

CODE 20

SIDEBAR

FY17 NDAA AND THE MILITARY JUSTICE ACT OF 2016

Background. On 23 December 2016, the President signed the National Defense Authorization Act for Fiscal Year 2017 (FY17 NDAA) which included numerous military justice related legislative changes contained in the Military Justice Act of 2016 (MJA16) (Sections 5001-5542). The significant changes in MJA16 concern pretrial issuance of subpoenas by military judges and military magistrates, Article 32 pretrial hearing officer's disposition recommendations, punitive articles, plea agreement and sentencing, appeals, and professional development of judge advocates. The text of FY17 NDAA may be found at: - <http://docs.house.gov/billsthisweek/20161128/CRPT-114HRPT-S2943.pdf>.

Effective date. The FY17 NDAA authorizes the President to establish an effective date for the MJA16 but no later than the 1st day of the 1st month two years after enactment (1 Jan 19). The MJA16 requires the President to prescribe implementing regulations no later than one year after enactment (23 Dec 17).

Training. MJA16 specific training for the field is being developed by Code 20, AJAG 05 and NJS. Details of that training will be published in future Sidebars.

Major changes

- **Authorized punishment at NJP.** MJA16 eliminates the authority to award bread and water as a punishment.
- **Military Judge pre-referral authority.** Prior to referral, military judges or military magistrates may address specified legal issues such as investigative subpoenas, warrants or orders for electronic communications (may be reviewed only by military judge), or matters referred by an appellate court.
- **Fixed members panels.** Sets the panels size for members' cases. The panels will be 12 members for capital cases, 8 members for non-capital general courts-martial and 4 members for special courts-martial and, except for capital cases, three-fourths of members must agree on findings and sentence.
- **Special court-martial bench trial.** Creates a new military judge alone, or magistrate with the consent of the parties, special court-martial where the maximum punishment is six months confinement, reduction to E-1, and forfeitures of 2/3 pay, but no discharge is authorized.
- **Article 32 preliminary hearing.** The preliminary hearing officer must make a disposition recommendation in the preliminary hearing report and the hearing officer must also analyze any additional information submitted by the parties or by the victim that is relevant to disposition.
- **Restructured punitive articles of the UCMJ.** The punitive articles are reorganized and many forms of misconduct now addressed by Executive Order under Article 134 (General Article) are redesignated as new articles. There is a new punitive article criminalizing retaliation, and another modification of Article 120 eliminating the "bodily harm" element and replacing it with a new element of "without consent."
- **Sentencing.** If the accused elects sentencing by military judge alone, sentencing will be segmented with the military judge having discretion to run sentences concurrently or consecutive. Sentences by military members will remain unitary.
- **Expanded appeals.** Article 66 automatic review jurisdiction is raised to courts-martial that include a sentence of death, a punitive discharge, or confinement for more than 2 years, but a new affirmative right to appeal is extended to courts-martial that include a sentence of confinement of greater than six months and which are not otherwise subject to automatic review. The Government may appeal sentences with TJAG approval on grounds that the sentence is illegal or plainly unreasonable.

Summary of significant changes to the UCMJ

General provision

- **Sec. 5102.** Article 2 is amended to clarify when a reservist is subject to the UCMJ to include periods incident to inactive-duty training (drills), and during intervals between consecutive periods of inactive duty training.
- **Sec 5103.** Article 6 is amended to disqualify a staff judge advocate or legal officer for any convening authority if they served as a preliminary hearing officer, court member, military judge, magistrate, appellate judge or counsel in the same case.
- **Sec. 5104.** A conforming amendment to Article 6a adding military magistrate to the list of officials whose fitness to perform duties is subject to investigation and disposition under regulations prescribed by the President.
- **Sec. 5105.** Article 6b is amended to provide that the legal guardians or the representatives of a victim's estate, or any other person designated by the military judge may assume the rights of the victim. Also, clarifies the relationship between rights provided to victims under the UCMJ and the exercise of discretion under Art. 30 and Art. 34. Finally, counsel for the accused are required to make any request to interview a victim (for all offense not just the victim of sex-related offenses as previously required in Article 46(b)) through counsel for the victim (VLC or civilian) and, if requested by the alleged victim, any interview by counsel for the accused must take place in the presence of Government counsel, counsel for the victim, or a victim advocate.

Apprehension and Restraint

- **Sec. 5121.** Article 10 is amended to clarify the general provisions related to pretrial confinement and the requirement for prompt forwarding of charges and requires the President to establish timeframes in the Manual for Courts-Martial.
- **Sec. 5122.** Article 12 is amended to clarify that military servicemembers may not be held in "immediate association" with enemy prisoners or foreign nationals who are not members of the military and who are detained under the law of war.

Non-Judicial Punishment

- **Sec. 5141.** Article 15 is amended to preclude punishment in the form of a diet consisting only of bread and water.

Court-Martial Jurisdiction

- **Sec. 5161.** Article 16 is amended to provide that members' trials in non-capital general courts-martial will consist of 8 members, in capital cases 12 members, and in special courts-martial 4 members. The section also creates a non-member military judge alone court-martial if referred to it by the convening authority but with limitations on sentencing under Article 19.
- **Sec. 5162.** Article 18 is amended to include attempts to commit violations of Art. 120(a) and (b) and Art. 120b (a) and (b) as offenses that must be tried before general courts-martial.
- **Sec. 5163.** Article 19 is amended to conform with non-members judge alone trials created under Article 16 (these trials may be presided over by a military judge or a military magistrate, with the consent of the parties) but sentencing is limited to no punitive discharge and confinement and forfeitures to no more than six months.
- **Sec. 5164.** Article 20 is amended to specify that a summary court-martial is a non-criminal forum and that convictions at summary court-martial are not criminal convictions.

Composition of Courts-Martial

- **Sec. 5182.** Art. 25 is amended to expand eligibility to serve on special or general courts-martial by enlisted members eliminating the requirement that enlisted members be from a different unit than the accused. Also, in non-capital members cases an accused may request, after findings, to be sentenced by members. In capital cases, an accused will be sentenced by members on all capital offenses.
- **Sec. 5183.** Article 25a is amended to provide standard panel sizes in capital cases to no less than 12 members, unless prior to the members being impaneled the case becomes non-capital then the panel size will 8. However, if after 12 members are impaneled and the case becomes non-capital, the number of members remains at 12.
- **Sec. 5184.** Article 26 is amended to reflect current practice that a military judge is detailed to every general and special court-martial and provides that the Judge Advocate General certify officers to be military judges who are qualified by reason of education, training, experience and judicial temperament. The section allows the President to

implement rules for assignment of judges for minimum tour lengths subject to exceptions as may be prescribed. Also, Judge Advocates General shall designate a chief trial judge from the members of the trial judiciary.

- **Sec. 5185.** A new Article 26a is enacted providing the qualifications and duties of military magistrates.
- **Sec. 5186.** Article 27 is amended to provide for the disqualification of persons who have previously served in any capacity in a case and specifies, to the extent practicable, that at least one defense counsel in a capital case will be qualified to handle such cases or, if necessary, civilian counsel may be detailed and compensated to handle the case.
- **Sec. 5187.** Article 29 is amended to conform to minimum panel sizes established in Article 25. In addition, if authorized by the convening authority, alternate members will be impaneled and the procedure for impaneling alternate members is provided. If after the members are impaneled in non-capital cases and members are excused, the minimum number of members may be 6 members for general courts-martial and 4 members for special courts-martial. Procedures are established for presenting the prior trial proceedings to new members or a new military judge, if the detailed military judge is unable to proceed as a result of physical disability or otherwise.

Pre-Trial Procedure

- **Sec. 5202.** A new Article 30a was enacted authorizing military judges or, in most instances, military magistrates, to review pre-referral investigative subpoenas, warrants or orders for electronic communications (may be reviewed only by military judge), or matters referred by an appellate court. Such pre-referral decisions are reviewable subsequently by the detailed military judge.
- **Sec. 5203.** Article 32 is amended to require a preliminary hearing officer to include a recommendation as to the disposition that should be made of the case and a detailed analysis of any post-hearing information submitted by the parties or by the victim that is relevant to disposition. Additionally, there is clarification that a victim's declination to participate in the Article 32 hearing "shall not serve as the sole basis for ordering a deposition" under Article 49.
- **Sec. 5204.** Article 33 is amended to require the Secretary of Defense to issue non-binding guidance regarding factors commanders, convening authorities, staff judge advocates, and judge advocates must take into account when exercising their duties with respect to disposition of charges and specifications taking into account military requirements, and the principles contained in official guidance of the Attorney General to attorneys for the Government in federal criminal cases.
- **Sec. 5205.** Article 34 amended to require in general courts-martial that staff judge advocates include a written recommendation to the convening authority that ties the staff judge advocate's disposition recommendation to the "interest of justice and discipline." Also, requires the convening authority, prior to referral of charges to special court-martial, to "consult with a judge advocate on relevant legal issues."
- **Sec. 5206.** Article 35 is amended to require the accused to object to commencement of trial before the completion of a statutory period following service of charges – three days for a special court-martial and five days for a general court-martial.

Trial Procedure

- **Sec. 5225.** Article 43 is amended to increase the statute of limitation for child abuse offenses from five years or the life of the child to ten years or the life of the child, whichever is longer and extending the statute of limitations for fraudulent enlistment or appointment to the length of the enlistment or appointment or five years, whichever is longer, and extends the statute of limitations for certain offenses when DNA testing implicates an identified person.
- **Sec. 5226.** Article 44 is amended to clarify when jeopardy attaches in courts-martial by military judge alone or with members.
- **Sec. 5227.** Article 45 is amended to add a provision for harmless error in cases where the error does not materially prejudice the substantial rights of the accused. The section also includes conforming amendments to 18 U.S.C. Sec. 2703 authorizing the issuance of subpoenas for wire or electronic communications from providers of those services.
- **Sec. 5228.** Article 46 is amended to authorize a military judge to issue investigative subpoenas for the production of evidence prior to referral.
- **Sec. 5229.** Article 47 is amended providing for criminal prosecution in U.S. district court of civilians, not subject to the UCMJ, who fail to comply with military subpoenas.
- **Sec. 5230.** Article 48 is amended to clarify that military appellate judges have contempt powers and removes contempt powers from summary court-martial officers.

- **Sec. 5235.** Article 52 is amended to require concurrence of three-quarters of the members for findings and sentencing in general and special courts-martial except in capital cases where the members must be unanimous on findings of guilty and during sentencing for offenses punishable by death.
- **Sec. 5236.** Article 53 is amended to provide a military judge shall sentence an accused if the accused elects a trial by military judge alone. In non-capital cases, tried to members an accused must elect after findings whether to be sentenced by members or military judge. In capital cases where the accused is convicted of an offense for which death is authorized sentencing shall be by members for that offense. However, if the accused is also convicted of other non-capital offenses the accused may still elect to be sentenced by members or military judge on those offenses.
- **Sec. 5237.** A new Article 53a was enacted making plea agreements binding on the parties and the military judge except for plea agreements that contain provisions not accepted by both parties, contain provisions not understood by the accused, or contains a sentence that is less than a mandatory minimum. However, plea agreements for an agreed upon sentence of less than the mandatory minimum sentence may be entered into upon the recommendation of the trial counsel in exchange for substantial assistance by the accused in the investigation or prosecution of another person.
- **Sec. 5238.** Article 54 is amended to provide basic rules and procedures for producing, certifying, and distributing records of trial in general, special and summary courts-martial. The court reporter, not the military judge or the prosecutor, will certify the record of trial in general and special courts-martial. Victims of any offense who testify at a court-martial will be notified of the opportunity to receive the records of the proceedings and will be given a copy of the proceedings as soon as the records are certified.

Sentences

- **Sec. 5301.** Article 56 is amended to add conspiracy to commit any of the listed sex-related offenses that require a mandatory dismissal or dishonorable discharge. The section lists several factors that a court-martial will consider when imposing “punishment that is sufficient but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces.” When sentencing is by military judge alone the military will announce segmented sentencing providing the term of confinement and amount of fine, if any, for each offense. For sentencing by members the court-martial will announce a unitary sentence for all the offenses for which the accused was found guilty. Sentenced for life without eligibility for parole is for the remainder of the accused’s life unless the sentence is set aside during post-trial proceedings or the accused is pardoned. With the approval of the Judge Advocate General the Government may appeal a sentence within 60 days of the judgment being entered to the Court of Criminal Appeals on the grounds that the sentence violates the law, or the sentence is plainly unreasonable.
- **Sec. 5302.** Article 57 is amended to consolidate Articles 57, 57a, and 71 to establish when general and special courts-martial sentences become effective. With the exception of death and punitive discharges, sentences become effective by operation of law without any additional approval upon entry of judgment. In summary courts-martial the sentence is effective when the convening authority acts on the sentence. Appellate review is complete when an Article 65 review is finished, or when the Court of Criminal Appeals has reviewed the case and any petition to a higher court for review has been addressed.
- **Sec. 5303.** Article 58a is amended to make reduction to E-1 mandatory for all Services when the adjudged sentence includes a punitive discharge, confinement, or hard labor without confinement.

Post-Trial Procedure and Review of Courts-Martial

- **Sec. 5321.** Article 60 is amended entirely requiring the military judge to enter into the record the Statement of Trial Results, consisting of the pleas of the accused, the findings and sentence of the court-martial, and any other information required by the President with copies to be provided to the convening authority, the accused and any victim of an offense. The President is to establish rules governing submission of post-trial motions to the military judge and the authority for the military judge to address post-trial motions that may affect a plea, a finding, a sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority.
- **Sec. 5322.** A new Article 60a retains current limitations on the convening authority’s post-trial actions in most general and special courts-martial with narrowly limited suspension authority. The section retains and clarifies limitations on the convening authority’s post-trial actions in courts-martial in which: (1) the maximum sentence of confinement for any offense is more than two years; (2) the adjudged confinement imposed, running consecutively, is more than six months; (3) the sentence includes a dismissal or discharge; or (4) the accused is found guilty of

designated sex-related offenses. Upon a recommendation of the military judge in the Statement of Trial Results a convening authority has limited authority to suspend a sentence of confinement in whole or in part, or to suspend a punitive discharge. The authority for a convening authority upon the recommendation of the trial counsel to reduce a sentence for substantial assistance in the investigation or prosecution of another person is retained. However, prior to acting to suspend or reduce an adjudged sentence a convening authority shall consider matters submitted in writing by the accused or any victim of an offense pursuant to rules prescribed by the President to include procedures for notice, deadlines for submission and procedures for providing the accused and any victim of a crime a copy of the recording of any open trial sessions of a court-martial and copies of, or access to, any admitted, unsealed exhibits.

- **Sec. 5323.** A new Article 60b addresses post-trial actions in summary courts-martial and any general or special courts-martial not covered under Article 60a. In those cases the convening authority is authorized to act on the findings and sentence, and to order rehearings, subject to certain limitations. The opportunity of the accused or a victim to submit matters for consideration as contained in Article 60a apply under Article 60b, as well.
- **Sec. 5324.** A new Article 60c requires a military judge in all general and special courts-martial to enter the judgment of the court-martial including the Statement of Trial Results and any modification of, or supplements to them, by reason of any post-trial action by the convening authority or any ruling, order, or other determination of the military judge that affects a plea, a finding or the sentence. Procedures will be implemented to provide the judgment to the accused, to any victim of the offense, and made available to the public. In summary courts-martial the findings and sentence, as modified by any post-trial action by the convening authority constitutes the judgment of the court-martial and shall be recorded and distributed as the President shall prescribe.
- **Sec. 5326.** Article 62 is amended to expand current Government interlocutory appeals to allow the Government to appeal when, upon defense motion, a military judge sets aside a panel's finding of guilty because of legally insufficient evidence. The Government may also appeal a ruling or order of a military magistrate in the same situations as had the ruling or order been issued by a military judge. The military courts are to liberally construe the provisions of Article 62 to effect its purposes.
- **Sec. 5327.** Article 63 is amended to remove the sentence limitation at a rehearing in cases in which: (1) an accused changes his or her plea from guilty to not guilty, or otherwise fails to comply with the terms of a pretrial agreement; or (2) a sentence is set aside based upon a Government appeal.
- **Sec. 5328.** Article 64 is amended to require a judge advocate to conduct an initial review of summary courts-martial.
- **Sec. 5329.** Article 65 is amended to require the record of trial in all special or general courts-martial where there is a finding of guilty to be transmitted to the Judge Advocate General. Cases involving a sentence of death, dismissal, a punitive discharge, or confinement for more than 2 years are subject to automatic review and a copy of the record of trial will be forwarded to the Court of Criminal Appeals. In cases subject to review under Article 66 a copy of the record of trial will be forwarded to an appellate defense counsel who shall be detailed to review the case, and upon request of the accused, will represent the accused on appeal. The Judge Advocate General is required to provide notice to the accused of the right to file an appeal. In cases not subject to automatic review or eligible for direct appeal review the Judge Advocate General shall complete a written review that focuses on: (1) whether the court-martial had jurisdiction over the accused and the offense; (2) whether each charge and specification stated an offense; and (3) whether the sentence was within the limits prescribed as a matter of law. This review would also respond to any allegation of error submitted by an accused in writing. In cases where an accused is eligible to file an appeal for direct review under Article 66 but waives or withdraws from appellate review, the Judge Advocate General must conduct a review under Article 69. Following the review, corrective action may be taken and the sentence and findings may be set aside in whole or in part, or a rehearing may be ordered by the Judge Advocate General.
- **Sec. 5330.** Article 66 is amended to require the President to establish minimum tour lengths, with appropriate exceptions, for military appellate judges, and requires the Judge Advocate General of each service to certify the qualifications of appellate judges consistent with Article 26 regarding assignment and qualifications for military judges. An accused may file a timely appeal of a court-martial judgment not otherwise subject to automatic review: (1) where the sentence to confinement is more than six months; (2) any case that was previously the subject of an appeal by the Government; and (3) any case in which an application for discretionary review under Article 69(e)(2) was granted. The Court of Criminal Appeals will have jurisdiction to review any case in which the Judge Advocate General orders sent to the Court for review under Article 56(d) (Government sentencing appeal). The Court of Criminal Appeals also has jurisdiction to automatically review all cases in which the judgment includes a dismissal, punitive discharge, or confinement for more than two years.

- **Sec. 5331.** Article 67 is amended to require notification by a Judge Advocate General to other Judge Advocates General that the Judge Advocate General intends to certify to the Court of Appeals for the Armed Forces (CAAF). CAAF is limited to review a petition with respect to - (1) the findings and sentence as affirmed or set aside as incorrect in law by the CCA; (2) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the CCA.
- **Sec. 5333.** Article 69 is amended to authorize the Judge Advocate General upon application of an accused to conduct a post-trial review of courts-martial not subject to direct review under Article 66. The application for review must be filed within one year after the completion of review under Article 54 or 65, extendable to three years for good cause. Review is limited to setting aside the findings and sentence, in whole or in part on the grounds of newly discoverable evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. An accused may file for discretionary review after a decision is issued by the Judge Advocate General and the Judge Advocate General has the authority to certify cases for review to the CCA. In a case where an accused is eligible to file an appeal for direct review under Article 66 but waives or withdraws from appellate review the Judge Advocate General must conduct a review that is limited to determine whether the waiver, withdrawal, or failure to file an appeal as invalid.
- **Sec. 5334.** Article 70 is amended to require, to the greatest extent practicable, at least one appellate defense counsel shall be learned in the law applicable to capital cases in any case in which the death penalty was adjudged at trial.
- **Sec. 5335.** Article 72 is amended and authorizes a special court-martial convening authority to appoint a judge advocate qualified under Article 27(b) to preside at a vacation hearing, which must be held before a suspended sentence may be vacated.
- **Sec. 5336.** Article 73 is amended to extend from two years to three years the time to petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court.
- **Sec. 5337.** Article 75 is amended ordering the President to prescribe rules and procedures governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

Punitive Articles

- **Sec. 5401.** The punitive articles are reorganized by transferring and redesignating 16 articles of the UCMJ. The offenses migrated from Article 134 and redesignated as articles elsewhere no longer need the terminal element of Article 134 (that the conduct was prejudicial to good order and discipline or service discrediting) as the basis for its criminality.
- **Sec. 5402.** Article 79 is amended to authorize the President to designate any lesser included offense by regulation that would be “reasonably included in the greater offense.”
- **Sec. 5402.** Article 82 is retitled “Soliciting commission of an offense” and migrates the general solicitation offense under Article 134 to Article 82.
- **Sec. 5404.** Article 83 - “Malingering” is migrated from Article 134.
- **Sec. 5405.** Article 84 - “Quarantine: medical, breaking” is migrated from Article 134.
- **Sec. 5406.** Article 87 - consolidates “Missing movement” and “Jumping from vessel into water” from Article 134.
- **Sec. 5407.** A new Article 87a migrates and consolidates the offenses of “Restriction, breaking” and “Correctional custody - offenses against” from Article 134 to Article 87a - “Offenses against correctional custody and restriction.”
- **Sec. 5408.** Article 89 is amended and retitled “Disrespect toward superior commissioned officer; assault of superior commissioned officer” and includes the offense of “Assaulting a superior commissioned officer,” which is transferred from Article 90.
- **Sec. 5409.** Article 90 is amended by transferring the offense of “Assaulting a superior commissioned officer” to Article 89 and retitles the statute as “Willfully disobeying superior commissioned officer.”
- **Sec. 5410.** A new Article 93a entitled “Prohibited activities with military recruit or trainee by person in position of special trust” covering military recruiters and trainers who knowingly engage in prohibited sexual activity with prospective recruits or junior members of the armed forces in initial training environments. Consent is not a defense to this offense.
- **Sec. 5411.** Article 95 migrates the loitering portion of the offense of “Sentinel or lookout: offenses against or by” from Article 134 to the redesignated Article 95 “Offenses by sentinel or lookout.”
- **Sec. 5412.** A new Article 95a (Disrespect toward a sentinel or lookout). The new statute includes the disrespect portion of the offense of “Sentinel or lookout: offenses against or by,” which is migrated from Article 134.
- **Sec. 5413.** Article 96 is amended and retitled as “Release of prisoner without authority; drinking with prisoner.” As amended, Article 96 includes the offense of “Drinking liquor with prisoner,” which is migrated from Article 134.

- **Sec. 5414.** Article 103 - “Spies” is amended by replacing the mandatory death penalty currently required with a discretionary death penalty.
- **Sec. 5415.** Article 104 - “Public record: altering, concealing, removing, mutilating, obliterating, or destroying” is migrated from Article 134 to redesignated Article 104 “Public records offenses.”
- **Sec. 5416.** A new Article 105a – “False or unauthorized pass offenses.” The new statute includes the offense of “False or unauthorized pass offenses,” which is migrated from Article 134.
- **Sec. 5417.** Redesignated Article 106 and migrates the offense of “Impersonating a commissioned, warrant, noncommissioned, petty officer or agent of official” from Article 134 into the redesignated Article 106 – “Impersonation of officer, noncommissioned or petty officer, or agent or official.”
- **Sec. 5418.** A new Article 106a – “Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button”, and migrates the offense of “Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button” from Article 134.
- **Sec. 5419.** Article 107 is amended and retitled as “False official statements; false swearing.” As amended, Article 107 includes the offense of “False swearing,” which is migrated from Article 134.
- **Sec. 5420.** A new Article 107a - “Parole violation”, and migrates the offense of “Parole, Violation of” from Article 134.
- **Sec. 5421.** A new Article 109a – “Mail matter: wrongful taking, opening, etc.”, and migrates the offense of “Mail: taking, opening, secreting, destroying, or stealing” from Article 134.
- **Sec. 5422.** Article 110 – “Improper hazarding of vessel” is amended to also prohibit improper hazarding of an aircraft.
- **Sec. 5423.** Article 111 is amended and retitled “Leaving scene of vehicle accident.” As amended, the statute includes the offense of “Fleeing the scene of an accident,” which is migrated from Article 134.
- **Sec. 5424.** Article 112 is amended and retitled “Drunkenness and other incapacitation offenses.” As amended, Article 112 includes the offenses of “Drunkenness—incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug” and “Drunk prisoner,” which are migrated from Article 134.
- **Sec. 5425.** Article 113 – “Drunken or reckless operation of vehicle, aircraft, or vessel” is amended and transferred from Article 111 and sets the BAC limits in the offense at .08 but also authorizes the DoD to prescribe lower limits should scientific developments or changes in federal civilian law lead to lower limits.
- **Sec. 5426.** Article 114 is amended and retitled “Endangerment offenses” and migrates “Firearm, discharging—willfully, under such circumstances as to endanger human life,” and “Weapon: concealed carrying” from Article 134.
- **Sec. 5427.** Article 115 is redesignated and migrates “Threat, communicating,” and “Threat or hoax designed or intended to cause panic or public fear” from Article 134 to the redesignated Article 115 – “Communicating threats.”
- **Sec. 5429.** A new Article 119b – “Child endangerment,” and migrates the offense of “Child endangerment” from Article 134.
- **Sec. 5430.** Article 120 is amended with modified definitions of “sexual act” and “sexual contact.” The Article 120(b) element of “causing bodily harm to that other person” for sexual assault is eliminated adding the element “without consent of the other person.” “Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent” and a new definition of “incapable of consenting” were added.
- **Sec. 5431.** Article 120a is redesignated as “Mails: deposit of obscene matter” and migrates the offense of “Mails: depositing or causing to be deposited obscene materials in” from Article 134.
- **Sec. 5432.** A new Article 121a – “Fraudulent use of credit cards, debit cards, and other access devices” addresses the misuse of credit cards, debit cards, and other electronic payment technology, also known as “access devices.”
- **Sec. 5433.** A new Article 121b – “False pretenses to obtain services” migrates the offense of “False pretenses, obtaining services under” from Article 134.
- **Sec. 5434.** Article 122 is amended to remove the words “with intent to steal” from robbery eliminating the requirement to show the accused intended to permanently deprive the victim of the victim’s property.
- **Sec. 5435.** A new Article 122a – “Receiving stolen property,” and migrates the offense of “Stolen property: knowingly receiving, buying, concealing) from Article 134.
- **Sec. 5436.** Article 123 is retitled “Offenses concerning Government computers” and creates a new offense to address computer-related offenses that apply only to persons subject to the UCMJ and offenses directed at U.S. government computers and U.S. Government protected information.
- **Sec. 5437.** A new Article 124a – “Bribery” and migrates the offense of “Bribery” from Article 134.
- **Sec. 5438.** A new Article 124b – “Graft” migrates the offense of “Graft” from Article 134.

- **Sec. 5439.** Article 125 is redesignated and migrates the offense of “Kidnapping” from Article 134.
- **Sec. 5440.** Article 126 – “Arson; burning property with intent to defraud” is redesignated and migrates the offense of “burning with intent to defraud” from Article 134 creating two forms of aggravated arson and one form of simple arson.
- **Sec. 5441.** Article 128 is amended to focus attention on the malicious intent of the accused as opposed to the speculative “likelihood” of the act actually resulting in harm. Also, the offense of “Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking” is migrated from Article 134 to Article 128.
- **Sec. 5442.** Article 129 is amended and retitled as “Burglary; unlawful entry” and incorporates the offense of “Housebreaking.” The offense of “Unlawful entry” is migrated from Article 134.
- **Sec. 5443.** Article 130 is redesignated as “Stalking” and updates current law to address cyberstalking and threats to intimate partners.
- **Sec. 5444.** A new Article 131a – “Subornation of perjury” migrates the offense of “Perjury: subornation of” from Article 134.
- **Sec. 5445.** A new Article 131b – “Obstructing justice” migrates the offense of “Obstructing justice” from Article 134.
- **Sec. 5446.** A new Article 131c – “Misprision of serious offense” migrates the offense of “Misprision of serious offense” from Article 134.
- **Sec. 5447.** A new Article 131d – “Wrongful refusal to testify” migrates the offense of “Testify: wrongful refusal” offense from Article 134.
- **Sec. 5448.** A new Article 131e – “Prevention of authorized seizure of property” migrates the offense of “Seizure: destruction, removal, or disposal of property to prevent” from Article 134.
- **Sec. 5449.** A new Article 131g – “Wrongful interference with adverse administrative proceeding” migrates the offense of “Wrongful interference with adverse administrative proceeding” from Article 134.
- **Sec. 5450.** Article 132 is amended and retitled as “Retaliation” and provides added protection for witnesses, victims, and persons who report or plan to report a criminal offense to law enforcement or military authority.
- **Sec. 5451.** Article 134 is amended to cover all non-capital federal crimes regardless of where the federal crime is committed.

Miscellaneous Provisions

- **Sec. 5503.** Article 137 is amended to require that officers, in addition to enlisted personnel, receive training on the UCMJ upon entry to service, and periodically thereafter. The amendment requires specific military justice training for military commanders and convening authorities, and requires the Secretary of Defense to prescribe regulations for additional specialized training on the UCMJ for combatant commanders and commanders of combined commands. The Secretary of Defense is also required to maintain an electronic version of the UCMJ and Manual for Courts-Martial that would be updated periodically and made available on the Internet.
- **Sec. 5504.** A new Article 140(a) requires the Secretary of Defense no later than two years after enactment of MJA16 to prescribe uniform standards and criteria for case processing and management, military justice data collection, production and distribution of records of trial, and access to case information. The purpose of this section is to enhance the management of cases, the collection of data necessary for evaluation and analysis, and to provide appropriate public access to military justice information at all stages of court-martial proceedings. At a minimum, the system developed for implementation should permit timely and appropriate access to docket information, filings, and records, of courts-martial.
- **Sec. 542.** Requires the Services to establish military justice experience and skill identifiers and pilot programs to “assess the feasibility and advisability of establishing a deliberate and professional development process for judge advocates that leads to military justice experience to prosecute and defend complex cases.” Each pilot project is to be for period of five years with each Service Secretary to provide a progress report to Congress within four years of the enactment of MJA16.

Military Justice Review Panel and Annual Reports

- **Sec 5521.** Article 146 is amended and retitled “Military Justice Review Panel” requiring the Secretary of Defense to establish a panel to conduct independent reviews and assessments of the UCMJ. The Panel will be comprised of thirteen members, one from the following: the Secretary of Defense, the Attorney General, each service, including the Coast Guard; with the remaining members selected by the Secretary of Defense based upon recommendations

from the House and Senate Armed Services Committee, the Chief Justice of the U.S., and the Chief Judge of CAAF. The Panel will have a full-time staff. The Panel will issue a report during FY2020 focusing on the implementation of any amendments to the UCMJ and the Manual for Courts-Martial during the previous five years. During FY 2020 the Panel is to gather and analyze sentencing data collected from the services from general and special courts-martial. During FY 2024 the Panel will issue a comprehensive review of the UCMJ and MCM and then every 8 years thereafter.

- **Sec. 5522.** A new Article 146a requires annual reports by CAAF and the Judge Advocates General, and the Staff Judge advocate to the Commandant of the Marine Corps. The Service reports will include data on cases pending, timeliness of the appellate review process, the reasons for reversal of convictions based upon command influence, denial of the right to speedy review or loss of records of trial or other administrative deficiencies, and the number of cases reversed where provisions of the UCMJ were held to be unconstitutional. The annual service report will also address measures implemented to ensure the competence of judge advocates as trial and defense counsel, military judges and victims' legal counsel

This Sidebar has been posted to Code 20's page on the JAG Portal at:
<https://portal.secnav.navy.mil/orgs/JAG/20/SitePages/Home.aspx>.

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