

20.50.1. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the accused. The accused's own personal information does not have to be redacted from the accused's copy.

20.50.2. The SJA must obtain proof of ROT service on the accused, or substitute service, and include it as an attachment to the ROT. **(T-0)**. See R.C.M. 1112(e)(2) and DAFMAN 51-203.

20.50.3. Members Confined at the United States Disciplinary Barracks (USDB) at Fort Leavenworth. Forward a copy of the certified ROT to the USDB. If the ROT is not certified at the time of inmate transfer, contact the USDB's DAF Liaison at DSN: 585-3626, OR COMM: (913) 758-3626. Once the ROT is certified, mail the ROT, via certified mail, to the USDB, ATTN: USAF Liaison, 1301 N. Warehouse Rd, Fort Leavenworth, KS 66027-2304. Notify the liaison upon shipment and provide them certified mail number.

20.51. Serving the ROT on Eligible Victim(s).

20.51.1. The following victim(s) are entitled to a copy of the ROT upon certification:

20.51.1.1. The victim of an offense of which the accused was charged if the victim testified during the proceedings, without regard to the verdict, automatically receives a copy of the ROT.

20.51.1.2. A victim named in a specification who did not testify at trial receives a copy of the ROT upon request, regardless of the verdict.

20.51.2. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the victim(s). The victim's own personal information does not have to be redacted from the victim's copy. However, the personal information of other witnesses and victims must be redacted. Additionally, information about

the accused that would normally be protected by the Privacy Act must also be redacted. (T-0).

20.51.3. The SJA must ensure that eligible victims are notified of the opportunity to receive a copy of the ROT. (T-0). A template notification is located on the VMJD. If the victim waives receipt of the ROT, the SJA must document that waiver in writing and attach it to the ROT. The SJA must obtain proof of ROT service on the victim, or substitute service, and include it as an attachment to the ROT. See R.C.M. 1112(e)(2) and DAFMAN 51-203.

20.52. Forwarding the ROT. After the ROT is complete, the servicing SJA or convening authority's SJA forwards the original ROT and required copies for post-trial review. See DAFMAN 51-203 for in-depth instructions on forwarded ROTs.

20.52.1. SCMs requiring Article 64, UCMJ, review and GCM or SPCMs requiring Article 65(d), UCMJ, review are forwarded to the GCMCA's SJA using the most cost-effective method that provides for means of tracking. See [Section 24D](#).

20.52.2. All other cases are forwarded to JAJM; this includes cases resulting in an acquittal or terminated without findings (e.g., mistrial or dismissal of all charges).

20.52.3. Incomplete ROTs (e.g., records of trial that are missing documents) should not be forwarded to JAJM. Incomplete ROTs will be returned to the responsible legal office and will not be considered transferred to JAJM for purposes of metrics and milestones.

Section 20M—Excess Leave

20.53. Involuntary (Required) and Excess Leave.

20.53.1. The convening authority will place an accused that either had no confinement adjudged or already completed the period of confinement on involuntary excess leave while awaiting appellate review of an unsuspended punitive discharge. (T-0). See Article 76a, UCMJ. For ARC-specific guidance, see [Chapter 3](#).

20.53.2. Members with an adjudged sentence that includes a punitive discharge may volunteer to be placed on excess leave pending the convening authority's review. If the convening authority does not reduce, commute or suspend the punitive discharge, the accused's voluntary excess leave status is terminated and the accused is placed on involuntary excess leave. If the convening authority reduces, commutes or suspends the punitive discharge, the accused is returned to duty; however, if the member faces involuntary separation, consult 10 U.S.C. § 1149.

20.53.3. When an approved sentence includes unsuspended confinement, the convening authority may not place the accused on either voluntary or involuntary excess leave unless the confinement has been served, remitted, or deferred.

20.53.4. An accused who has accrued leave when required to take excess leave may elect to either (1) receive pay and allowances during the period of accrued leave and then continue on unpaid excess leave, or (2) receive payment for the accrued leave as of the day excess leave begins and serve the entire period on unpaid excess leave.

20.53.5. If the accused's sentence to a punitive discharge is set aside or disapproved upon appellate review, the accused is entitled to pay and allowances for the period of required excess

leave unless a rehearing or new trial is ordered and a punitive discharge results from the rehearing. The amount of pay and allowances is reduced by the amount of income, unemployment compensation, and public assistance benefits received by the accused from any government agency during the period of excess leave.

20.53.6. The convening authority must cause the member's status to be changed to excess leave upon completion of a sentence to confinement where the member's unsuspended punitive discharge is still pending appellate review. The procedures for doing so can be found in [paragraph 20.56](#) Such involuntary excess leave may continue until the date the discharge is executed, unless terminated at any earlier date. A template notification to the member is located on the VMJD.

20.53.6.1. USAFA cadets may request voluntary excess leave ("administrative turnback") pending investigation or military justice action. In the event that a cadet is already on voluntary excess leave following a court-martial, a subsequent notification of involuntary excess leave is not required. However, if a USAFA cadet requests to return from voluntary excess leave while pending appeal (following adjudication of punitive discharge), involuntary excess leave paperwork must be processed in accordance with this chapter.

20.54. Excess Leave for Accused Assigned Outside the Continental United States. When a convening authority directs excess leave for an accused serving in an overseas area at the time excess leave is directed, the convening authority will direct reassignment to the force support squadron at the base nearest the appellate leave address provided by the accused. The convening authority may issue this direction through the SJA if appellate leave is provided for in the CADAM.

20.54.1. An accused may go directly to a designated leave address without reporting into the gaining unit. Before departure, the accused determines whether to physically report into the gaining unit.

20.54.2. The losing commander, consistent with the accused's election, directs the accused to travel from the overseas location to either the appellate leave address or the gaining unit as soon as possible after completion of out-processing. After arrival, the accused commences taking accrued leave, if so elected, and any required excess leave.

20.54.3. The accused will be considered assigned to the force support squadron at the gaining base on the date the member physically reports to the unit or, in cases where the accused does not physically report to the gaining unit, the date determined by the local force support squadron's personnel relocations element based upon the accused's departure date and travel time.

20.54.4. Overseas members may provide an ordinary or voluntary leave address in an OCONUS state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the force support squadron nearest such leave address. Overseas members assigned to units in foreign countries when placed on involuntary excess leave must provide an appellate leave address in a state or territory of the United States and will be reassigned to a force support squadron at the base nearest the appellate leave address. Overseas members in foreign countries at the time they are placed on involuntary excess leave will be required to depart the foreign country.

20.55. Excess Leave Procedures.

20.55.1. When the convening authority orders an accused to take excess leave, the convening authority (or the SJA, if the convening authority so directs in the CADAM) sends the accused a letter, directing the excess leave and informing the accused of entitlements, status and responsibilities while on excess leave. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the accused's receipt and any subsequent address changes, is sent to the servicing force support squadron. A copy of all excess leave letters must be sent to JAJM and JAJA. In cases of an accused being reassigned from overseas, a copy of the letter must also be sent to the SJAs of the SPCMCA and GCMCA of the gaining unit and the gaining, or excess leave, FSS/CC. The format for the letter is available on the VMJD.

20.55.2. Action to place the accused on voluntary or involuntary excess leave must comply with *Joint Travel Regulations*, AFI 36-3003, *Military Leave Program*; DAFI 36-2110; AFMAN 36-2102, *Base-Level Relocation Procedures*; and AFMAN 31-115, Vol 1, *Air Force Corrections System*. Ensure AMJAMS is updated to reflect the accused's appellate leave address and the base nearest the address when the accused was reassigned.

20.56. Travel of Personnel Awaiting Completion of Appellate Review. An accused involuntarily placed on excess leave while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal may be provided travel or transportation in kind, according to the *Joint Travel Regulations*. Ensure a special travel order is published in the "A" series if the court-martial convening authority directs involuntary appellate (excess) leave according to AFI 36-3003, *Military Leave Program*, and this instruction. If the accused's court-martial sentence is disapproved or set aside, and the member is restored to duty, the member is authorized travel or transportation in kind, according to the *Joint Travel Regulations*. In such cases, publish an "A" Series Travel Order in accordance with the publishing directive.

Section 20N—Post-EoJ Action by the Convening Authority

20.57. General Provision. In accordance with R.C.M. 1109, the convening authority may take action on the sentence in certain cases after the EoJ is complete.

20.58. Requirement for Additional CADAM. In any case where the convening authority takes action on the sentence subject to this section, the convening authority must issue a new CADAM. (T-0). See also R.C.M. 1109(g)(2).

20.59. Procedures. Once the additional CADAM is complete, the convening authority submits it to the servicing legal office who shall forward the CADAM to the Chief Judge, JAT, who will then ensure it is attached to the record of trial. (T-0).

20.60. Service on Accused and Any Victims. In accordance with R.C.M. 1109(h), the additional CADAM must be served on counsel for the accused, if represented, and counsel for the victim(s), if represented. If either the accused or victim(s) are not represented by counsel, the additional CADAM will be served directly on the accused and victim(s).

20.61. Requirement for Additional EoJ. The Chief, JAT, or designated military judge must then execute an additional EoJ after receipt of the CADAM. (T-0). See R.C.M. 1109(g)(2) and (h). The EoJ will then be forwarded to the servicing SJA for execution of a new first indorsement and distribution in accordance with the STR/EoJ Distribution List on the VMJD.

Chapter 21

CORRECTING OR MODIFYING POST-TRIAL PAPERWORK AND THE RECORD OF TRIAL

Section 21A—Correcting the STR and First Indorsement

21.1. Contents of the STR. The prescribed STR form contains data required by R.C.M. 1101 and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.2. Administrative Errors. Errors to administrative data listed on the STR but not required under R.C.M. 1101 (e.g., the member's SSN, rank, date, etc.) may be corrected on the STR in the manner prescribed in [Section 21E](#) at any time.

21.3. First Indorsement. The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the STR and first indorsement in accordance with [Section 21E](#).

21.4. Errors Identified Prior to EoJ. Errors on the STR identified prior to the EoJ are corrected in accordance with R.C.M. 1104(b). **(T-0)**.

Section 21B—Correcting the Convening Authority's Decision on Action.

21.5. Contents of the Convening Authority's Decision on Action Memorandum. The prescribed CADAM includes the convening authority's action (or decision to take no action) as well as other administrative matters. Such administrative matters include ordering the member on appellate leave. These matters are included in the memorandum in order to provide the accused notice of any administrative requirements (e.g., appellate leave) executed by the convening authority.

21.5.1. Errors in the Memorandum. Errors in the CADAM that do not relate to or affect the convening authority's action and thus do not affect the EoJ on the findings or sentence will be corrected in the manner described in [Section 21D](#) after the EoJ has been signed. An example of such an error is any error in the reprimand language (to include failure to provide reprimand language in the memorandum).

21.6. Errors in the Action Language. Errors in the convening authority's action may be corrected prior to the EoJ in accordance with R.C.M. 1104(b). If corrections must be made after the EoJ, follow the procedures in [Section 21C](#).

21.6.1. Any corrections made by the convening authority must be memorialized in a subsequent CADAM and attached to the original CADAM. In the event corrections are made by the military judge in accordance with R.C.M. 1104(b)(2)(B), the military judge memorializes those corrections on the EoJ.

Section 21C—Correcting the EoJ

21.7. Contents of the EoJ. The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and

other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.8. Errors Identified in the EoJ. Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). **(T-0)**. If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the Record of Trial defective.

21.8.1. The military judge who presided over the trial has a limited ability to correct errors on the EoJ for 14 days after completion of the EoJ in accordance with R.C.M. 1111(c).

21.9. More than 14 Days after Initial Completion of the EoJ.

21.9.1. The Chief Trial Judge has been delegated the authority to modify EoJs in accordance with R.C.M. 1111(c)(2), and may detail a subordinate trial judge to modify an EoJ in a particular case.

21.9.2. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.3. TJAG, AFCCA, and Court of Appeals for the Armed Forces (CAAF) may also modify a judgment in the performance of their duties and responsibilities.

Section 21D—Method for Making Corrections

21.10. General Provision. If corrections are made to the first indorsement, STR, or EoJ, the corrected copy must be inserted in place of the original document and included in the original, JAJM copies 1 and 2, and office copies of the ROT. See the GCM/SPCM ROT Assembly Checklist on the VMJD. The original erroneous document and any prior corrected copies should be included in the ROT behind the corrected copies, before the audio recording. Corrected copies must be redistributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD. If corrections are made to the first indorsement only, the STR, EoJ, and the first indorsement, must be redistributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD.

21.11. Header. If changes are made to the first indorsement, STR, or EoJ form, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**). If changes are only made to the first indorsement, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**) only on the first indorsement. If multiple corrected copies are required, the corrected copies must be numbered (e.g., **SECOND CORRECTED COPY, THIRD CORRECTED COPY, FOURTH CORRECTED COPY**, etc.)

21.12. Making Corrections on the first indorsement, STR, and EoJ. Incorrect information should remain on the form but be struck through. The correct information should follow and be underlined. For example, if the accused’s sSSN was incorrectly listed on the STR, it should be corrected as follows: 111-22-4444 111-22-3333. **Note:** The date listed in the “Date” block on the STR and EoJ must be updated for each corrected copy. The date does not need to be struck through or underlined when updated. The date of the first indorsement should be updated to reflect the date the corrected first indorsement is signed. Corrected copies must be distributed in accordance with the STR/EoJ Distribution list on the JAJM VMJD.

21.13. Subsequent CADAM. If an error is identified in the original memorandum a subsequent CADAM must be accomplished in accordance with **Section 20E**. Subsequent memorandums must be distributed in accordance with **paragraph 20.26**, and both the original and subsequent memorandums must be included in the ROT.

21.14. Signatures. Corrected copies of the STR and EoJ must be signed by the same military judge or by the military judge directed by the Chief, Trial Judiciary and must indicate the date the judgment was initially entered into the record. Corrected copies of the first indorsement must be signed by the SJA or person Acting as the SJA.

Section 21E—Correcting the ROT

21.15. Defective of Incomplete ROT. A defective or incomplete ROT is corrected in accordance with R.C.M. 1112(d). A Certificate of Correction is prepared and certified by the military judge detailed to the case. After certification, provide a copy of the certificate to the trial counsel, defense counsel, and the accused. See AFMAN 51-203, paragraph 3.9.2.

21.15.1. Defective or incomplete records of trial may be forwarded by the superior competent authority to the Chief Trial Judge for correction. The Chief Trial Judge may detail a subordinate trial judge to correct the ROT in accordance with R.C.M. 1112(d)(2).

21.15.2. TJAG has designated the Chief, JAJM, a superior competent authority for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2). In the absence of the Chief, Military Justice Division, the Associate Chief, Military Justice Division, may exercise this authority.

21.15.3. Additionally, prior to the certification of a record of trial and its submission to the Appellate Records section, Staff Judge Advocates for the convening authority who convened the court are superior competent authorities for purposes of declaring records of trial defective or incomplete and ordering corrections under R.C.M. 1112(d)(2).

Chapter 22

COURTS OF INQUIRY (ARTICLE 135, UCMJ; MCM, PART I, PARAGRAPH 2(B)(3))

22.1. General. A court of inquiry is one of several investigative methods available to ascertain the facts of a matter of importance to the DAF. Only a GCMCA may convene a court of inquiry. A sample convening order is located on the VMJD. A court of inquiry should not be used when statute or regulation otherwise provides specific investigative procedures for a matter. A court of inquiry should not be used in place of an Article 32, UCMJ, preliminary hearing unless deemed necessary to produce evidence not otherwise reasonably available. If, however, a court of inquiry previously investigated the subject matter of an offense and the requirements of R.C.M. 405(a) are met, an Article 32, UCMJ, preliminary hearing may not be necessary prior to referring charges related to the previously investigated offense(s).

22.2. Personnel.

22.2.1. Members of the Court of Inquiry. A court of inquiry consists of three or more commissioned officers. The senior member is the president. All members should be senior to any person whose conduct is the subject of the inquiry.

22.2.2. Counsel for the Court of Inquiry. The convening authority appoints a judge advocate certified under Article 27(b), UCMJ, as legal advisor for the court of inquiry. The counsel assists the court of inquiry in matters of law, presenting evidence, and keeping the record.

22.2.3. Party to the Court of Inquiry. The convening authority may designate any person subject to the UCMJ whose conduct is subject to inquiry as a party to the court of inquiry. Any person subject to the UCMJ or employed by the DoD may also be designated a party if they have a direct interest in the inquiry and request the convening authority or the Court designate them as a party. Any person designated as a party is given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

22.2.4. Counsel for Parties. Military members who are party to the court of inquiry are entitled to representation by a defense counsel certified under Article 27(b), UCMJ. A party may request IMDC, subject to the rules of reasonable availability applicable to trials by court-martial. Any party may retain a civilian counsel at no expense to the government. See Article 135(c)(3), UCMJ; M.R.E. 305(d); R.C.M. 502(d)(3).

22.2.5. Reporter. A qualified court reporter, requested through JAT, records the proceedings and testimony and prepares a record of the proceedings for authentication by the president.

22.3. Procedures.

22.3.1. Convening Order. Use the sample format on the VMJD to convene a court of inquiry. The order appoints the members and counsel for the court of inquiry, states the subject of inquiry, designates known parties, and directs a report of findings of facts on the issues involved. If the convening authority desires conclusions and recommendations, include this in the order. The convening order should set the time and place of the court of inquiry. The convening order is provided to the parties and counsel.

22.3.2. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court. The president of the court, with advice from the legal advisor, rules

on challenges. In the event the president of the court is challenged, the challenge must be forwarded to the convening authority for a determination.

22.3.3. **Oaths.** The members, counsel, reporter, and interpreter take an oath or affirmation to faithfully perform their duties. Article 135(e), UCMJ. The president or counsel for the court of inquiry may administer oaths. Article 136, UCMJ.

22.3.4. **Procedures and Rules of Evidence.** The procedures and rules of evidence that apply to an Article 32, UCMJ, preliminary hearing apply to a court of inquiry.

22.3.5. **Witnesses.** The president of the court may issue subpoenas for civilian witnesses. R.C.M. 703(g)(3)(D). All witnesses testifying before a court of inquiry do so under oath or affirmation. Members of the court of inquiry, the counsel to the court of inquiry, and the counsel to a party may examine all witnesses. A party cannot be compelled to testify, but may testify under oath subject to cross-examination or make an unsworn statement.

22.3.6. **Written Report by the Court of Inquiry.** The court of inquiry makes findings of fact, but may not make conclusions of law and recommendations, unless required to do so by the convening authority. Dissenting views are authorized.

22.3.7. **Record of the Court of Inquiry.** Each court keeps a record of its proceedings. The record is authenticated in accordance with Article 135(h), UCMJ. The president forwards the authenticated record to the convening authority, who obtains a legal review from the servicing SJA. The SJA's legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action. If the record of the proceedings is to be used as a substitute for an Article 32, UCMJ, preliminary hearing, it must comply with the requirements of R.C.M. 405(l).

22.3.8. **Revision.** The convening authority may reconvene the court of inquiry and direct it to take additional action as the convening authority deems necessary.

Chapter 23

SUMMARY COURTS-MARTIAL

Section 23A—General Guidance for SCMs

23.1. Summary Court-Martial Guide. For additional guidance on processing summary courts-martial, refer to the Summary Court-Martial Guide on the VMJD.

23.2. Non-Criminal Forum. SCMs are not criminal forums. SCMs may be used to adjudicate minor offenses. See MCM, Part V.1(e). Convictions at SCMs do not constitute criminal convictions. **Note:** However, a finding of guilty at an SCM still has criminal indexing implications if for a qualifying offense under federal law or Air Force policy. See **paragraph 29.33.2.2;** AFMAN 71-102; 18 U.S.C. § 922; and 27 C.F.R. § 478.11, *Meaning of terms*.

23.3. Former Jeopardy Considerations. An SCM triggers former jeopardy under Article 44, UCMJ in the same manner as an SPCM or GCM.

23.4. Lack of Jurisdiction of SCM. SCMs do not have jurisdiction over officers. Only enlisted members may be tried by SCM. SCMs do not have jurisdiction over capital offenses. SCMs do not have jurisdiction over any offense with a mandatory minimum sentence, to include penetrative sexual assault offenses or attempts or conspiracy to commit such offenses.

23.5. Right to Object to Trial by SCM. Before arraignment, an accused may object to being tried by an SCM even if they previously refused punishment under Article 15, UCMJ, and demanded trial by court-martial. If an accused objects to trial by SCM, the charges may be dealt with by any means listed in R.C.M. 401. See R.C.M. 1303.

23.6. Punishment Limitations. The maximum penalty that can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. In the case of enlisted members above the fourth enlisted pay grade, summary courts-martial may not adjudge confinement, hard labor without confinement, or reduction except to the next pay grade. R.C.M. 1301(d)(1) & (2).

23.7. Victims' Rights. "Victim" is defined as any person who has suffered a direct, physical, emotional, or pecuniary harm as a result of the commission of a UCMJ offense. For discussion of applicable rights at an SCM, see Article 6b, UCMJ, and AFI 71-102.

Section 23B—Composition of an SCM

23.8. Summary Court-Martial Officer (SCMO). An impartial, active-duty DAF commissioned officer presides over an SCM as the SCMO. A Reserve commissioned officer on active duty or an ANG commissioned officer on active duty in federal service may serve as an SCMO. The SCMO must be impartial. Before appointing an officer to serve as an SCMO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the SCMO's impartiality could be questioned based on the SCMO's relationship with the case, the parties, and the base legal office.

23.8.1. If the SCMO is not a certified judge advocate, an impartial legal advisor must be made available to the SCMO. This may be done telephonically. Whether a legal advisor is impartial should be considered in the context of the officer's normally assigned duties and relationship

with the case, the parties, and the base legal office. A SCMO may seek advice from a judge advocate or legal officer on questions of law, but may not seek advice from any person on factual conclusions that should be drawn from evidence or the sentence that should be imposed. The SCMO has the independent duty to make these determinations.

23.9. Defense Counsel. The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. Civilian counsel, qualified under R.C.M. 502(d)(3), may represent the accused at the accused's own expense if it will not cause unreasonable delay. **Note:** If not represented by counsel, convictions at SCMs generally cannot later be admitted as a previous conviction in a general or special court-martial. See [paragraph 19.15.4](#).

23.10. Government Counsel. A properly designated judge advocate may be detailed to represent the government. See R.C.M. 1301(e).

Section 23C—Convening an SCM

23.11. Convening Authority.

23.11.1. A GCMCA or SPCMCA may convene an SCM. The commander of a detached squadron or other detachment may convene an SCM, but only with the express authorization of the superior DAF GCMCA. See R.C.M. 1302 and AFI 51-201.

23.11.2. Convening Authority as Accuser. If the convening authority is the accuser, the convening authority may forward the charge(s) to a superior authority with a recommendation to convene an SCM. This is not mandatory and jurisdiction is not affected if the case is not forwarded. See R.C.M. 1302(b). The convening authority may not, however, sit as the SCMO unless there are no other commissioned officers in the command or detachment. See R.C.M. 1301(a) and R.C.M. 1302(b).

23.11.3. SCMO as Accuser. An accuser is not impartial and should not be detailed as the SCMO. If, however, the accuser is the only commissioned officer in the command or detachment, the accuser may be detailed as the SCMO. See R.C.M. 1302(b).

23.12. Detailing Summary Courts-Martial. An SCM is detailed by a convening order. The convening order is a special order prepared in accordance with R.C.M. 504(d) signed by the convening authority. For composition of an SCM, refer to R.C.M. 1301(a). See the SCM Guide and sample summary courts-martial convening order on the VMJD.

23.12.1. All SCMs are constituted by special orders that are numbered consecutively on a fiscal year basis, starting with the number 1, and using an AC series letter prefix. See [paragraph 14.10.3](#).

23.12.2. When generating the convening order, the following single paragraph is a model to be used for the convening authority's signature in an appropriately formatted AC series special order: "Pursuant to authority contained in Special Order G-20-001, Department of the Air Force, dated 5 December 2019, a summary court-martial is hereby convened. I reviewed the charge sheet and evidence in the case of *United States v. AIC John H. Doe*. It may proceed at Beale AFB, California, to try such persons as may be properly brought before it. Lt Col Will I. Judge, 30 SW/DO, is detailed as the Summary Court-Martial Officer."

23.12.3. The convening authority signs the convening order. The SJA may sign the DD Form 458 on the convening authority's behalf, if the convening order is signed by the convening authority; otherwise, the convening authority signs the referral section on the DD Form 458.

Section 23D—Preparing the DD Form 2329, Record of Trial by Summary Court-Martial

23.13. DD Form 2329. The DD Form 2329, *Record of Trial by Summary Court-Martial*, is the key component to the record of trial (ROT) in a SCM. The SCMO must use the DD Form 2329 throughout the proceedings and must sign it immediately after trial.

23.14. Completing the DD Form 2329. The legal office should prepare Blocks 1-3c and Block 8 through the "Charge(s)" section prior to the court. The SCMO will complete all of the remaining blocks, except for Block 13 (convening authority action). The legal office must ensure the entirety of the DD Form 2329 is correct and accurately reflects the specifications from the charge sheet, pleas, findings, and sentence (as announced at the court-martial) prior to the SCMO's certification. A sample DD Form 2329 is on the VMJD.

23.14.1. Block 1. Accused Information. List name of accused, current rank, current unit/organization and DOD ID No.

23.14.2. Block 2. Convening Authority's name, rank, "position" should be "commander", and organization (unit, base, and state).

23.14.3. Block 3. SCMO's name, rank, and unit/organization (unit, base, and state). Below the personal information of the SCMO, enter the UCMJ Articles the accused is being charged with. The accused must circle whether or not they refuse the SCM and must sign and date this portion.

23.14.4. Block 4. Add the date the SCMO held any preliminary proceedings at which the SCMO provided the charge sheet to the accused. If there were no preliminary proceedings, then add the date of the court and immediately provide a copy of the charge sheet to the accused. The SCMO will complete the block by marking in the "Yes" or "No" block.

23.14.5. Block 5. The SCMO will complete these blocks by marking in the "Yes" or "No" block.

23.14.6. Block 6. Add the date the court martial proceeding (or preliminary proceeding) began. The SCMO must indicate whether or not the accused objected to trial by SCM and must have the accused initial the designated box.

23.14.7. Block 7. In Block 7a, the SCMO will add whether or not the accused was represented by counsel. If represented, the SCMO will add the name and rank of the defense counsel and their qualifications in Blocks 7b-d.

23.14.8. Block 8.

23.14.8.1. In the "Charges and Specifications" column, include the charge and article number, skip a line and then add the specification. The text of the specification can be copied directly from the charge sheet, or you may omit personal data (e.g. name, rank, unit, etc.) but the rest of the specification should match the charge sheet. For example: "Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use phencyclidine, a

Schedule II controlled substance.” If more room is needed for Charges and Specifications, use a continuation sheet.

23.14.8.2. In the “Pleas” column the SCMO indicates how the accused pled. In the “Findings” column the SCMO indicates the findings of the SCMO as to each charge and specification. [guilty (“G”); not guilty (“NG”); not guilty, but guilty of a lesser included offense (“NG, but guilty of the LIO of Art. X”); guilty by exceptions (“G, except the word(s) “____,” of the excepted word(s), NG”); or guilty by exceptions and substitutions (“G, except the word(s) “____” and substituting therefor the word(s) “____,” of the excepted word(s), NG, of the substituted word(s), G”)]

23.14.8.2.1. There must be a plea and finding annotated for each charge and specification.

23.14.9. Block 9. The SCMO annotates the sentence as adjudged.

23.14.9.1. Any forfeitures must be announced and annotated in a whole dollar amount.

23.14.9.2. Annotate any pretrial confinement credit and/or illegal pretrial confinement credit in this block.

23.14.10. Blocks 10-11. The SCMO must mark “Yes” or “No”.

23.14.11. Block 12. The SCMO must sign and date this block. Before certifying, the SCMO must coordinate with the base legal office to ensure the DD Form 2329 is prepared correctly and that all exhibits are accounted for.

Section 23E—Conducting the SCM (R.C.M. 1304)

23.15. Procedures. See R.C.M. 1304 and the SCM Guide for detailed procedures to be followed when conducting an SCM. The SCM Guide, found on the VMJD, also includes the script to be used for such a proceeding.

Section 23F—Post-Trial Procedure (R.C.M. 1306)

23.16. Required SJA first indorsement to DD Form 2329. After trial, upon certification of the DD Form 2329, the SJA must complete the first indorsement to the DD Form 2329 located on the VMJD. The purpose of the indorsement is to identify any criminal indexing requirements as a result of the offenses and notify the appropriate agencies.

23.17. Distribution of the DD Form 2329 following trial. Immediately following trial, provide a copy of the SCMO certified DD Form 2329 to the accused and obtain a receipt. Provide a redacted copy to any victim upon request. Additionally, distribute the DD Form 2329 and first indorsement, regardless of verdict, in accordance with the SCM Distribution List on the VMJD.

23.18. Matters Submitted by the Accused. The accused may submit clemency matters to the convening authority within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. Any matters submitted by a victim must be served on the accused, and the accused has five additional days to rebut those matters. See R.C.M. 1106(d). Templates are located on the VMJD.

23.19. Matters Submitted by the Victim(s). Any victim, as defined in this chapter, whose allegation resulted in a conviction may submit matters for the convening authority’s consideration

within seven days after the sentence is announced. The convening authority may grant an extension of up to 20 additional days for good cause. The legal office must immediately serve the victim's matters on the accused. The SCMO shall inform eligible victims of their right to submit matters. See R.C.M. 1106A. A template notification letter is located on the VMJD.

23.20. Rehearing. The convening authority may order a rehearing as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only. See R.C.M. 1306(c) for further guidance.

23.21. Convening Authority Action. After the periods for submission of matters by the accused and victim expire (or are waived), the convening authority shall take action in accordance with R.C.M. 1306(b). Action by the convening authority will be annotated on Block 13 of DD Form 2329. The convening authority shall consider matters submitted by the accused and victim.

23.21.1. The convening authority may take action on the findings, but it is not required. See Article 60b(a), UCMJ, and R.C.M. 1306.

23.21.2. The convening authority shall approve the sentence or take other action detailed in Article 60b(a)(1), UCMJ. The action must state whether the adjudged sentence is approved. If only part of the sentence is approved, the action must state which parts are approved. See R.C.M. 1306(d). Sample SCM action language is located on the VMJD.

23.21.3. If the SCMO expresses forfeitures as a fraction, the convening authority may correct this error by expressing forfeitures in whole dollar amounts in the convening authority action.

23.21.4. There is no requirement to provide written legal advice to the convening authority prior to action. Any written legal advice on action must be served on the accused and defense counsel.

23.22. Annotating Convening Authority Action. Annotate the convening authority's action in Block 13 of the DD Form 2329. The convening authority, not a party acting on behalf of the convening authority, must sign Block 13 directly. If the entirety of the action will not fit into the block, then mark "See attached" in Block 13, and do not complete the rest of the block. Instead, put the entire action on a separate sheet of bond paper, signed and dated by the convening authority. A sample is provided on the VMJD.

23.22.1. SJA Second Indorsement to the DD Form 2329. Upon convening authority's action, the SJA must complete a Second Indorsement to the DD Form 2329.

23.23. Distribution of the DD Form 2329 after Action. Immediately following convening authority's action, distribute DD Form 2329, any separate page action, first, and second indorsements in accordance with the SCM Distribution List on the VMJD.

23.24. Serving Convening Authority Action on the Accused and Victim. The SJA must serve the convening authority's action on the accused and victim. **(T-0)**. If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. **(T-0)**. Service of the record of trial on the accused (which includes the action) will satisfy this requirement. If any subsequent action is required, it, along with the court-martial order, must be served on the accused and the victim.

23.25. Correcting Convening Authority Action. If errors are subsequently identified in the action after the convening authority completes Block 13, then correct the error by withdrawing the original action and substituting a new one. The convening authority (including successors)

completes the new action on a separate page using the following language: “the action taken by me (or my predecessor) on (date) is withdrawn, and the following is substituted therefor: (insert new action).” After the convening authority signs the new action, the SJA must sign and publish a court-martial order, and distribute the order to the same individuals who received the DD Form 2329. Samples are provided on the VMJD.

Section 23G—Preparing and Serving the ROT and Post-Trial Review

23.26. See DAFMAN 51-203.

Chapter 24

APPEALS, REVIEWS, AND PETITIONS FOR NEW TRIAL

Section 24A—General Guidance

24.1. Applicability Statement. For cases referred before 1 January 2019, apply the appellate procedures that were in place prior to 1 January 2019. These procedures are available on the VMJD. Contact JAJM for further assistance. In all other cases, including straddling cases, apply the appellate procedures and guidance in this chapter. **Note:** In straddling cases, the government does not have the authority to appeal a sentence under R.C.M. 1117 in this circumstance.

Section 24B—Appellate Defense Counsel

24.2. Accused’s Request for Appellate Defense Counsel (Article 70, UCMJ).

24.2.1. Include an AF Form 304, *Request for Appellate Defense Counsel*, signed by the accused in every ROT forwarded to AFCCA, to include cases referred by TJAG.

24.2.2. The accused’s trial defense counsel assists the accused in filling out the form, obtains the accused’s signature, and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

24.2.3. The AF Form 304 provides the accused’s preferred mailing address (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An adequate address must be obtained even if the accused waives appellate review. Do not use addresses for the ADC or civilian defense counsel office(s), base organization, or on-base residence. An adequate address is one where the accused can be directly contacted.

24.2.4. If an accused’s death sentence has been approved by the President pursuant to Article 57, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in federal civilian court, the accused may request a military defense counsel from TJAG. Upon receipt of the accused’s request, TJAG will detail military counsel under Article 70(f), UCMJ, to represent the accused in such proceedings and any appeals.

24.3. Withdrawal of Request for or Declination of Appellate Defense Counsel.

24.3.1. The accused may decline appellate representation by checking the appropriate box on the AF Form 304.

24.3.2. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation after the convening authority’s decision on action is served upon the accused. **(T-0)**. See *United States v. Xu*, 70 M.J. 140 (CAAF 2011) (Summary Disposition).

24.3.2.1. If the accused again declines appellate representation after receiving the action, include both versions of the AF Form 304 in the ROT (the one served on the accused immediately after trial and the other served on the accused after action).

24.3.2.2. In those instances where an accused’s initial AF Form 304 indicates a waiver of appellate counsel, but a second AF Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement.

24.4. Waiver/Withdrawal of Appellate Review (Article 61, UCMJ; R.C.M. 1115).

24.4.1. If an accused wishes to waive or withdraw from Article 66, UCMJ, appellate review, follow the procedures outlined in R.C.M. 1115. The request to waive or withdraw must be filed after the EoJ. The waiver or withdrawal should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*. **Note:** Ensure use of the correct version of DD Form 2330, which is dictated by referral date. See Appendix 13, MCM.

24.4.2. Once properly submitted, a waiver or withdrawal may not be revoked. A valid waiver or withdrawal of appellate review bars review by AFCCA. See Article 61(d), UCMJ. It does not prevent later submission of an Article 69(d), UCMJ application.

24.4.3. In the event of waiver, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. See [paragraph 24.15](#).

24.4.4. In the event of withdrawal, appellate defense counsel must file a motion with the appropriate appellate court. Upon granting of the motion, the GCMCA SJA will be notified by JAJM to complete an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201 and a Certification of Final Review will need to be completed. See [paragraph 24.15](#) and [Chapter 27](#).

Section 24C—Appeals of Sentence by the United States (Art 56, UCMJ; R.C.M. 1117)

24.5. General Provision. With the approval of TJAG, the Government may appeal a sentence to AFCCA on the grounds that the sentence violates the law or is plainly unreasonable. See Article 56(d), UCMJ. The government may only file such an appeal if all specifications of which the accused was convicted allege offenses that were committed on or after 1 January 2019.

24.5.1. A Government appeal of the sentence must be filed within 60 days after the EoJ is complete. **(T-0)**. Prior to filing a notice of appeal, the Government must receive convening authority concurrence, consult with JAJG, and receive TJAG approval through their functional chain. **(T-0)**. The Government must reserve adequate time after coordination to allow JAJG to prepare the required appellate briefs within the 60-day window. **(T-0)**.

24.5.2. To seek TJAG approval, the requesting legal office must submit to JAJG:

24.5.2.1. A statement of reasons that meets the requirements of R.C.M. 1117(c)(1)-(3) (**Note:** The statement of reasons may not include facts outside the record established at the time the sentence was announced.);

24.5.2.2. The EoJ;

24.5.2.3. The transcript of the proceedings or, if the transcript is not available at the time of the request, a summary of the evidence and facts established at the time the sentence was announced;

24.5.2.4. Convening authority concurrence, which may be established in the statement of reasons;

24.5.2.5. A block for JAJG coordination, which may be established in the statement of reasons; and

24.5.2.6. Documentation showing concurrence and coordination with the functional chain of command. This coordination may also be established in the statement of reasons.

24.5.3. Prior to acting, TJAG forwards the request to the military judge who presided over the proceedings for the purpose of allowing the military judge, the parties, and the victim(s) to make a submission addressing the statement of reasons in the Government's request. See R.C.M. 1117(c)(4).

24.5.3.1. The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge, and for the military judge to forward all submissions to TJAG. The military judge shall ensure that the parties have not less than seven days to prepare, review, and transmit such submissions.

24.5.3.2. Submissions under this paragraph shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

24.5.4. Upon receiving TJAG approval, trial counsel may file a notice of appeal with the military judge consistent with R.C.M. 908(b).

24.5.5. After filing a notice of appeal, trial counsel requests JAJG file the appeal with AFCCA. In the request, trial counsel will identify the sentence to be appealed and include the following:

24.5.5.1. The statement of approval from TJAG; **(T-0)**.

24.5.5.2. The Government's request and statement of reasons; **(T-0)**.

24.5.5.3. Any submissions made by the military judge, the defense, or the victim(s); **(T-0)**.

24.5.5.4. Any other documentation required by JAJG.

24.5.6. JAJG decides whether to file the appeal with AFCCA, and notifies the requesting party and JAJM.

Section 24D—Judge Advocate Review of Summary Courts-Martial (Article 64, UCMJ; R.C.M. 1307)

24.6. Article 64, UCMJ, Overview. Every SCM resulting in a guilty finding receives an Article 64, UCMJ, review by the GCMCA legal office. See R.C.M. 1307.

24.7. Article 64, UCMJ, Review Requirements. An Article 64, UCMJ, review by a judge advocate is required in each SCM where there is a finding of guilty. **(T-0)**. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of lack of mental responsibility.

24.7.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate who conducts the review.

24.8. Disqualification.

24.8.1. A judge advocate who has acted in the same case as an accuser, PHO, SCMO, counsel, or who has otherwise acted on behalf of the prosecution or defense may not conduct the Article 64, UCMJ, review. **(T-0)**.

24.8.2. If the GCMCA acted as the convening authority for the SCM, then the GCMCA may take action subject to the limitations of R.C.M. 1307(c).

24.8.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 64, UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to act. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact JAJM for assistance in identifying a GCMCA to act on the case.

24.9. Form and Content of Article 64, UCMJ, Reviews.

24.9.1. Article 64, UCMJ, reviews should contain only those matters required in R.C.M. 1307(d). If no errors are alleged, the review will consist of a stamped or typed entry on the DD Form 490, cover of volume one of the original ROT, and on the DD Form 2329, *Record of Trial by Summary Court-Martial or separate page action*. The entry shall be entitled, "Article 64, UCMJ, Review," and shall consist of the conclusions required in Article 64, UCMJ, and R.C.M. 1307(d), the command unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.9.2. **Corrective Action Not Required.** If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0)**. See R.C.M. 1307(d)(2). The review is prepared, dated and signed by the reviewer, covers the matters required by Article 64, UCMJ, and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the ROT. The DD Form 490 and the DD Form 2329 are annotated with a typed or stamped notation consisting of the items required in [paragraph 24.9.1](#).

24.9.3. Corrective Action Required.

24.9.3.1. If the judge advocate concludes that corrective action is required as a matter of law, the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in R.C.M. 1307(d), and include the options of the GCMCA can take under R.C.M. 1307(f).

24.9.3.2. The judge advocate will prepare a supplemental order for the GCMCA to sign to enact the GCMCA's action on the review.

24.9.3.3. The GCMCA takes further action in accordance with R.C.M. 1307(f) and Article 64(c), UCMJ, and the review and action are included in the ROT. There will be no additional notation on the DD Form 490 and no additional notation on the DD Form 2329. The judge advocate's written review serves as the notation required by Article 64, UCMJ, and R.C.M. 1307(d).

24.9.3.4. If the judge advocate concludes that corrective action is required as a matter of law, and the GCMCA does not take action that is at least as favorable to the accused as that

recommended by the judge advocate, the ROT, Article 64, UCMJ, review, and convening authority action are forwarded to JAJM. JAJM will forward the record to JAJI for review under Article 69(a), UCMJ. See Article 64(c)(3), UCMJ, and R.C.M. 1307(g). **(T-0).** **Note:** In all other cases, the accused may petition TJAG for an Article 69, UCMJ, review after the Article 64, UCMJ, review is complete.

24.9.3.5. If the officer taking action under Article 64, UCMJ, orders a rehearing, the ROT, Article 64, UCMJ, review, and Article 64, UCMJ, action, if applicable, will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. See **Section 26A**. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused. If the rehearing is found to be impracticable, the convening authority shall dismiss the charges. **(T-0).**

24.10. Finality of SCM. Except for cases requiring Article 69, UCMJ, review under R.C.M. 1307(g), SCMs are final under Article 76, UCMJ, upon completion of the judge advocate's review and any required action by the GCMCA. However, even after the SCM is final, the accused may petition TJAG to conduct a review under Article 69, UCMJ, to modify or set aside the findings of a sentence in whole or in part. In order to qualify for such a review, the accused must submit an application to TJAG, through JAJM, no later than one year after the completion of the Article 64, UCMJ, review. See R.C.M. 1201(h). **(T-0).**

24.11. Article 64, UCMJ, Review Distribution. After completing the Article 64 review and, when applicable, any action by the GCMCA, forward the original ROT and any supplementary orders to JAJM.

24.11.1. Provide a copy of the Article 64, UCMJ, review and any action taken by the GCMCA to the accused in person or via certified mail. **(T-0).** See R.C.M. 1307(f). If the GCMCA acted upon the case, provide a copy of the supplemental order to the accused in person or via certified mail. See R.C.M. 1307(f). If provided in person, obtain a receipt from the accused.

24.11.1.1. Attach the receipt or proof of mailing to the ROT.

24.11.2. Provide one copy each of the DD Form 2329 indicating compliance with Article 64(a), UCMJ, to the same parties listed on the SCM Distribution List, available on the VMJD. Distribute any supplemental order(s) to the same parties listed on the SCM Distribution List, available on the VMJD.

Section 24E—Review by TJAG of GCMs and SPCMs Not Appealed to the Air Force Court of Criminal Appeals (Article 65, UCMJ)

24.12. Overview. An Article 65(d), UCMJ, review is required for any GCM or SPCM not eligible for an automatic Article 66, UCMJ, appeal (i.e., where the confinement is less than two years and no punitive discharge or dismissal was adjudged) or when the accused failed to timely file, waived, or withdrew an Article 66, UCMJ, appeal to AFCCA.

24.13. Article 65(d), UCMJ, Review Requirements. Article 65(d), UCMJ, reviews are conducted by attorneys as designated in this chapter by TJAG.

24.13.1. In cases where the accused is sentenced to a term of confinement that is greater than six months but no more than two years and no punitive discharge or dismissal, the Article 65(d), UCMJ, review, if any, is completed by a judge advocate assigned to JAJI.

24.13.2. In all other cases, judge advocates assigned to the GCMCA legal office are designated to conduct Article 65, UCMJ, reviews unless all of the judge advocates within that office are disqualified. See R.C.M. 1201(a)-(g).

24.13.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 65(d), UCMJ, review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM or FLDCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is not an eligible convening authority in the command, or in the discretion of the MAJCOM or FLDCOM SJA, a judge advocate assigned to the MAJCOM or FLDCOM legal office may conduct the review. If the MAJCOM or FLDCOM is disqualified from conducting the review, then the MAJCOM or FLDCOM SJA may request another MAJCOM or FLDCOM to conduct the review. If agreement cannot be reached between MAJCOMs or FLDCOMs, contact JAJM for assistance.

24.13.4. A judge advocate who has acted in the same case as an accuser, PHO, member of the court-martial, military judge, counsel, or has otherwise acted on behalf of the prosecution or defense may not conduct the Article 65(d), UCMJ, review.

24.14. Cases Eligible and Ineligible for Appeal to AFCCA.

24.14.1. **Cases Eligible for Direct Appeal to AFCCA.** In accordance with Article 66(b)(1), UCMJ, an accused who is adjudged a sentence to confinement of more than six months but less than two years and is not adjudged a punitive discharge or dismissal has the right to submit a direct appeal to AFCCA. **Note:** If the accused in such cases does not file a timely Article 66, UCMJ, appeal, then the case will receive an Article 65(d), UCMJ, review by JAJI.

24.14.1.1. Base/NAF Procedures for Direct Appeal Eligible Cases.

24.14.1.1.1. After the ROT is complete, the original and one additional copy of the ROT must immediately be forwarded to JAJM. Failure to forward the ROT immediately will delay the provision of timely notice to the accused of their right to file a direct appeal.

24.14.1.1.2. No Article 65(d), UCMJ, review should be completed by the GCMCA legal office in these cases. JAJI will conduct the Article 65(d), UCMJ, review if the accused does not file a timely Article 66, UCMJ, appeal. See [paragraph 24.14.2](#).

24.14.1.2. JAJM Procedure.

24.14.1.2.1. After receiving the ROT and the required copy, JAJM will provide a copy of the ROT to JAJA, and notify the accused of their right to appeal in accordance with Article 65(c)(1), UCMJ, via certified mail. The accused will then have 90 days from the date on which the notice is postmarked to file an appeal.

24.14.1.2.2. If no appeal is filed, JAJM will provide the ROT to JAJI to conduct an Article 65(d), UCMJ, review in accordance with [paragraph 24.15](#). Once the review is complete, JAJI will notify the accused of the results of the review and any action taken by TJAG or the convening authority via certified mail. See R.C.M. 1201(g). JAJI will

complete distribution in accordance with [paragraph 24.16](#) JAJI will return the notification and the ROT to JAJM.

24.14.1.2.3. If an appeal is filed, JAJM will provide the original ROT to AFCCA and request an additional copy of the ROT for JAJG, and will serve such copy on JAJG upon receipt from the base. AFCCA will review the appeal and submit a notice of docketing to the appellant and appellate parties.

24.14.2. Cases Not Eligible for Automatic or Direct Appeal AFCCA. Such cases are those with confinement for six months or less and no punitive discharge or dismissal. If a case is not eligible for automatic or direct appeal to AFCCA, the Article 65(d), UCMJ, review is performed by a judge advocate assigned to the GCMCA legal office.

24.14.2.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate to conduct the review. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of a lack of mental responsibility.

24.14.2.2. If the judge advocate conducting the review recommends corrective action, the record shall be forwarded to JAJM. JAJM will forward such record to JAJI for action by TJAG, who may set aside the findings or sentence in whole or in part. See Article 65(e), UCMJ, and R.C.M. 1201(f). Any action taken by TJAG in accordance with Article 65(e), UCMJ, must be included in the ROT and memorialized in the Certification of Final Review.

24.15. Form, Content, and Distribution of Article 65(d), UCMJ, Judge Advocate Reviews.

24.15.1. Article 65(d) reviews will contain only those matters required by R.C.M. 1201(d) & (e). In those cases in which no corrective action is required by TJAG, the review will consist of a stamped or typed entry on the original DD Form 490, ROT cover of volume one of the original ROT, and on the EoJ for non-punitive discharge SPCMs and GCMs. The entry shall be entitled "Article 65(d), UCMJ, Review," and shall consist of the conclusions required in Article 65(d)(2), UCMJ, the unit designation of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

24.15.2. For cases in which appellate review has been waived or withdrawn, the Article 65(d), UCMJ, review will contain only those matter required by R.C.M. 1201(e) and will be annotated according to 24.15.1 except it will consist of the conclusions required in Article 65(d)(3), UCMJ. **Note:** In officer/cadet cases where a dismissal has been adjudged, the ROT and Article 65(d), UCMJ, review must be forwarded to JAJM, who will route the record and review to JAJI for Secretarial action on the dismissal.

24.15.3. Corrective Action Not Required. If errors are alleged, the judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. **(T-0)**. The review is prepared, dated and signed by the reviewer, covers the matters required by Article 65(d)(2), UCMJ, and includes a statement that the findings are correct in law and fact. The review is attached to the ROT. The Article 65(d), UCMJ, review will be annotated as required by [paragraph 24.15.1](#).

24.15.4. Corrective Action Required. When the review indicates that corrective action may be required, the GCMCA SJA forwards the review, the ROT and attachments to JAJM for

docketing. JAJM will forward the ROT to JAJI for action by TJAG, in accordance with Article 65(e), UCMJ, and R.C.M. 1201(f). Any action taken by TJAG in accordance with Article 65(e), UCMJ, must be included in the ROT and memorialized in the Certification of Final Review.

24.16. Distribution of Judge Advocate Reviews Performed at the GCMCA Legal Office.

24.16.1. After completing the Article 65(d), UCMJ, review, forward the original ROT, to include four copies of the Article 65(d), UCMJ, stamped EoJ to JAJM.

24.16.2. Provide a copy of the Article 65(d), UCMJ, review and any action taken by TJAG to the accused. **(T-0)**. Notification must be accomplished via certified mail to the address provided by the accused. **(T-0)**. Proof of service must be attached to the ROT. **(T-0)**. See R.C.M. 1201(g).

24.16.3. Provide a copy of the Article 65(d), UCMJ, stamped EoJ to the same parties listed on the EoJ Distribution Checklist, available on the VMJD.

24.17. Finality of SPCM or GCM under Article 65, UCMJ. For cases that do not require corrective action, SPCMs and GCMs reviewed under Article 65, UCMJ, are final under Article 76, UCMJ, upon completion of the judge advocate's review. For cases that are otherwise eligible for Article 66, UCMJ, review but where that review is waived or withdrawn, those case are final upon completion of the Certification of Final Review. For cases that require corrective action, those cases are final upon action of TJAG and completion of the Certification of Final Review.

Section 24F—Review by The Judge Advocate General (Article 69, UCMJ)

24.18. Scope of Article 69, UCMJ, Review (R.C.M. 1201(h) & (k)). The Judge Advocate General may review a case under Article 69, UCMJ, in the following scenarios:

24.18.1. Following completion of an Article 64 or Article 65(d), UCMJ, review, the accused may submit an application to TJAG to modify or set aside, in whole or in part, the findings and sentence in a court-martial. The accused must submit any application for Article 69, UCMJ, review within the deadlines established by R.C.M. 1201(h)(2) & (3). **(T-0)**.

24.18.2. If a judge advocate conducting an Article 64, UCMJ, review of an SCM states that corrective action is required as a matter of law, and the GCMCA does not take such action, the matter shall be forwarded to TJAG to conduct an Article 69, UCMJ, review. **(T-0)**. See R.C.M. 1307(g), R.C.M. 1201(j), and [paragraph 24.9.3.4](#).

24.18.3. The Judge Advocate General does not exercise Article 69, UCMJ, authority over cases reviewed by AFCCA.

24.19. Prerequisite of Finality of Review. An application may not be filed and will not be reviewed under Article 69, UCMJ, unless a judge advocate completed a review and any other action required by Article 64 or Article 65(d), UCMJ. **(T-0)**.

24.20. Contents of Article 69(a), UCMJ, Application. In all cases, the application is written and signed by the accused or the applicant's legal representative under oath or affirmation. See the VMJD for a sample format for applications or contact JAJM. Defense counsel will not receive a copy of TJAG's action unless counsel's name is on the application. The application must contain the following:

- 24.20.1. The accused's name, SSN, and present mailing address;
- 24.20.2. The date and place of trial and type of court-martial;
- 24.20.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;
- 24.20.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged); and
- 24.20.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

24.21. Article 69(a), UCMJ, Application Procedures. The accused or the defense counsel must submit a hardcopy application to JAJM by certified mail (AF/JAJM, Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or a completed electronic copy to JAJM, Appellate Records section (AF.JA.JAJM.Appellate.Records@us.af.mil). For timing purposes articulated in Article 69(b), UCMJ, the application shall be considered to have been submitted to TJAG on the date the application is received by JAJM. JAJM forwards the application and the ROT to JAJI for further processing.

24.22. Review of Sealed Records when Considering Article 69(d), UCMJ, Review. In any case where an appellant considers further review under Article 69(d), UCMJ, no notice of intent to appeal has yet been filed, and matters in the record are sealed, TJAG authorizes AFCCA to appoint an appellate judge or member of the Court's professional staff to review any appellate counsel request for examination of sealed materials in accordance with R.C.M. 1113(b)(3)(B). If the appointed appellate judge or member of the Court's professional staff finds that the appellate counsel meets the criteria in R.C.M. 1113(b)(3)(B), they may permit appellate counsel to examine the sealed materials in accordance with the rule. **Note:** Such appointment does not create an inherent conflict of interest for the Chief Judge or other appellate judge; any such determination will be made on a case-by-case basis.

24.23. Notification of Article 69, UCMJ, Review Results.

24.23.1. If TJAG does not direct a rehearing or a review by AFCCA, JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy via certified mail to the defense counsel.

24.23.1.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Article 69, UCMJ, application and will return the ROT to JAJM.

24.23.2. If TJAG orders a rehearing, the procedures in [Section 26A](#) apply. JAJI will prepare a memorandum to notify the accused of TJAG's action and attach a copy of the action, via certified mail. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy, via certified mail, to the defense counsel. JAJI will provide a copy to the GCMCA SJA.

24.23.2.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to JAJM.

24.23.2.2. JAJM will mail the ROT, to include documents listed in [paragraph 24.23.2.1](#), via certified mail, to the GCMCA/SJA office for rehearing.

24.23.3. If TJAG forwards the case for review by AFCCA, JAJI will prepare a memorandum to notify the accused, via certified mail, of TJAG's action and attach a copy of the action. If the defense counsel's name and address is included on the Article 69, UCMJ, application, JAJI also mails a copy, via certified mail, to the defense counsel. JAJI will provide a courtesy copy to the GCMCA SJA.

24.23.3.1. JAJI will provide to JAJM a copy of the notification, certified mail receipt, TJAG's action, the accused's Art 69, UCMJ, application and will return the ROT to JAJM.

24.23.3.2. JAJM will provide the ROT, to include the documents listed in 24.24.3.1, to AFCCA. The documents listed in [paragraph 24.24.3.1](#) will be provided to appellate counsel in JAJG and JAJA.

Section 24G—Review by AFCCA, CAAF, or the Supreme Court of the United States

24.24. AFCCA Review (Article 66, UCMJ; R.C.M. 1203).

24.24.1. AFCCA reviews cases under Article 66, UCMJ, in the following scenarios:

24.24.1.1. Cases resulting in automatic appeal under Article 66(b)(3), UCMJ, (e.g., cases with a sentence which includes confinement for two years or more or a punitive discharge, dismissal or death).

24.24.1.2. Timely appeals submitted by an accused under Article 66(b)(1)(A), UCMJ, in which the sentence extends to confinement for more than six months and is not subject to automatic review under Article 66(b)(3), UCMJ. See Article 66(c)(1), UCMJ, for the timeliness requirements.

24.24.1.3. Cases referred to it by TJAG under R.C.M. 1201(k)(1)(A) following an Article 69, UCMJ, review.

24.24.1.4. Timely appeals by an accused under Article 66(b)(1)(B), UCMJ, in a case in which the government previously filed an Article 62, UCMJ, appeal. See Article 66(c)(1), UCMJ, for the timeliness requirements.

24.24.1.5. Timely appeals by an accused under Article 66(b)(1)(C), UCMJ, in a case where TJAG sent the case to AFCCA for review of the sentence under Article 56(d), UCMJ. See Article 66(c)(2), UCMJ, for the timeliness requirements.

24.24.1.6. Timely appeals by an accused under Article 66(b)(1)(D), UCMJ, in a case where an accused files for review under Article 69(d)(1)(B), UCMJ, and the application is granted by the appellate court.

24.24.2. AFCCA reviews government appeals under Articles 56(d) and 62(a), UCMJ,.

24.24.3. Any petition the accused or government wishes to file with the AFCCA must be filed in accordance with their rules of practice.

24.24.4. **Notification AFCCA Decision.** Upon return of the record of trial from AFCCA, JAJM will prepare a notification memo transmitting AFCCA's decision to the accused via certified mail. The notification will inform the accused about the right to petition CAAF for

further review, the timeliness and procedural requirements for any such petition under R.C.M. 1203(f)(2) and the contact information for JAJA. **(T-0)**. JAJM will request a receipt of the notification from the accused. See R.C.M. 1203(f)(3).

24.24.4.1. JAJM will provide a Notification of Mailing to JAJA.

24.25. CAAF Review (Article 67, UCMJ; R.C.M. 1204). In accordance with The Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, CAAF reviews the record in the following situations:

24.25.1. Decisions by AFCCA appealed by the accused in which CAAF has granted a review.

24.25.2. Cases referred to the court by TJAG.

24.25.2.1. This includes appeals by the government under Article 62, UCMJ.

24.25.2.2. If TJAG refers a case to CAAF, JAJM will cause a copy of the order forwarding the case to be served on the accused and on appellate counsel. **(T-0)**.

24.25.3. Cases in which the death penalty was adjudged, approved, and affirmed by AFCCA;

24.25.4. Decisions by AFCCA on petitions for extraordinary relief in which writ-petitions have been filed and CAAF has granted a review.

24.25.5. Any petition the accused wishes to file with CAAF must be filed directly with the Court in accordance with their rules of practice.

24.25.6. A copy of any filings made with CAAF will be promptly sent to AF.JA.JAJM.Appellate.Records@us.af.mil for inclusion in the ROT.

24.26. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ). The accused or the United States may file petitions for Supreme Court review by writ of certiorari in those cases specified in Article 67a(a), UCMJ, and R.C.M. 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

24.26.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

24.26.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States.

24.26.3. A copy of any filings made with Supreme Court will be promptly sent to AF.JA.JAJM.Appellate.Records@us.af.mil for inclusion in the ROT.

Section 24H—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210)

24.27. Petition for New Trial. Petitions for a new trial are prepared and processed under R.C.M. 1210, and are filed with JAJM on behalf of TJAG. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court, in any kind of court-martial, within three years after the EoJ.

24.27.1. The petition must be in writing and contain the matters required by R.C.M. 1210(c). When practicable, the petition should be typewritten and double-spaced. The petition is signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the

petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The petitioner forwards the original and two copies of the petition and supporting documentation directly to JAJM by certified mail (Appellate Records, 1500 West Perimeter Rd Ste 1130, JB Andrews, MD 20762) or by electronic copy to JAJM, Appellate Records section (AF.JA.JAJM.Appellate.Records@us.af.mil). An accused may submit only one petition for new trial for the same reason within the three-year limitation period.

24.27.2. Forwarding the Petition.

24.27.2.1. If the petitioner's case is pending before AFCCA, JAJM forwards the following documents to the Court: the signed petition and supporting documents, and the original ROT. JAJM also forwards a copy of the petition and supporting documents to appellate defense and appellate government counsel. R.C.M 1210(e).

24.27.2.2. If the petitioner's case is pending before CAAF, JAJM forwards the following documents to the Court: the original petition and supporting documents plus seven copies, JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. R.C.M 1210(e).

24.27.2.3. If the petitioner's case is not pending before an appellate court, JAJM forwards the petition to JAJI.

24.28. TJAG Review of the Petition. If the petitioner's case is not pending before a court, JAJI, on behalf of TJAG or an officer designated by TJAG, shall review the petition. If counsel was not previously appointed, upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. JAJM forwards one copy of the petition and supporting documents to each appointed appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

24.28.1. Filing Briefs Requiring TJAG Review.

24.28.1.1. **Form and Number of Briefs.** Briefs are to be typewritten, double-spaced on letter size white paper, and include an original plus three copies. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permit(s).

24.28.1.2. **Time for Filing.** The brief on behalf of the petitioner shall be filed with JAJI within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided to counsel. Appellate government counsel may file a brief within twenty days after petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within twenty days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request, the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

24.28.2. **Oral Arguments.** If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

24.28.2.1. Notice. The designated officer(s) shall give appellate counsel at least ten days' notice of the time and place of oral arguments.

24.28.2.2. Time Limits. No more than 30 minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

24.28.2.3. Number of Counsel; Opening and Closing. The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

24.28.2.4. Failure to Appear. Appellate counsel's failure to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

24.28.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

24.28.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for TJAG's consideration. After the action has been signed by TJAG, JAJI shall cause a copy thereof to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action. JAJI shall also forward a copy to JAJM for inclusion in the ROT.

24.29. Action on Petition.

24.29.1. AFCCA and CAAF. The courts shall act on the petition in accordance with their respective rules.

24.29.2. If TJAG believes meritorious grounds for relief under Article 74, UCMJ, have been established but that a new trial is not appropriate, the Judge Advocate General may act under Article 74, UCMJ, or transmit the petition and related papers to the Secretary concerned with a recommendation. TJAG may also, in cases which have been finally reviewed but have not been reviewed by a Court of Criminal Appeals, act under Article 69, UCMJ.

24.30. Miscellaneous Writs and Petitions. For all other writs or petitions filed, whether pro se or through counsel, JAJM shall receive said writs or petitions and forward to the appropriate office for action.

Chapter 25

REMISSION AND SUSPENSION (ARTICLE 74, UCMJ)

25.1. General Information. After the EoJ, SecAF has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President. If SecAF delegated such authority in accordance with Article 74, UCMJ, then the delegee is bound to the same limitation. See DAFFPD 51-2 for delegations under Article 74, UCMJ.

25.2. Authority Over Confinees. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFMAN 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, Article 74, UCMJ, authority delegated to commanders in DAFFPD 51-2 is exercised by AFDW/CC or by the officer exercising general court-martial convening authority over DAF personnel in those institutions.

25.3. Authority Reserved to the SecAF. Only the SecAF may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under R.C.M. 1109-10; Article 60, UCMJ.

25.3.1. Any sentence of a person convicted by a military tribunal, under SecAF's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment;

25.3.2. Any sentence SecAF approved and ordered into execution;

25.3.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the Manual for Courts-Martial;

25.3.4. Those cases referred to SecAF for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the DAF policy level to JAJI for SecAF decision.

25.4. Authority of The Judge Advocate General. TJAG may exercise SecAF authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in [paragraph 25.3](#). The Director, JAJ, may act for TJAG to remit or suspend up to 90 days of an approved sentence to confinement.

25.5. Authority of the Accused's Commander. Except in cases listed in [paragraph 25.3](#), and where TJAG has not acted, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence.

25.5.1. A commander exercising only special court-martial convening authority over the command to which the accused is assigned may not remit a bad conduct discharge, but may suspend a bad conduct discharge only in the initial action.

25.5.2. A commander exercising general court-martial convening authority over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in [paragraphs 25.3-25.4](#).

25.5.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-115, Vol 1, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by AFDW/CC or the officer exercising general court-martial convening authority over DAF personnel in those institutions.

25.6. Publication of SecAF Actions under Article 74, UCMJ. Promulgate actions taken by SecAF in cases specified in [paragraph 25.3](#) in the Certification of Final Review, which is prepared by JAJI and distributed to the member and all other entities required in accordance with the STR/EoJ Distribution List on the VMJD. The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by the SecAF in all other cases.

Chapter 26

REHEARINGS, NEW TRIALS, OTHER TRIALS, AND REMANDS (ARTICLES 63 AND 66(F), UCMJ)

26.1. Terminology.

26.1.1. Rehearings. Proceedings ordered or authorized by an appellate or reviewing authority on the findings and the sentence or on the sentence only.

26.1.2. New Trials. Proceedings ordered pursuant to Article 73, UCMJ, because of newly discovered evidence or fraud committed on the court.

26.1.3. Other Trials. Proceedings ordered to consider new charges and specifications when the original proceedings are declared invalid because of a lack of jurisdiction or failure of a charge to state an offense.

26.1.4. Remands. Proceedings ordered during appellate review to determine issues raised on appeal which require additional inquiry. R.C.M. 810(f) reflects this practice also known as *DuBay* hearings. See *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

26.2. Notification of the Accused and Counsel. When a post-trial review or action directs or authorizes further proceedings the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of documents requiring additional action. Ensure receipts are accomplished. Further proceedings in such a case need not be delayed solely to permit an accused to petition for a grant of review or otherwise appeal the matter.

26.2.1. **Appellate Leave.** Pursuant to Article 76a, UCMJ, an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. When an appellate court takes an action that has the effect of setting aside a punitive discharge, notify the accused of the options available to ensure proper duty status is maintained. A template notification can be found on the VMJD.

26.3. Notification of the Victim(s). When a post-trial review or action directs or authorizes further proceedings and the case involved a victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense under the UCMJ, the responsible court-martial convening authority's SJA must make reasonable efforts to locate and provide any victim and counsel (if applicable) with a copy of the document requiring additional action. See Article 6b(a)(2), UCMJ. Ensure receipts are accomplished. For additional information on required notifications, and other victims' issues on appeal, please see DAFI 51-207.

26.4. Procedures Generally. JAJM will return the record of trial along with the opinion directing or authorizing the further proceedings to the responsible convening authority's legal office via certified mail.

26.4.1. The original convening authority who made a decision whether or not to act on the accused's sentence is the responsible convening authority if the accused is still within that chain of command.

26.4.2. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

26.4.3. If the accused is no longer within the chain of command of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the convening authority in the accused's chain of command who would normally convene the type of court-martial involved.

26.4.3.1. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the convening authority in the accused's current chain of command who would normally convene the type of court-martial involved.

26.4.4. JAJM sends a transmittal letter, and a copy of the pertinent decision, mandate, or order to the responsible convening authority's SJA. If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the convening authority within the accused's current chain of command who would normally convene the type of court-martial involved. See R.C.M. 810(f). Any special instructions deemed necessary to carry out the mandate of the court are to be transmitted by JAJM with the remanded ROT.

26.5. Supplemental Order. The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a supplemental order reflecting post-trial action in the case, which could include:

26.5.1. That a rehearing is ordered before another court-martial to be designated. See [paragraph 13.9.3](#) for sample language for rehearing on sentence; or

26.5.1.1. If a rehearing on sentence is impracticable, that the sentence as to the affected charges and specifications has been set-aside and (1) a new sentence is approved based only on the unaffected charges and specifications if segmented sentencing was employed at the original trial, or (2) a sentence of no punishment is approved; or

26.5.1.2. If a rehearing on findings is impracticable, that the findings of guilt and the sentence as to the affected charges and specifications have been set aside and the effected charges and specifications are dismissed. **Note:** The convening authority may not dismiss charges or specifications previously affirmed by an appellate court.

26.6. Composition of the Proceedings.

26.6.1. **Election of the Accused.** The accused has the same right to make an election as to enlisted members, all-officer panel, or military judge alone, that the accused had at the original trial.

26.6.2. **Military Judge.** The military judge at a rehearing may be the same judge who presided over the previous trial.

26.6.3. **Members.** Members that previously heard the case may not sit as part of the court-martial.

26.6.4. **Examination of Record of Former Proceedings.** Examination of the prior record requires permission of the military judge after such matters have been received in evidence. R.C.M. 810(c).

26.7. Sentence Limitations. See R.C.M. 810(d) for guidance.

Section 26A—Rehearings (Article 63, UCMJ; R.C.M. 810)

26.8. Receipt of Decision and Speedy Trial Clock. Receipt of decision by the SJA of the original convening authority (or the current convening authority if the original convening authority no longer exists) triggers the speedy trial clock for both rehearings on findings and rehearings on sentence only. In a sentence-only rehearing, an accused is “brought to trial” at the first Article 39(a), UCMJ, session. *United States v. Becker*, 53 M.J. 229 (C.A.A.F. 2000); R.C.M. 707(b)(3)(D).

26.9. Rehearings in Full. The procedures applied shall be the same as in the original trial. **(T-0)**. See R.C.M. 810.

26.10. Rehearings on Sentence Only. The procedures applied shall be the same as in the original trial, except that the portion of the procedure which ordinarily occurs after challenges and through findings is omitted. **(T-0)**. See R.C.M. 810.

26.10.1. The contents of the record of the original trial, consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced, may be established by any party whether or not testimony so read is otherwise admissible under M.R.E. 804(b)(1) and whether or not it was given through an interpreter. See R.C.M. 810(a)(2)(1).

26.10.2. The accused at a rehearing on sentence only may not withdraw any plea of guilty upon which approved findings of guilt have been based. **(T-0)**. See R.C.M. 810(a)(2)(B).

26.11. Combined Rehearings. A rehearing on sentence may be combined with trial on the merits of specifications referred to the court-martial. For additional guidance, see R.C.M. 810(a)(3). The presentencing procedure shall be the same as in the original trial. **(T-0)**.

26.11.1. Additional Charges. Additional charges may be referred for trial together with charges as to which a rehearing has been directed. See R.C.M. 810(a)(4).

26.12. Rehearings Ordered by Convening Authority. If the convening authority orders a rehearing, a military judge shall be detailed and the matter will be forwarded to the military judge. **(T-0)**.

Section 26B—Other Trials.

26.13. Ordering Other Trials. An authority ordering an “other trial” must state in the action the basis for declaring the proceedings invalid (i.e., lack of jurisdiction, failure of a charge to state an offense). **(T-0)**. See R.C.M. 810.

26.14. Procedures in Other Trials. The procedures applied shall be the same as in the original trial. See R.C.M. 810.

Section 26C—New Trials

26.15. Procedures in New Trials. The procedures applied shall be the same as in the original trial. **(T-0).** See R.C.M. 810.

Section 26D—Remand

26.16. Overview. A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. See R.C.M. 810(f)(1) for additional information and limitations of remand.

26.17. Remand Order. An order for remand shall be directed by the Court of Criminal Appeals to the Chief, JAT. **(T-0).** The Chief, JAT, will forward the order to JAJI with an information copy to JAJM. **(T-0).**

26.17.1. **Remand Impracticable.** If the designated GCMCA determines that the remand is impracticable due to military exigencies or other reasons, a Government appellate attorney must notify the ordering court. **(T-0).**

26.18. Detailing of Military Judge. When the court orders a remand, the Chief Trial Judge shall detail an appropriate military judge and notify the SJA to the GCMCA for the accused of the remand, who notifies the GCMCA of the detailing.

Section 26E—ROT and Post-Remand Concerns.

26.19. Maintaining the ROT. The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

26.19.1. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the original record with a copy of the document and an MFR explaining the reason for the removal, and the new location of the original document.

26.19.2. If the accused served confinement resulting from the original trial, the new STR and EoJ must reflect that the accused will be credited for the time served.

26.19.3. The charge sheet must be annotated to reflect the case is being sent for a rehearing. See [paragraph 13.9.3](#) At the conclusion of the rehearing, a new STR and EoJ must be completed.

26.19.4. The record of the rehearing is a separate volume from the original ROT. Place the record of rehearing on top of the original ROT. The original ROT volumes are renumbered as appropriate.

26.19.5. A verbatim transcript is required for a rehearing proceeding. Forward the original and two copies of the verbatim rehearing record, along with the original ROT, to JAJM.

Chapter 27

CERTIFICATION OF FINAL REVIEW

27.1. General Provision. When appellate review is complete, JAJM notifies the SJA of the responsible convening authority. The SJA for the responsible convening authority completes the Certification of Final Review in accordance with the checklist on the VMJD. If the accused is no longer within the command of the original convening authority, a courtesy copy of the notification is forwarded to the accused's previous convening authority.

27.1.1. In all courts-martial in which a member was sentenced to confinement and gained by the AFSFC, AFDW/JA is responsible for accomplishing the certification of final review.

27.2. Requirement for Certification of Final Review. A Certification of Final Review is required in all cases when appellate review is complete, when the member has waived or withdrawn from appellate review, or TJAG takes corrective action in a case, except:

27.2.1. Cases receiving an Article 65(d), UCMJ, review, unless that review is completed because the member waived or withdrew from appellate review.

27.2.2. SCMs.

27.2.3. Cases resulting in a full acquittal, not guilty only by reason of lack of mental responsibility, mistrial, dismissal of all charges, or otherwise terminated without findings.

27.3. Distribution of the Certification of Final Review. The Certification of Final Review must be distributed within 14 days of receipt of notification of completion of final review from JAJM, unless an extension has been granted by JAJM. Distribute to the accused and the recipients listed on the EOJ.

Chapter 28

MILITARY JUSTICE ORDER LOGS

Section 28A—Convening Order Logs

28.1. Separate Logs Required. Have a separate convening order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for supplemental and final orders.

28.2. Content of Log. The log must reflect the convening order number assigned to a particular case. Copies of the original convening orders must be stored with the convening order log. Digital copies are permitted. See [Section 14B](#) and [Section 23C](#) for instruction on preparing convening orders.

Section 28B—Courts-Martial/Supplemental Order Logs

28.3. Separate Logs Required. Have a separate courts-martial/supplemental order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have a separate log for SPCMs, SPCMs by military judge alone, and SCMs. Each log must also be kept separately from the log for convening orders.

28.4. Content of Log. The log must reflect the courts-martial/supplemental order number assigned to a particular case. Copies of the original courts-martial/supplemental orders must be stored with the supplemental order log. Digital copies are permitted.

Chapter 29

SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

Section 29A—Sex Offender Notification

29.1. General Provision. If the member has been convicted of certain “qualifying offenses” potentially requiring sex offender registration the DAF is required to notify federal, state, and local officials. **(T-0).** As noted in the STR/EoJ Distribution List on the VMJD, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, afcorrections.appellateleave@us.af.mil, and DAF-CJIC, daf-cjic@us.af.mil.

29.2. Qualifying Offenses. See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ AFOSI/JA)

29.3. Notification Requirement. The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and AFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

29.4. Timing of Notification.

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0). Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in AFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0).**

29.4.2. In cases where the offender will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, AFMAN 31-115V1, and DoDI 5525.20.

29.5. Legal Office Responsibilities. SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished in order to ensure the DAF is meeting its obligations under federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See [paragraph 29.6](#) and [paragraph 29.7](#) and AFMAN 71-102, Chapter 3.

29.6. STR and EoJ. If a member is convicted of a qualifying offense referred to trial by general or special court-martial on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD.

29.7. Notification to the Installation Confinement Officer/NCO. In cases where the member was convicted of a qualifying offense at a general or special court-martial but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in AFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

29.8. Convictions by a Host Country. Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with [Section 29A](#) is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with [paragraph 29.3](#) and [paragraph 29.4](#), and DoDI 1325.07.

Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. §§ 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)

29.9. General Provision. The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. (T-0). See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. §§ 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's National Crime Information Center (NCIC).

29.10. Criminal History Record Information. CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge).

29.11. Identified Individuals.

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in AFMAN 71-102 and DoDI 5505.1 when a probable cause determination has been made that the member committed an equivalent offense.

29.12. Disposition Data. The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

29.13. Qualifying Offenses. Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 CFR. 20.32. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

29.14. Military Protective Orders. Issuance of an MPO also triggers a requirement for indexing in NCIC. See [paragraph 29.39](#) and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI). If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. **(T-0).**

29.16. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

29.17. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.18. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

29.19. Legal Office Final Disposition Requirement.

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a lesser included offense, sentence data, nonjudicial punishment, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within five duty days of completion of the documents discussed in paragraphs [29.19.4-29.19.7](#).

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within five duty days of completion of the EoJ.

29.19.5. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.6. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with [paragraph 10.3.2](#)
Note: Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.7. For all other final dispositions which must be submitted in accordance with [Section 29E](#), AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.20. Expungement of Criminal History Data and Fingerprints. Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102.

Section 29C—DNA Collection (10 U.S.C. §

1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)

29.21. General Provision. The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when fingerprints are collected pursuant to DoDI 5505.11. **(T-0)**. See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. §

40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*.

29.22. Qualifying Offenses. DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

29.23. Probable Cause Requirement. DNA collection occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified committed it. The collection of DNA under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose DNA is being collected.

29.24. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0)**.

29.25. Timing of Collection and Forwarding. OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with RCM 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of the MCM; and convicted by general or special court-martial.

29.26. STR and EoJ. In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the first indorsement of the STR and EoJ by the SJA.

29.27. Final Disposition Requirement. As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR and EoJ, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD.

29.27.3. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with [paragraph 29.19.6](#).

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within five duty days of completion of the final disposition. See [Section 29E](#) for further distribution guidance.

29.28. Expungement of DNA. DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. §

921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, *Unlawful acts*, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within

the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2**. The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or

guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under [Section 29B](#).

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. **Form of Notice.** A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. **SJA Responsibility to Notify.** In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph **29.30.7.1** and **18** U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local

responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

Section 29E—Distribution of Court-Martial Data for Indexing Purposes

29.35. General Provision. In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

- 29.35.1. Charge sheets in cases referred to general courts-martial, where any charged offense has a possible sentence to confinement greater than one year;
- 29.35.2. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.3. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.4. In SCMs for drug use or possession that would trigger firearm prohibitions, the final completed DD Form 2329 and first indorsement;
- 29.35.5. Certification of Final Review in any case where any offense qualifies for any type of indexing discussed in this chapter;
- 29.35.6. Notification of outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court;
- 29.35.7. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;
- 29.35.8. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and
- 29.35.9. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under [Sections 29B-D](#) of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with [paragraph 10.2](#); NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, administrative paperwork for drug use or possession).

29.36. Additional Notification Requirements. SJAs should be aware of other notification requirements as discussed in AFMAN 71-102 and support commander notification requirements, as needed. SJAs should consider partnering with local DAF law enforcement to conduct necessary commander training on notification requirements, particularly as it relates to firearms prohibitors and indexing concerns implicated by CDIs.

29.37. General Courts-Martial Continuances, Delays and Abatements. Any continuance, delay or abatement that results in the announcement of a sentence or acquittal in a general court-martial occurring more than six months after referral may require modification of disposition information in NICS. Government counsel must notify the investigating agency (e.g., local OSI detachment or Security Forces) and DAF-CJIC in the event a continuance or delay is granted or abatement ordered in a general court-martial.

29.38. Electronic Submission Preferred. These complete and unredacted documents should be submitted to the DAF-CJIC electronically to ensure prompt processing. Documents should be submitted to daf.cjic@us.af.mil and may be submitted as attachments or via other secure electronic method. **Note:** The original AF Form 177 used to document firearm prohibitions must also be submitted to DAF-CJIC via mail in accordance with AFMAN 71-102.

Section 29F—Protective Order Submissions

29.39. National Crime Information Center (NCIC) Submission. When a commander issues an MPO, the commander must forward the MPO to Security Forces in accordance with **Section 4C. (T-0)**. Security Forces enters the MPO into NCIC. The commander also notifies Security Forces when any terms are modified or the MPO is terminated. **(T-0)**. SJAs must be cognizant of these requirements and appropriately advise commanders of their responsibilities and the collateral effects of issuing, modifying or terminating MPOs.

Chapter 30

METRICS AND MILESTONES

Section 30A—Case Processing Overview

30.1. Case Processing Time.

30.1.1. The DAF must account for resource investments, system and program effectiveness, and personnel impacts of military justice in an enterprise environment. An increase in processing time stands in contrast to the decrease in number of cases tried in recent years. Our separate system of military justice provides different or diminished constitutional rights to account for military requirements, including efficiency and effectiveness of the military justice system. It follows that an even greater emphasis on diligence and timeliness should be pursued under the UCMJ than in the civilian system. *United States v. Moreno*, 63 M.J. 129 (CAAF 2006). This is not to say that fairness, due process, or accused or victim considerations are forfeited in the name of promptness, but it does recognize that diligence and timeliness are entirely consistent with good order and discipline and necessary for fairness and justice.

30.1.2. **Coordination with Investigators.** Consistent with CIP and SVIP constructs discussed in [Chapter 4](#), SJAs must work with local OSI detachment commander and Security Forces Investigations to coordinate with agents and detectives as early as possible in the investigative stage of a case.

30.1.3. **Time Management.** SJAs and chiefs and NCOs in charge of military justice, at all levels of command, should regularly analyze available AMJAMS data relating to each stage of court processing over which they have significant control to determine specific areas for improvement to maximize effectiveness and efficiency. The expeditious processing of courts-martial is essential to minimize disruptions in the DAF mission, the lives of victims, witnesses, and accused members, and to minimize DAF costs. Metrics and milestones provide a framework by which we can maintain healthy military justice processes while also remaining faithful to legal requirements of diligence and timeliness. Decisions on how to address disciplinary matters should not be made solely to produce seemingly quick results, but decision-makers and practitioners must be cognizant of the negative impacts generated by unnecessary delays. Metrics and milestones are offered to help calibrate military justice processes; the goals are derived from historical data and from legal requirements. They are intended to maintain fidelity with *Moreno* and *United States v. Livak*, 80 M.J. 631 (AFCCA 2020). Members are cautioned against dismissing military justice goals as a career field-driven interest item; good order and discipline, and the health of the processes and protections that accompany it, are a common pursuit for all who swear to support and defend the Constitution.

Section 30B—Metrics

30.2. General Provision. Metrics are standards of measurement by which certain requirements can be assessed. Metrics for courts-martial assess compliance with time-based, legal requirements. Compliance with the legal requirement is presented as a percentage of times actions were in compliance with the targeted measurement standard. The law and practicality recognize there can be valid exceptions to compliance; therefore, explanations for such exceptions must be captured

and documented to demonstrate applicability of an exception. The below metrics ensure focus is appropriately dedicated to time requirements established by law.

30.2.1. Speedy Trial. Bring an accused to trial within 120 days of preferral, imposition of pretrial restraint, or entry onto active duty. R.C.M. 707. Arraignment will toll the speedy trial clock. *United States v. Doty*, 51 M.J. 464 (CAAF 1999). Practitioners who seek to stop the speedy trial clock through arraignment should first attempt to meet all relevant discovery obligations and charge sheet modifications. **Note:** Separate from the metric, practitioners should also consider speedy trial considerations under the 6th Amendment and Article 10, UCMJ, whenever pretrial restraint is imposed, as these standards are different from R.C.M. 707.

30.2.2. ROT Complete Defined. ROT completion is defined as the completion and compilation of the ROT (both Parts **1** and **2**), including all attachments and allied papers as prescribed by R.C.M. 1112(f), DAFMAN 51-203, and the ROT Assembly Checklist on the VMJD.

30.2.3. ROT Completion to ROT Forwarding. A complete and accurate ROT, as defined in **paragraph 30.2.2.1**, must be sent to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments.

30.2.4. Processing Cases for Appeal. The appropriate office for processing cases wherein the accused has an opportunity for Article 66, UCMJ, review is JAJM. The appropriate processing office for cases wherein the accused has an opportunity for Article 64, UCMJ, review or Article 65(d), UCMJ review is the GCMCA SJA. While not an enumerated metric, healthy military justice processes should ensure a complete and accurate ROT in all cases subject Article 65(d), UCMJ, review is sent to JAJM within seven days of completion of the review.

Section 30C—Milestones

30.3. Milestones Generally. Milestones are time-based goals to assist in expediting the administration of justice. The goals are displayed as benchmarks for certain stages of the trial process and the process in its entirety. The goals are established through an analysis of past case processing times and they reflect analysis of the historical median of the number of calendar days it has previously taken to complete phases of the court-martial process. Milestones provide a destination marker and a piece of an entire collective processing effort.

30.3.1. **Using Milestones.** Milestones provide practitioners with the ability to manage near-term and long-term processing issues and to orient them to lessons-learned, positive and negative, in their military justice program, thereby maintaining a healthy military justice program that balances protections, effectiveness, and efficiencies. The intent is to encourage legal offices to focus on strengths, weaknesses, and improvements to their entire process; milestones offer a way to better understand each part of the whole process.

30.4. General Court-Martial Milestones.

30.4.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and Reports of Investigation (ROIs).

30.4.2. Prefer charge(s) within 40 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

30.4.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the publication of the ROI, AMJAMS will reflect "0" days between publication of the ROI and preferral.

30.4.4. Complete the Article 32, UCMJ, hearing and report within 36 days of the date of preferral of charge(s).

30.4.5. Refer the charge(s) within 21 days of the date of the completion of the Article 32, UCMJ, hearing and report.

30.4.6. Complete the trial (sentence/acquittal) within 75 days of the date of referral.

30.4.7. Sentence/Acquittal to ROT Completion. The ROT, including all attachments and allied papers as defined in [paragraph 30.2.2.1](#), must be complete within 64 days of announcement of the sentence or acquittal.

30.4.8. Forward the ROT to the appropriate office for post-trial review within 250 days of the date the OSI, Security Forces or Commander-Directed Investigation ROI is published.

30.5. Special Court Martial Milestones.

30.5.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations.

30.5.2. Prefer charge(s) within 24 days of the date the OSI, Security Forces or Commander-Directed Investigation (CDI) ROI is published.

30.5.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, AMJAMS will reflect "0" days between publication of the report of investigation and preferral.

30.5.4. Refer the charge(s) within four days of the date of preferral of charge(s).

30.5.5. Complete the trial (sentence/acquittal) within 40 days of the date of referral.

30.5.6. Sentence/Acquittal to ROT Complete. Complete the ROT, including all attachments and allied papers as defined in [paragraph 30.2.2.1](#), within 38 days of announcement of the sentence or acquittal.

30.6. Transcription Milestones. Every effort should be made to complete the court-martial transcript prior to completion of the EoJ. However, in no case should transcription exceed the following milestones:

30.6.1. In a GCM, complete the transcription within 64 days following the completion of trial.

30.6.2. In a SPCM, complete transcription within 38 days following the completion of trial.

Section 30D—Summary Court-Martial Measures

30.7. Summary Court-Martial Processing. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate investigative assistance to agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results.

30.7.1. Prefer charge(s) within 40 days of the date of discovery.

30.7.2. Complete action within 21 days of preferral of charge(s).

30.7.3. Forward a complete and accurate ROT to the appropriate office for processing post-trial review within 14 days of action.

Section 30E—Milestones Common to All Courts-Martial

30.8. Date of Discovery. The date of discovery of the offense is defined as the date when the legal office first becomes aware of an allegation and a subject has been identified. Allegations may be made initially to an investigative agency (e.g., OSI, Security Forces, Inspector General), commander, supervisor, or first sergeant, and legal offices are strongly encouraged to maintain close relationships with all of these entities to ensure minimal delay between the initial report and legal office notification. In all cases where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses (e.g., allegation one is reported to the legal office on 1 January and allegation two is reported to the legal office on 1 March, the date of discovery is 1 January).

Chapter 31

AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEM (AMJAMS)

Section 31A—General Information

31.1. Purpose. The purpose of AMJAMS is to collect data pertaining to investigations, NJP imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. Use of AMJAMS is required for legal offices to manage their cases. The use of any other case management system (e.g., excel spreadsheets, digital whiteboards) is not authorized. As the DAF eventually transitions to the Disciplinary Case Management System (DCMS) as a successor to AMJAMS, this chapter and all of its paragraphs will apply equally to DCMS. The information collected is required for the following reasons:

- 31.1.1. To conduct statistical studies that measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the personnel needs of the service;
- 31.1.2. To provide various management reports to judge advocate personnel at all levels;
- 31.1.3. To provide statistical data to the DoD concerning military justice;
- 31.1.4. To provide raw data to DIBRS; and
- 31.1.5. To reply to inquiries concerning military justice.

31.2. Uses. Based on user inputs, AMJAMS contains detailed information on offenses and processing timelines as well as demographic information on subjects and victims. The information in AMJAMS provides effective management tools for use by Headquarters, MAJCOMs/FLDCOMs, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through completion of the appellate process. AMJAMS data is controlled unclassified information and may only be accessed by personnel for an official purpose while scrupulously recognizing the need for confidentiality and attorney work product.

31.3. Release. While transparency and access to military justice records offers the public an opportunity to maintain confidence in the fairness of the military justice system, the release of certain information must be balanced by key limitations. In particular, practitioners must maintain an awareness that access to certain data found within AF/JA's legal management systems—including records of legal assistance visits, civil litigation, and UCMJ action (including victim-centric information)—is not just subject to the Privacy Act. Access is also limited by both case law and Executive Order. Such limitations protect the United States and its service members' interests by shielding delicate information from an unauthorized release. The shield exists so long as it is not waived (explicitly or through practice); as such, the data is scrupulously managed. The shield is referred to as the attorney work product privilege, which was established by the Supreme Court of the United States in *Hickman v. Taylor*, 329 U.S. 495 (1947). The privilege was subsequently written into the Federal Rules of Civil Procedure, Rule 26(b)(3). The protection was explicitly extended to the work product—case preparation and thought processes—of military justice practitioners in *United States v. Romano*, 46 M.J. 269 (CAAF 1997). In *United States v.*

Bowser, 73 M.J. 889 (AFCCA 2014), AFCCA noted the work product privilege encompasses an attorney's thought processes and is specifically addressed by Executive Order (EO) 13825, *2018 Amendments to the Manual for Courts-Martial, United States*, in R.C.M. 701(f). The case law and EO complement each other to ensure Air Force legal practitioners comply with both their own licensing requirements and ABA Model Rule 1.6, *Confidentiality of Information*, in representing their clients.

31.3.1. AF/JA is the release authority for data collected and stored in AMJAMS and in the Disciplinary Case Management System (DCMS) and the products they may generate.

31.3.2. Requests for release of AMJAMS data and products will be considered in light of applicable limitations.

31.3.3. AF/JA is the release authority when a request for derogatory data on an individual is presented to the installation legal office. AF/JA delegates the release authority to the installation SJA consistent with the limitations established under the Privacy Act, DAFI 51-201, and other applicable policy. The delegation does not include the release of reports that are generated by or from AMJAMS. Any release must shield attorney work product to the maximum extent possible.

31.3.4. Installation legal offices are sometimes asked to use AMJAMS to determine whether or not derogatory data exists for a particular individual (e.g. to vet candidates for professional opportunities). SJAs are encouraged to remind the requestor that AF/JAJM frequently vets those same candidates on collective lists to meet headquarters requirements. More importantly, SJAs should limit the release of any derogatory data to matters that fall within the JA portfolio as the OPR. The SJA can confirm, in response to an official request, if an individual was court-martialed because AF/JAJM is the custodian of court-martial records. SJAs should not confirm if a candidate received non-judicial punishment or was investigated because the JA community is not OPR for those records and it does not comprehensively track corrections or expungements to such records.

31.4. Policy. AMJAMS inputs must be timely, complete, and accurate. Timely collecting, reporting, and processing of military justice information is essential to SJAs at all levels. Timely inputs keep senior leadership apprised of and prepared to answer questions about developing investigations that may generate high-level attention. Inputs are ordinarily completed within one duty day of a military justice "event" in a case, beginning with the Investigation module. "Events" include but are not limited to stages common to all courts such as investigation, preferral, referral, but also include any significant changes to the facts or processing of a case. If the data field is applicable to a case, an input must be made as soon as the data is available and updated as the need arises.

31.5. Responsibilities.

31.5.1. SPCMCA and GCMCA legal office personnel have primary responsibility for AMJAMS data entry except appellate information. AMJAMS data should be complete, accurate, and timely.

31.5.2. GCMCA legal office personnel have primary responsibility for reviewing AMJAMS inputs with regard to cases in the command. The GCMCA legal office must validate all court-martial verdicts and sentences within seven calendar days of completion of the STR.

31.5.3. JAJM and appellate personnel have primary responsibility for AMJAMS data entry of appellate information.

31.5.4. JAS has primary responsibility for granting legal practitioners access to AMJAMS.

Section 31B—Case Processing

31.6. Investigation. New cases must be opened in AMJAMS as investigations within one duty day of any personnel in the legal office becoming aware of a potential Article 15, UCMJ, court-martial, or circumstances reportable as a special interest case. See [Section 31D](#). When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to JAJM and document the rationale for the delayed entry in AMJAMS case notes.

31.7. AMJAMS Data Completion. AMJAMS data must be filled out in accordance with guidance promulgated by JAJM. AMJAMS guidance is found within this regulation and on the VMJD.

Section 31C—Reports and Queries

31.8. Reports. Reports generated by AMJAMS can be accessed through the Management System itself, or from FLITE. Legal offices at all levels of command should review their AMJAMS reports on a weekly basis for accuracy.

31.8.1. In AMJAMS, go to the “Reports” drop-down menu and select “Reports.”

31.8.2. In FLITE, go to the “Reports” drop-down menu and select “Automated Military Justice Analysis and Management System.”

31.9. Queries. Generate queries via AMJAMS by going to the “Reports” drop-down menu and selecting “Reports” or “Query.” Then select the type of query and its parameters.

Section 31D—SIRs

31.10. Reporting Special Interest Cases. Certain cases involving DAF members generate interest within Headquarters DAF because of the nature of the offense, the subject’s grade, or some other reason. SJAs must be sensitive to SIR requirements.

31.11. Responsibilities. Reporting special interest cases is a base-level responsibility. Reports must be prepared and forwarded to JAJM within 24 hours of learning of the incident by the base legal office responsible for the case or supporting the subject’s unit of assignment. If a base legal office learns of a SIR case but another office is responsible for it, the base legal office with knowledge of the case should inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority.

31.12. Requirements. SIRs must be created in the following circumstances:

31.12.1. Officer, E-8 and E-9 Subjects. Regardless of offense, report all allegations resulting in an investigation involving officers, and enlisted personnel in the grades of E-8 and E-9.

31.12.2. Serious Crimes. Regardless of the subject's grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

31.12.2.1. Offenses resulting in death, including violations of Articles 118 (Murder), 119 (Manslaughter); 119a (Death or injury of an unborn child), and 134, UCMJ, (Negligent Homicide);

31.12.2.2. For offenses occurring prior to 1 January 2019, violations of Articles 120, 120a, 120b, 120c, 125 (Forcible Sodomy), or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.3. For offenses occurring on or after 1 January 2019, violations of Articles 117a, 120, 120b, 120c, 130, or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof;

31.12.2.4. Domestic violence allegations involving substantial or grievous bodily harm, committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, guardian, or other directly related family member; or by a person similarly situated to a spouse, parent or guardian of the victim.

31.12.2.5. Retaliation, in violation of Article 132, UCMJ, and attempts thereof;

31.12.2.6. Espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States;

31.12.2.7. Environmental crimes, including civilian felony prosecution;

31.12.2.8. Prohibited activities with military recruit or trainee by person in position of special trust in violation of Article 93a, UCMJ;

31.12.2.9. Other circumstances if required by the relevant NAF, MAJCOM or FLDCOM.

31.12.3. Cases Involving Command or Media Interest.

31.12.3.1. Any case where the chain of command is required or likely to report the case via Operational Event/Incident Report (OPREP3) per AFMAN 10-206, *Operational Reporting (OPREP)*.

31.12.3.2. Any case with potential or actual community or local concerns or potential or actual media interest.

31.13. What to Report. Use AMJAMS to generate the SIR, which must include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. Identify missing information and follow up as soon as possible.

31.13.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to JAJM via email.

31.13.2. Ensure law enforcement sensitive investigative information is not included in the SIR without concurrence of the OSI Detachment Commander/Special Agent-in-Charge or investigating agency.

31.13.3. For matters investigated by CDI, Inspector General (IG), or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

31.13.4. For cases disposed of by NJP or administrative action, identify the wrongdoing or offenses alleged (e.g., “On (date), Subject received NJP/LOR for...”).

31.13.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities, court, jurisdiction, and a summary of the charges, pleas, findings and sentence.

31.13.6. For sexual assault cases, indicate whether a Circuit Trial Counsel was consulted under the “Pending Offense” subfolder, “Case Information” tab.

31.13.7. If a case was closed without action, explain why.

31.14. When to Submit a SIR.

31.14.1. Within twenty-four hours of learning of an incident that requires a SIR. If AMJAMS cannot be accessed within twenty-four hours, submit case information using the most expeditious means possible (likely email), and input the case into AMJAMS as soon as possible. SIR reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA should coordinate SIR reporting, especially initial reports, with the wing commander or equivalent authority

31.14.2. When a significant event in a reported case occurs. Significant events include discovery of additional SIR-required charges; disposition of investigation; referral of charges; referral of charges; results of trial; convening authority action; dismissal of any charges; and media interest.

31.14.3. Continue to submit reports until completion of the court-martial, NJP or administrative action, including the decision whether to file NJP action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed.

31.15. How to Report.

31.15.1. Use AMJAMS to generate the SIR. SecAF and NAF/MAJCOM SIR buttons are located in the SIR case tree item in AMJAMS. Set the “Reporting Required” flag to “yes” for cases requiring special interest reporting as directed in this section. The “NAF/MAJCOM Requirement” button is selected when a NAF, FLDCOM or MAJCOM requires additional reporting not required by this Instruction. Once a case is marked as a SIR, it remains a SIR for the life of the case. Also, the “NAF/MAJCOM Requirement” button, once selected, remains selected unless otherwise directed by the NAF, FLDCOM or MAJCOM.

31.15.2. Transmitting SIRs to JAJM. Go to AMJAMS Reports page and select SIR. Enter the case ID, select case notes and run the SIR. Save a.pdf copy of the SIR and send it via encrypted email to AF.JAJM.SIR.Workflow@us.af.mil. Further instructions are available on the VMJD.

31.15.3. Initial. When submitting an initial SIR, use the following subject line/title: Controlled Unclassified Information (CUI) NEW SIR: CASE ID # - RANK SURNAME – BASE.

31.15.4. Updated. When submitting an updated SIR, use the following subject line/title: Controlled Unclassified Information (CUI) UPDATED SIR: CASE ID # - RANK SURNAME – BASE.

31.15.5. Final. When submitting a final SIR, use the following subject line/title: Controlled Unclassified Information (CUI) FINAL SIR: CASE ID # - RANK SURNAME – BASE.

Section 31E—Requesting Access to AMJAMS

31.16. Overview. AMJAMS access is not automatic and all users must be approved for access by the office where they will be performing military justice actions. To ensure that AMJAMS is being used for official purposes, all requests must be submitted, via email, to JAS. AMJAMS access is approved by JAJM.

31.16.1. Office of Assignment. Before a person can be given AMJAMS access, the individual must be assigned to the requesting office in Roster. Only offices with a military justice mission (i.e., the mission includes prosecuting courts-martial or the legal office supports a convening authority empowered to convene courts-martial) are authorized access to AMJAMS.

31.16.2. Contents of the Request. All requests must be submitted via email to afloa.helpdesk@us.af.mil. The email must originate from one of the following personnel within the office: SJA, DSJA, Law Office Superintendent (or Legal Office NCOIC), Chief of Military Justice, or NCOIC of Military Justice. The email must include the name/rank of the person being granted access, but should not include SSNs.

31.16.3. Temporary Access to AMJAMS. When a member is deployed or TDY to an office and needs AMJAMS access, the same requirements for requesting an account shall apply. Additionally, the individual will need to create a temporary role in Roster and that temporary role will need to be gained into the requesting office before the request can be processed. Temporarily assigned individuals will have their AMJAMS access removed automatically at the end of the temporary tour.

Chapter 32

ARTICLE 137, UCMJ, REQUIRED COMMANDER BRIEFINGS, AND STATUS OF DISCIPLINE

Section 32A—Article 137, UCMJ, Briefings for Enlisted Personnel and Officers

32.1. Responsibilities.

32.1.1. The FSS/CC identifies enlisted and officer personnel on the installation required to complete an Article 137, UCMJ, briefing.

32.1.2. The SJA, in coordination with the FSS/CC, must ensure base personnel are briefed on the UCMJ as required by Article 137, UCMJ, and this chapter. **(T-0)**.

32.2. Content. The Article 137, UCMJ, briefings for enlisted personnel and officers must cover, at a minimum, the following topics:

32.2.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139, UCMJ; **(T-0)**.

32.2.2. Types of punitive and administrative discharges;

32.2.3. Bases for characterizing service;

32.2.4. The benefits, disadvantages, and possible future effects of each type of service characterization;

32.2.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (38 U.S.C. § 5303A, *Minimum active-duty service requirement*); and

32.2.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.

32.3. Article 137, UCMJ, Delivery Methods. The following delivery methods apply to Article 137 briefings.

32.3.1. Online. The preferred method for accomplishing Article 137, UCMJ, briefings is online. The myLearning online training meets the content requirements in [paragraph 32.2](#) for the enlisted and officer briefings. **Note:** Commanders must accomplish the additional required Article 137, UCMJ, briefings discussed in [Section 32B](#).

32.3.2. In-person. Article 137, UCMJ, briefings may also be conducted in-person by a judge advocate, a DAF civilian attorney, or a 5-level or higher paralegal, to personnel within the command who require training. For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who:

32.3.2.1. Carries a 5-level paralegal certification as a Reservist, or

32.3.2.2. Prior to entering civilian service, served as a Regular Air Force or Space Force paralegal with a 5-level or higher certification.

32.3.3. If it is not practicable for a member to receive the briefing through myLearning or in-person, the member may be briefed by a qualified briefer via telephone, video teleconference or other remote means.

32.3.4. Documenting the training.

32.3.4.1. The servicing legal office will coordinate with the FSS to ensure all personnel have completed the myLearning training as required in this instruction.

32.3.4.2. If the legal office conducts an in-person myLearning briefing, the legal office must record all in-person attendance for enlisted, officers, and commanders through documentation provided to the member (e.g., memorandum, sign-in sheets, or other means) to allow for verification by the member's UTM that the specific individual received the mandatory training.

32.3.4.3. For all other methods of completion ensure documentation of the member's completion.

32.3.5. Frequency, Content and Duration. The SJA determines the frequency content, and duration of training sessions, provided they meet the requirements of this chapter.

32.4. Enlisted Completion Requirements.

32.4.1. Complete the initial explanation within 14 calendar days of the entry of enlisted personnel on active duty; **(T-0)**.

32.4.2. Complete the six-month explanation for enlisted personnel within 30 calendar days of the last day of the month in which the individual completed six months of active duty; **(T-0)**. and

32.4.3. Complete the reenlistment explanation within 30 calendar days of an individual's reenlistment.

32.4.4. Enlisted members of the Reserve or Air National Guard receive the initial explanation within 14 calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

32.5. Officer Completion Requirements.

32.5.1. Complete officer training within six months of commissioning, regardless of whether initial commissioning is in a reserve component or Regular Air Force or Space Force. **(T-0)**.

32.5.2. The SJA for the Holm Center, Maxwell Air Force Base, ensures trainees in Officer Training School receive the required briefing prior to graduation..

32.5.3. The SJA at each Training Wing (or Space Force equivalent) ensures officers who commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training.

32.5.4. The SJA for USAFA ensures cadets receive the required briefing from instructors at USAFA within 14 calendar days of entry on active duty.

Section 32B—Required Commander Training

32.6. Overview. In addition to the training in [Section 32A](#), commanders must accomplish two additional trainings: training on the role of a commander in all stages of military justice in connection with sexual assault; and military justice-specific training covering, at a minimum, search authorizations, no contact and protective orders; and commander-specific indexing and firearm prohibition requirements.

32.6.1. **Timing.** SJAs ensure commanders receive all three trainings (Article 137, UCMJ, and the two additional required commander trainings) prior to conducting the legal sufficiency reviews of their G-series orders, when practicable. **(T-0).** In the event an officer is not able to complete all the required commander training prior to being placed on G-series orders, the trainings must be accomplished within 30 days of appointment to or assumption of command. This includes commanders placed on temporary orders periodically, for whom training is good for 365 days.

32.6.2. **Content.**

32.6.2.1. The VMJD contains templates for the additional commander-specific trainings.

32.6.2.2. Part two of the training consist of training required by FY 2020 NDAA, Section 540B.

32.6.2.2.1. At a minimum, this training must cover the following topics: **(T-0).**

32.6.2.2.1.1. The role of commanders in each stage of the military justice process in connection with allegations of sexual assault committed by a service member;

32.6.2.2.1.2. The role of commanders in assuring victims of sexual assault are informed of, and have the opportunity to obtain, assistance available for victims;

32.6.2.2.1.3. The role of commanders in assuring victims of sexual assault are afforded the rights and protections available for victims;

32.6.2.2.1.4. The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their complaints, statements, testimony, and status in connection with allegations sexual assault, including the role of commanders in ensuring subordinates in the command are aware of their responsibilities in preventing such retaliation;

32.6.2.2.1.5. The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault, and in the response of the commander, subordinates in the command, and other personnel in the command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault; and

32.6.2.2.1.6. Any other matter on the role of commanders in connection with sexual assault that the Secretary of Defense deems appropriate.

32.6.2.2.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#) A template for the required training is located on the VMJD.

32.6.2.3. Part three of the training is intended to provide education and training on remaining matters within the military justice system that involve a command responsibility, but may not be covered in part two. This training ensures that commanders throughout the Air Force and Space Force are best equipped to handle instances that may arise in their units which impact good order and discipline.

32.6.2.3.1. This training covers, at a minimum, search authorization under M.R.E. 315; “no-contact” orders, MPOs, and CPOs; and commander-specific indexing and firearm

prohibition requirements. Additional topics may be covered at the discretion of the SJA and installation commander.

32.6.2.3.2. The SJA is responsible for ensuring commanders receive this training in accordance with [paragraph 32.6.1](#).

Section 32C—Status of Discipline Briefings

32.7. Overview. A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the installation commander or equivalent installation authority on at least a quarterly basis. The intent of the briefing is to facilitate discussion across the installation regarding trends in military justice and discipline, as well as identifying areas of concern among the base's population.

32.7.1. The SJA supporting the installation commander facilitates the SOD briefing. Installation commanders and SJAs are encouraged to invite host and tenant commanders and first sergeants. Pursuant to the direction of the installation commander, the SJA may invite additional personnel to all or specific SOD briefings. For example, vice and deputy commanders, superintendents, and OSI and Security Forces senior investigators may be invited to all SOD briefings while the SARC, VC, or ADC may be invited to participate in a portion of a specific SOD briefing.

32.7.2. The content of the SOD briefing may vary based on the installation. The SJA and legal office staff will create the briefing materials and coordinate as necessary and appropriate. AMJAMS and Web-Based Administrative Separation Program (WASP) are used to generate the briefing slides. For briefings involving Air Force personnel, data will include the squadron (where required in [paragraph 32.8](#), et seq.) wing, NAF, MAJCOM, and Air Force numbers, as applicable. For briefings involving Space Force personnel, data will include the data for all equivalent organizations (e.g., garrison, delta, FLDCOM, and Space Force).

32.8. Minimum Requirements. The following items will be discussed at Status of Discipline briefing:

32.8.1. Results of trial for courts-martial closed in the quarter. Do not disclose the name of an accused who was acquitted of all charges and specifications. This requirement does not apply to traditional reserve units; however, traditional reserve units will discuss closed cases where recall was initiated and a judicial proceeding resulted.

32.8.2. Court-martial processing times for courts-martial completed through Record of Trial forwarding in the quarter; and for the wing or garrison, superior commands through the MAJCOM/FLDCOM, and DAF, for the year-to-date. See [paragraph 32.7.2](#).

32.8.3. Information on NJP actions completed through SJA review in the quarter. This includes supplemental actions (suspension, mitigation, remission, and set aside). Do not disclose any names of individuals who were offered or received NJP. The SJA is encouraged to have the responsible commanders brief their squadron's NJP actions.

32.8.4. NJP processing times for NJP actions completed through SJA review by squadron or equivalent, superior commands through the MAJCOM/FLDCOM, and DAF for year-to-date. See [paragraph 32.7.2](#).

32.8.5. Information on involuntary discharge cases completed through discharge or retention in the quarter. This includes cases involving Probation and Rehabilitation (P&R) and the status of those P&R cases. Do not disclose any names of individuals notified of discharge, discharged, or retained. The SJA is encouraged to have the responsible commanders brief their squadron's discharge cases. Briefing of individual discharge cases is not required for entry-level status discharges.

32.8.6. Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron or equivalent, superior commands through MAJCOM/FLDCOM, and DAF year-to-date. See [paragraph 32.7.2](#).

32.8.7. At least once per calendar year, rates per thousand for courts-martial and NJP listed by the applicable levels of command described in [paragraph 32.7.2](#) for: overall and by officer/enlisted, gender, and race. The requirement for discussion of courts-martial does not apply to traditional reserve units.

32.8.8. Special interest items identified by the wing or garrison commander, or the SJA, such as alcohol-related incidents, drug offenses, and unlawful command influence. Examples of topics are available on the VMJD.

32.8.9. Training specific to the installation military justice issues. Templates and topic ideas are available on the VMJD.

Chapter 33

STAFF JUDGE ADVOCATE SUPPORT TO EXTERNAL PROGRAMS

Section 33A—Staff Judge Advocate’s Responsibilities to Defense Counsel

33.1. The ADC Program. The ADC Program is one of the great strengths of the military justice system and will continue to be so as long as the defense function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions and to treat the ADC as equal with the prosecution function at the bar of justice.

33.2. Staff Judge Advocate Responsibilities.

33.2.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the ADC function. SJAs are charged with providing commanders candid and objective advice on all legal matters, especially in regard to military justice. An SJA is responsible for ensuring the government is well represented and its personnel are properly trained to execute their various military justice responsibilities. In executing their duties, SJAs are expected to execute multiple roles and responsibilities in safeguarding the justice process and in enhancing good order and discipline, to include properly preparing counsel and effectively providing command with an unbiased perspective and legal advice on the full range of military justice options, which take into account the needs of all the parties involved, the mission, and the DAF.

33.2.2. The SJA’s position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with defense counsel, promoting civility in practice, and maintaining a productive relationship within the legal community. The SJA must never make denigrating, demeaning, or hostile comments about the ADC nor condone such comments by others. Instead, when the SJA considers it necessary to question or criticize the actions of the ADC, the SJA will raise such matters through the ADC’s supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the defense bar, vigorous promotion of defense independence, and appropriate recognition of the ADC’s achievements.

33.2.3. The quality of the ADC’s facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit ADC offices will not perceive the system is operating on a level playing field unless defense facilities and equipment achieve this standard. SJAs are responsible for assisting ADCs in obtaining and maintaining suitable facilities and equipment.

Section 33B—Staff Judge Advocate’s Responsibilities to Victims’ Counsel

33.3. The Victims’ Counsel Program. The VC Program is one of the great strengths of the military justice system and will continue to be so as long as the VC function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions.

33.4. Staff Judge Advocate Responsibilities.

33.4.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the VC Program.

33.4.2. The SJA's position and seniority demands that they set the tone for how military justice is viewed across the installation by maintaining open lines of communication with the VC, promoting civility in practice, and maintaining a productive relationship within the legal community. If the SJA considers it necessary to question or criticize the actions of the VC, the SJA will raise such matters through the VC's supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the members of the VC program, vigorous promotion of the VC Program's independence, and appropriate recognition of the VC's achievements.

33.4.3. The quality of the VC's facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit VC offices will not perceive the system is operating on a level playing field unless the facilities and equipment achieve this standard. SJAs are responsible for assisting VCs in obtaining and maintaining suitable facilities and equipment.

33.4.4. The VC program is separate and distinct from VWAP. The SJA must ensure legal office personnel understand the distinction between the two programs. VWAP responsibilities are not abrogated by a victim's representation by counsel.

Section 33C—Support of Defense Sexual Assault Incident Database (DSAID)

33.5. Defense Sexual Assault Incident Database. The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01, and DoDI 6495.02, *Sexual Assault Prevention and Response: Program Procedures, Volume 1*. The DSAID captures available information, not limited by restricted reporting or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. The DSAID is used to implement annual Congressional reporting requirements. The DSAID is maintained at base level by the installation SARC and requires information, as necessary, from appropriate base agencies to complete designated data fields.

33.5.1. The base SJA provides the SARC with disposition data on DSAID cases resulting from unrestricted reports of sexual assault and independent investigations (see [paragraph 19.10](#)) by completing the DSAID Subject Case Disposition form. In accordance with DoDI 6495.02, Volume 1, Appendix to Enclosure 12, the data to be provided includes information about: pretrial confinement; punitive, corrective, or discharge actions; command actions; case synopses; and relevant case dates. In the event a case does not proceed to trial, or does not result in NJP, disposition information will also include: the type of administrative action (e.g., LOA, LOC, LOR, discharge); whether the administrative action was for a sexual assault related offense or non-sexual assault related offense; and, if administrative discharge is being pursued, the characterization of discharge. Additional DSAID data may also be required as necessary. Refer to the VMJD for updates.

33.5.2. The requested DSAID Subject Case Disposition form will be accurate and complete and provided to the SARC as soon as possible upon request.

Chapter 34

REQUESTS FOR AND RELEASE OF INFORMATION

Section 34A—Extrajudicial Statements and Release of Information

34.1. General Provision. Information may not be disseminated if it could reasonably be expected to interfere with law enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudication in a criminal proceeding. The determination of whether a release of information is permissible includes an assessment of the type and details of information to be released and its source, the type of proceeding, and the stage of the proceeding. The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, implementing directives, security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, FOIA, and the Victim and Witness Protection Act. **Paragraph 34.2.1** discusses FOIA's required balancing test concerning the privacy rights of an accused. **Paragraph 31.3** discusses the release of AMJAMS information.

34.1.1. DAF representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

34.1.2. This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. Military defense counsel must comply with the requirements and restrictions of FOIA and the Privacy Act with respect to the release of DAF records. **(T-0)**.

34.2. Extrajudicial Statements. Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. There are valid reasons for making certain information available to the public in the form of extrajudicial statements, when such release otherwise complies with applicable rules and regulations as described in **paragraph 34.1**. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions. The question of whether a statement is extrajudicial will depend upon the circumstances.

34.2.1. Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a judge advocate office about an individual, may not be released to the public without the individual's consent unless release is required by FOIA. **(T-0)**. FOIA requires release except when specified circumstances exist, one of which is when release would constitute an unwarranted invasion of an individual's personal privacy. See 5 U.S.C. § 552a(b) and 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C).

34.2.1.1. An unwarranted invasion of personal privacy exists when an individual's privacy interests outweigh the public's interest in disclosure of the information. See *Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35 (D.D.C. 2004). The public's interest is defined by the degree to which disclosure sheds light on the performance of an agency's statutory function. *Dep't of Justice v. Reporters Comm.*, 489 U.S. 749 (1989). This can include

information about how the government holds its employees accountable. See *Schmidt v. Dep't of the Air Force*, 2007 U.S. Dist. LEXIS 69584 (C.D. Ill. 2007).

34.2.1.2. Whether disclosure of data regarding the accused and the alleged offenses constitutes an unwarranted invasion of privacy depends upon the assessment of whether the accused has a reasonable expectation of privacy as measured by various factors, including, but not limited to, the accused's rank, duties, alleged offense(s), existing publicity about the allegation(s), and stage of the proceedings. Considering the fact that anyone subject to the UCMJ can act as an accuser under the UCMJ, the accused normally retains a reasonable expectation of privacy upon preferral of charges. When the convening authority directs the charges toward a public forum, such as an Article 32, UCMJ, hearing or referral to trial, the accused's reasonable expectation of privacy begins to decline.

34.2.2. Extrajudicial Statements After Disposition. Employing the FOIA balancing test described above, the information release authority may normally release the following information after the convening authority has disposed of preferred charges by directing an Article 32, UCMJ, preliminary hearing or has referred the charges to a court-martial:

34.2.2.1. The accused's name, unit and assignment;

34.2.2.2. The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications (such as the names of all victims, signature of the accuser, and SSN of the accused).

34.2.2.3. The scheduling or result of any stage in the judicial process;

34.2.2.4. Date and place of trial and other proceedings, or anticipated dates, if known;

34.2.2.5. Identity and qualifications of appointed counsel;

34.2.2.6. Identities of convening and reviewing authorities;

34.2.2.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges; and

34.2.2.8. Generally, do not release the names of victims of sex offenses, the names of children, or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim. Otherwise, the identity of the victim may be disclosed where the release of that information is not otherwise prohibited by law.

34.2.2.9. Exceptional cases may warrant earlier release of information but, prior to any earlier release, the relevant authority should apply a public interest balancing test, assess the reasonable expectation of privacy factors, and exercise due caution.

34.2.3. Disclosing the Identities of Court Members and the Military Judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may normally be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding, and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

34.2.4. A written or oral request for information from the media or public is not required prior to release, nor does a media request indicate that information is automatically releasable.

34.2.5. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings. The following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

34.2.5.1. General information to educate or inform the public concerning military law and the military justice system;

34.2.5.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

34.2.5.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

34.2.5.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension, if requested or otherwise in the best interest of the DAF and after applying FOIA exemption principles, as appropriate;

34.2.5.5. The identities of investigating and apprehending agencies, and the length of the investigation, only if release of this information will not impede an ongoing or future investigation, and the release is coordinated with the affected agencies;

34.2.5.6. Information contained in a public record, without further comment; and

34.2.5.7. Information that protects the military justice system from matters that have a substantial likelihood of materially prejudicing the proceedings. Information in the form of extrajudicial statements shall be subject to **paragraph 34.2** and limited to that which is necessary to correct misinformation or to mitigate the substantial undue prejudicial effect of information or publicity already available to the public. This can include, but is not limited to, information that would have been available to a spectator at an open Article 32, UCMJ preliminary hearing or an open session of a court-martial.

34.2.5.7.1. Unless TJAG has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM or FLDCOM SJA (or equivalent) coordinates on release of this information by the appropriate command authority.

34.2.5.7.2. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination must be forwarded through the MAJCOM or FLDCOM SJA to JAJM by the most expeditious means appropriate to the sensitivity of the information.

34.2.6. Impermissible Extrajudicial Statements. Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and should not be made:

34.2.6.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

34.2.6.2. Observations about the accused's character and reputation;

34.2.6.3. Opinions regarding the accused's guilt or innocence;

34.2.6.4. Opinions regarding the merits of the case or the merits of the evidence;

34.2.6.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations, and ballistics or laboratory tests), the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

34.2.6.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

34.2.6.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

34.2.6.8. Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial; and

34.2.6.9. Before sentencing, facts regarding the accused's disciplinary or criminal record, including NJPs, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Generally, do not release information or statements about NJPs or administrative actions, or related documents even after sentencing unless admitted into evidence. This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.

34.2.7. Responsibility for Extrajudicial Statements. The release of extrajudicial statements is a command responsibility. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding, though coordination with MAJCOM or FLDCOM SJAs is encouraged. MAJCOM or FLDCOM (or equivalent) commanders may withhold release authority from subordinate commanders.

34.2.7.1. The installation SJA and the installation Public Affairs officer must work closely together to provide informed advice to the commander. SJAs should consult with their MAJCOM or FLDCOM SJAs when there is a question about the nature of a statement proposed for release. If the extrajudicial statement is based on information contained in agency records, the office of primary responsibility for the record should also coordinate on the extrajudicial statement prior to release. In high interest cases, the SJA and the public affairs officer should consult with their MAJCOM or FLDCOM representatives, and JAJM as necessary.

34.2.7.2. The SJA, trial counsel and defense counsel ensure investigators, law enforcement personnel, employees and other persons assisting or associated with the respective counsel do not make extrajudicial statements that counsel are prohibited from making.

34.3. Release of Information from Records of Trial or Related Records. Once a completed record is forwarded to JAJM, JAJM is the disclosure authority for all records and associated documents. This subsection is not intended to delay compliance with Article 140a, UCMJ. See **Section 34D**. This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., OSI reports). The disclosure authority for such documents and records is the office of primary responsibility (OPR) for those records under the provisions of AFI 33-332, *Air Force Privacy and Civil Liberties Program*, and/or DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*.

34.3.1. **Release of Record of Trial.** R.C.M. 1112(b) defines a court-martial ROT. A ROT is subject to release determination under FOIA and the Privacy Act. Information marked as classified, controlled, or sealed by judicial order should not be released unless authorized by proper authority (e.g., military judge). A transcript of oral proceedings is not a record until certification. When releasing ROTs under this paragraph, redact Privacy Act protected data and other sensitive information, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity. **(T-0).**

34.3.2. **Attachments to the ROT.** R.C.M. 1112(f) and DAFMAN 51-203 list the attachments to a ROT (e.g., transcript). Attachments are not considered part of the ROT, so they would not be included in a release seeking the “record of trial.” However, if the attachments are specifically requested for release, then they are subject to a release determination under FOIA and the Privacy Act, as described in the previous paragraph.

34.3.3. **Release of Other Military Justice Documents or Records.** All other documents or records that are not made part of the ROT or attached to the ROT are also subject to release determination under the Privacy Act and FOIA. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. **(T-0).** Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity. **(T-0).**

34.3.4. **Cases Disposed of by Acquittal or Action Other Than Court-Martial.** When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. See *ACLU v. Dep’t of Justice*, 750 F.3d 927 (D.C. Cir. 2014). Less serious misconduct, which is handled administratively rather than judicially, is usually not considered of sufficient public interest to outweigh the privacy interest of the individual.

34.3.5. **Requests for Information from Law Enforcement Agencies.** Disclose data about the accused, the charges, and the evidence in accordance with Blanket Routine Uses and SORN Routine Uses concerning military justice records. See <http://dpcl.o.defense.gov/privacy/Privacy/DODComponentArticleList/tabid/6799/Category/277/departments-of-the-armed-forces.aspx>.

Section 34B—Direct Communications and Reports

34.4. JAJM Requests for Information.

34.4.1. JAJM and JAJI routinely receive inquiries concerning military justice cases and rely on information from base-level legal offices to answer the inquiries. Complete, accurate and timely responses to requests for information are critical. To that end, JAJM and JAJI may

communicate directly with any legal office at any level of command. It is incumbent on the contacted SJA or designee to coordinate with intermediate levels of command. Contact or requests from JAJM or JAJI to a legal office should not be construed as criticism of case handling or as a mandate for any particular action in a case.

34.4.2. **Responses.** Generally, the SJA or designee should respond to JAJM via e-mail directly to the requestor or to AF.JAJM.SIR.Workflow@us.af.mil. All responses should include:

- 34.4.2.1. Detailed answers to any specific questions asked;
- 34.4.2.2. Case information, including details about the subject or accused and any relevant incidents and allegations;
- 34.4.2.3. Case background and any unique or significant aspects of the case; and
- 34.4.2.4. As necessary and appropriate, mark and protect information as Privacy Act-protected or CUI.

34.4.3. **Responses Involving Courts-Martial.** In addition to the information described in [paragraph 34.4.2](#), include the following information for courts-martial to the extent that such information is not otherwise capture in AMJAMS:

- 34.4.3.1. Dates and nature of pretrial restraint or confinement and associated proceedings;
- 34.4.3.2. Type of court-martial and summary of charges and specifications;
- 34.4.3.3. Dates of preferral, referral and trial;
- 34.4.3.4. Information about the Article 32, UCMJ, preliminary hearing, including who directed it, identity of accused's counsel and victim's counsel, if any, names of government and defense witnesses, summary of witness testimony and evidence presented, and the PHO's findings and recommendations;
- 34.4.3.5. Summary of witness testimony and evidence;
- 34.4.3.6. Pleas, findings, sentence, and court composition;
- 34.4.3.7. Any history of misconduct of the accused;
- 34.4.3.8. Date and action of the convening authority;
- 34.4.3.9. Date and outcome of Article 64, UCMJ, review, if an SCM;
- 34.4.3.10. Date ROT forwarded to JAJM; and
- 34.4.3.11. Information concerning post-trial confinement, excess leave, and other post-trial matters.

34.4.4. **Responses Involving NJP.** In addition to the information described in [paragraph 34.4.2](#), include the following information for NJP: names, dates, and elections for the NJP action; summary of charged misconduct; imposing commander's findings; imposed NJP; appeal outcome; and information on related matters, such as Unfavorable Information File (UIF), Officer Selection Record (OSR), and discharge.

34.4.5. Responses Involving Civilian Jurisdiction. In addition to the information described in [paragraph 34.4.2](#), include the following information for cases involving civilian jurisdiction:

- 34.4.5.1. Jurisdiction involved and status of waiver request;
- 34.4.5.2. Charges;
- 34.4.5.3. Detention or confinement;
- 34.4.5.4. Place and dates of civilian proceedings;
- 34.4.5.5. Name of defense counsel, if any;
- 34.4.5.6. Summary of the evidence;
- 34.4.5.7. Maximum authorized punishment;
- 34.4.5.8. Pleas, findings, and sentence;
- 34.4.5.9. Appeal;
- 34.4.5.10. Administrative or disciplinary action taken or contemplated by military authorities.

34.5. Field Response to High-Level Inquiry. When a legal office receives and responds directly to a high-level inquiry, such as a congressional inquiry, concerning a military justice case or matter, retain a copy of the inquiry and response. AFI 90-401, *Air Force Relations with Congress*, Chapter 3, provides additional guidance.

Section 34C—Reporting Cases Involving Foreign-National DAF Members

34.6. Foreign-National DAF Member Defined. A DAF member who is a national of a foreign country and who is not a citizen or national of the United States. For purposes of this section, any DAF member who claims to be a foreign national shall be considered so.

34.7. When to Report. Notify JAO when a foreign-national DAF member is:

- 34.7.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that they are a foreign national;
- 34.7.2. Ordered into arrest or confinement;
- 34.7.3. Held for trial with or without any form of restraint; or
- 34.7.4. Pending court-martial charges that have been referred for trial.

34.8. What to Report. Include in the notification the following:

- 34.8.1. The name, grade, SSN, organization and station of the member;
- 34.8.2. Any evidence, including information from the member's military record, that is inconsistent with a claim of foreign nationality;
- 34.8.3. A thorough description of the offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case;

34.8.4. The name of defense counsel, if any; and

34.8.5. The exact and current location of the member (e.g., Joint Base Andrews confinement facility).

34.9. Examination of Member's Records. Whenever charges against a foreign national DAF member are referred for trial, the SPCMCA's SJA has the member's military records examined to ascertain the member's nationality, even if the member has not entered a claim of foreign nationality.

34.10. Notification Not Required. Notification is not required:

34.10.1. For issues resulting in NJP or administrative action, or

34.10.2. If the foreign national DAF member is apprehended or confined in anticipation that only NJP or administrative action is contemplated.

34.10.3. When a foreign national is charged with a crime, arrested, confined or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government.

Section 34D—Article 140a, UCMJ, Guidance

34.11. General Provision. In accordance with Article 140a, UCMJ, the DAF must post certain court-martial filings, pleadings and records on a public facing website. Such postings must be in compliance with the Privacy Act. All redactions should be completed in black. This applies to all redactions required by this Instruction, including but not limited to discovery, releases, and Article 140a, UCMJ, postings.

34.12. Applicability. This requirement applies only to GCMs and SPCMs in which charges were preferred on or after 23 December 2020. It applies to such records at both the trial and appellate level.

34.13. JAJM Article 140a, UCMJ, Redaction Guide. Practitioners shall comply with the requirements of the JAJM Article 140a, UCMJ, Redaction Guide, which provides standards, references, and training for individuals responsible for redacting and reviewing these documents to ensure compliance with the Privacy Act. **(T-0).** The Article 140a, UCMJ, Redaction Guide is located on the VMJD.

34.14. Timing and Process. Upon certification of the record of trial in cases resulting in a guilty finding for at least one charge and specification, post court-martial filings and records to the designated public-facing website in accordance with the JAJM Article 140a, UCMJ, Redaction Guide.

34.15. The Judge Advocate General's Corps DAF Docket. The DAF Docket is the designated public facing website through which the public may view the dates of upcoming courts-martial, the results of past courts-martial, and access redacted filings and court records posted pursuant to Article 140a, UCMJ. In order to facilitate public access to the docket, all installation legal offices are required to coordinate with their servicing Public Affairs office to ensure the hyperlink to the DAF Docket is posted on each installation-specific, publically accessible website. A prominent location on the website is desirable to reflect the importance of the information and to assist the large number of anticipated visitors.

34.15.1. The location of the link shall display the following language: “Follow this link for access to the DAF Docket, which lists pending and completed courts-martial under the respective tabs at the top of the page. Results may be filtered by date range, base, or location.”

34.15.2. The hyperlink to the Air Force Docket is:
<https://legalassistance.law.af.mil/AMJAMS/PublicDocket/docket.html>

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Uniform Code of Military Justice (10 U.S.C. § 801, et seq)

Manual for Courts-Martial, United States, 2019 Edition

Privacy Act (5 U.S.C. § 552a)

10 U.S.C. § 802, *Persons subject to this chapter*

10 U.S.C. § 854, *Record of trial*

10 U.S.C. § 865, *Disposition of records*

10 U.S.C. § 9013, *Secretary of the Air Force*

10 U.S.C. § 8037, *Judge Advocate General*

10 U.S.C. § 1044, *Legal assistance*

10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*

10 U.S.C. § 1561a, *Civilian orders of protection: force and effect on military installations*

10 U.S.C. § 1565, *DNA identification information: collection from certain offenders; use*

10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*

10 U.S.C. § 2005, *Advanced education assistance: active duty agreement; reimbursement requirement*

10 U.S.C. § 12301, *Reserve components generally*

10 U.S.C. § 12302, *Ready Reserve*

10 U.S.C. § 12310, *Reserves: for organizing administering, etc., reserve components*

10 U.S.C. Chapter 61, *Retirement or Separation for Physical Disability*

18 U.S.C. 921, *Definitions*

18 U.S.C. § 922, *Unlawful acts*

18 U.S.C. § 2511, *Definitions for chapter*

18 U.S.C. § 2522, *Enforcement of the Communications Assistance for Law Enforcement Act*

18 U.S.C. § 2523, *Executive agreements on access to data by foreign governments*

18 U.S.C. § 2703, *Required disclosure of customer communications of records*

18 U.S.C. § 2705, *Delayed notice*

18 U.S.C. § 2711, *Definitions for chapter*

18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*

18 U.S.C. § 3261, et seq, *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act of 2000)*

18 U.S.C. § 3509, *Child victims' and child witnesses' rights*

21 U.S.C. § 802, *Definitions*

28 U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*

32 U.S.C. § 325(a), *Relief from National Guard duty when ordered to active duty*

34 U.S.C. § 20911, et seq, *Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators*

34 U.S.C. § 40702, *Collection and use of DNA identification information from certain Federal offenders*

37 U.S.C. § 303a, *Special Pay: general provisions*

37 U.S.C. § 401, *Definitions*

38 U.S.C. § 5303A, *Minimum active-duty service requirement*

42 U.S.C. § 290dd-2, *Confidentiality of records*

Pub. L. 109-248, *Adam Walsh Child Protection and Safety Act, 2006*

Pub. L. 114-328, 130 Stat. 2000, Division E *National Defense Authorization Act for Fiscal Year 2017, Military Justice Act, 23 December 2017*

27 C.F.R. § 478.11, *Meaning of terms*

28 C.F.R. §§ 20.30, et seq., *Federal Systems and Exchange of Criminal History Record Information*

28 C.F.R. § 28.12, *Collection of DNA samples*

EO 13825, *2018 Amendments to the Manual for Courts-Martial, United States, 1 March 2018*
Joint Travel Regulations, 1 October 2021

DoDD 6495.01, *Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012, Incorporating Change 5, November 10, 2021*

DoDI 1332.18, *Disability Evaluation System, 17 May 2018*

DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority, 11 March 2013*

DoDI 5505.09, *Interception of Wire, Electronic and Oral Communications for Law Enforcement, 27 November 2013*

DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements, 21 July 2014*

DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirement for Criminal Investigations, Law Enforcement, Corrections, and Commanders, 22 December 2015*

DoDI 5505.19, *Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs)*

DoDI 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, 18 June 2007

DoDI 5525.20, *Registered Sex Offender (RSO) Management in DoD*, 29 June 2018

DoDI 6400.06, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, 21 August 2007, Incorporating Change 4, May 26, 2017

DoDI 6495.02, Volume 1, *Sexual Assault Prevention and Response (SAPR): Program Procedures*, 28 March 2013, Incorporating Change 6, November 10, 2021

DoDI 6495.02, Volume 2, *Sexual Assault Prevention and Response (SAPR): Education and Training*, 9 April 2021

DoD 4525.6-M, *Department of Defense Postal Manual*, 31 August 2018

DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007

DoDM 6025.18, *Implementation of the Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule in DOD Health Care Programs*, 13 March 2019

DoDM 5200.01V1_AFMAN16-1404V1, *Information Security Program: Overview, Classification, and Declassification*, 11 January 2021.

DoDM 5200.01V2_AFMAN16-1404V2, *DoD Information Security Program: Marking of Information*, 7 January 2021.

DoD Policy Memorandum, *Placing Military Protective Orders in the National Crime Information Center Protective Order File*, 26 June 2014

DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*, 27 April 2018

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AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*, 31 August 2018

AFPD 90-60, *Sexual Assault Prevention and Response (SAPR) Program*, 20 March 2019

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020, Incorporating Change 1, 28 July 2021

DAFI 33-360, *Publications and Forms Management*, 1 December 2016

DAFI 40-301, *Family Advocacy Program*, 13 November 2020

DAFI 51-202, *Nonjudicial Punishment*, 4 January 2022

AFI 33-332, *Air Force Privacy and Civil Liberties Program*, 10 March 2020

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- AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, 20 September 2019
- AFI 36-2909, *Air Force Professional Relationships and Conduct*, 14 November 2019
- AFI 36-3003, *Military Leave Program*, 24 August 2020
- AFI 36-3203, *Service Retirements*, 29 January 2021
- AFI 36-3207, *Separating Commissioned Officers*, 9 July 2004
- AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, 9 June 2004
- AFI 36-3208, *Administrative Separation of Airmen*, 9 July 2004
- AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, 15 July 2019
- AFI 38-101, *Manpower and Organization*, 29 August 2019
- AFI 41-200, *Health Insurance Portability and Accountability Act (HIPPA)*, 25 July 2017
- AFI 44-172, *Mental Health*, 13 November 2015
- DAFMAN 44-197_DAFGM2021-01, *Military Drug Demand Reduction Program*, 16 August 2021
- AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*, 28 November 2018
- AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, 10 September 2018
- AFI 51-402, *International Law*, 6 August 2018
- AFI 90-401, *Air Force Relations with Congress*, 15 September 2020
- AFI 90-1001, *Total Force Associations (TFAs)*, 22 June 2020
- AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*, 15 July 2020, Incorporating Change 1, 26 March 2021
- DAFMAN 51-203, *Records of Trial*, 21 April 2021
- AFMAN 10-206, *Operational Reporting*, 18 June 2018
- AFMAN 31-115, Volume 1, *Air Force Corrections System*, 29 August 2019
- AFMAN 65-605V1, *Budget Guidance & Technical Procedures*, 31 March 2021
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- AFMAN 71-102, *Air Force Criminal Indexing*, 21 July 2020
- AFI 10-402_ANGSUP, *Mobilization Planning*, 13 February 2017
- DA PAM 27-9, *Military Judge's Benchbook*
- Prescribed Forms***
- AF Form 1176, *Authority to Search and Seize*

AF Form 304, *Request for Appellate Defense Counsel*

Adopted Forms

AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*

AF Form 847, *Recommendation for Change of Publication*

DD Form 458, *Charge Sheet*

DD Form 456, *Interrogatories and Depositions*

DD Form 457, *Preliminary Hearing Officer's Report*

DD Form 493, *Extract of Military Records of Previous Convictions*

DD Form 453, *Subpoena*

DD Form 1722, *Request for Trial Before Military Judge Alone*

DD Form 2707, *Confinement Order*

DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts- Martial Subject to Review by a Court of Military Review*

DD Form 2329, *Record of Trial by Summary Court-Martial*

DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*

DD Form 2873, *Military Protective Order*

DD Form 2707-1, *Department of Defense Report of Result of Trial*

Abbreviations and Acronym

ADC—Area Defense Counsel

AFCCA—Air Force Court of Criminal Appeals

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFJAGS—Air Force JAG School

AFPC—Air Force Personnel Center

AFPD—Air Force Policy Directive

AFSFC—Air Force Security Forces Center

AFRC—Air Force Reserve Command

AMJAMS—Automated Military Justice Management System

ANG—Air National Guard

ARC—Air Reserve Component

CAAF—United States Court of Appeals for the Armed Forces

CADAM—Convening Authority’s Decision on Action Memorandum

CCDC—Chief Circuit Defense Counsel

CCVC—Chief Circuit Victims’ Counsel

CDC—Circuit Defense Counsel

CTC—Circuit Trial Counsel

CDI—Commander Directed Investigation

C.F.R.—Code of Federal Regulations

CODIS—Combined DNA Index System

CUI—Controlled Unclassified Information

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DAFMAN—Department of the Air Force Manual

DAFPD—Department of the Air Force Policy Directive

DFAS—Defense Finance & Accounting Services

DIBRS—Defense Incident-Based Reporting System

DJAG—Deputy Judge Advocate General

DNA—Deoxyribonucleic Acid

DoD—Department of Defense

DoDD—Department of Defense Directive

DoDI—Department of Defense Instruction

DP—Defense Paralegal

DPM—Defense Paralegal Manager

DSAID—Defense Sexual Assault Incident Database

DSJA—Deputy Staff Judge Advocate

DTO—Director of Trial Operations

EoJ—Entry of Judgment

FAP—Family Advocacy Program

FLDCOM—Field Command

FOIA—Freedom of Information Act

FLITE—Federal Legal Information Through Electronics

GCM—General Court-Martial

GCMCA—General Court-Martial Convening Authority

IG—Inspector General
IMDC—Individual Military Defense Counsel
JAC—Civil Law and Litigation Directorate
JAJ—Judiciary Directorate
JAJA—Appellate Defense Division
JAJD—Trial Defense Division
JAJG—Government Trial and Appellate Operations Division
JAJI—Military Justice Investigations and Information Division
JAJM—Military Justice Division
Jajs—Victims’ Counsel Division
JAT—Air Force Trial Judiciary
LIO—Lesser Included Offense
LOC—Letter of Counseling
LOR—Letter of Reprimand
LRO—Local Responsible Official
MAJCOM—Major Command
MCM—Manual for Courts-Martial
MEJA—Military Extraterritorial Jurisdiction Act
MPO—Military Protective Order
M.R.E.—Military Rule of Evidence
NAF—Numbered Air Force
NCIC—National Crime Information Center
NCO—Non-commissioned Officer
NICS—National Instant Background Check System
NJP—Nonjudicial Punishment
OSI—Office of Special Investigations
OSR—Officer Selection Record
PCRO—Pretrial Confinement Review Officer
PHO—Preliminary Hearing Officer
PII—Personally Identifiable Information
R.C.M.—Rules for Courts-Martial
ROI—Report of Investigation

ROT—Record of Trial
ROTC—Reserve Officers’ Training Corps
SAPR—Sexual Assault Prevention and Response
SARC—Sexual Assault Response Coordinator
SCM—Summary Court-Martial
SIR—Special Interest Report
SJA—Staff Judge Advocate
SOD—Status of Discipline
SORN—System of Records Notice
SPCM—Special Court-Martial
SPCMCA—Special Court-Martial Convening Authority
SSN—Social Security Number
STR—Statement of Trial Results
SVIP—Special Victims Investigation and Prosecution Capability
TAG—Adjutant General
TJAG—The Judge Advocate General
UCMJ—Uniform Code of Military Justice
UIF—Unfavorable Information File
USAFA—United States Air Force Academy
USACIL—United States Army Criminal Investigations Laboratory
U.S.C.—United States Code
VA—Victim Advocate
VC—Victims’ Counsel
VMJD—Virtual Military Justice Deskbook
VWAP—Victim and Witness Assistance Program
WASP—Web-Based Administrative Separation Program

Terms

Adjudged Forfeitures—Forfeitures of pay and/or allowances announced as part of a sentence in a court-martial. See Article 57, UCMJ.

Central Repository—A central organization for confinee information, charged with establishing procedures to ensure victims are notified of changes in confinee status, if they so elect.

Component Responsible Official—The Air Force official responsible for coordinating, implementing and managing the Air Force VWAP. TJAG is the Air Force component responsible official.

Court-Martial Convening Authority—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

Crime of Domestic Violence—An offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The alleged offender must be: (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. 18 U.S.C. § 922.

Child Victim—The definition of child victim varies based on the offense. Practitioners must consult the MCM to determine which definition of child victim applies.

Contingent Confinement—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

Defense Sexual Assault Incident Database—The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01 and DoDI 6495.02.

Deferment of Forfeitures—Delaying the effective date of the beginning of forfeitures of pay and/or allowances. See Article 57, UCMJ.

Department of the Air Force—Service component of the Department of Defense which consists of the United States Air Force and United States Space Force, overseen by the SecAF.

Dependent—Generally, the spouse, unmarried child, parent of the member, or person in the member's legal custody, if those persons meet certain criteria. For further information, see 37 U.S.C. § 401.

DuBay Hearing—A post-trial hearing ordered by an appellate court or convening authority for the limited purpose of obtaining further evidence on a matter under consideration by the court. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967)

Entry of Judgment—Document which reflects the results of the court-martial after all post-trial actions, rulings or orders. See R.C.M. 1111 and Article 60c, UCMJ.

Expurgated—A document that has been redacted of certain information.

Extrajudicial statement—Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

General Court-Martial Convening Authority—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

Local Responsible Official—The individual responsible for identifying victims and witnesses of crimes and providing the services required by VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO.

Mandatory Forfeitures—Forfeitures that apply under operation of law. See Article 58b, UCMJ.

Mandatory Minimum Sentence—A portion of a sentence (e.g., confinement, punitive discharge) which is prescribed by law as the lowest possible sentence that can be adjudged if an individual is found guilty of an offense. See FY 2014 NDAA § 1702(b)(4)(B).

Metrics—Standards of measurement by which certain requirements can be assessed.

Milestone—Time-based goals to assist in expediting the administration of justice.

Military Protective Order—Formal protective orders issued by commanders on DD Form 2873. Such orders are used to limit communications; prohibit a subject from being within a certain physical distance of a protected person or protected person's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the protected person.

No-Contact Order—Order given by a military member to have no-contact with another person for a period of time.

Offense—Crime punishable under the UCMJ that is committed by a person subject to the UCMJ.

Original Court-Martial Convening Authority—Court-martial convening authority that convened the court-martial at issue.

Remand—Return a case to a lower court for reconsideration.

Special Court-Martial Convening Authority—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

Special Interest Report—AMJAMS reports submitted by base legal offices in certain cases that generate interest within Headquarters Air Force.

Special Victim Investigation and Prosecution Capability—Team of specially trained prosecutors, paralegals, and victim witness assistance personnel who work with specially trained investigators, often from investigative agencies such as OSI, to provide advice, guidance, and support during the investigative and military justice process.

Statement of Trial Results—Document which is prepared after the announcement of sentence or acquittal and is inserted into the Record of Trial. See R.C.M. 1101 for further information.

Straddling Cases—Refers to a single court-martial that alleges offenses occurring both before 1 January 2019 and on or after 1 January 2019.

Summarized Transcript—A transcript which involves a summary of the proceedings and is not verbatim. See DAFMAN 51-203 for additional information.

Unexpurgated—A document which has not been redacted.

Verbatim Transcript—A transcript of a proceeding which includes word-for-word reduction of audio to writing. See DAFMAN 51-203 for additional information.

Victim—The definition of victim varies throughout the military justice process. The definition governs what rights are afforded the victims, as defined. Practitioners must consult the MCM to

determine which definition of victim applies at each stage to determine which definition applies. See also DAFI 51-207.

Virtual Military Justice Deskbook—Knowledge management website with military justice resources available to Air Force judge advocates.

Victim and Witness Assistance Program Coordinator—The individual selected by the SJA to implement and manage VWAP.

Victim Liaison—An individual appointed by the LRO or delegate to assist a victim during the military justice process.

Waiver of Forfeitures—Act of a convening authority to direct forfeitures not be collected but that they be directed to the accused's dependents, for use of the accused's dependents, for no more than six months. See Article 58b, UCMJ.

Witness—A person who has information or evidence of a crime and provides that information or evidence to a DAF official.