Overview of the Military Justice System
Military justice system governs conduct of more than 1.35 million active duty military members.
Larger than the population of 10 states (Wyoming, Vermont, North Dakota, Alaska, South Dakota, Delaware, Montana, Rhode Island, New Hampshire, and Maine) and the District of Columbia
24/7, 365 days a year
Military justice system also applies to more than 800,000 Reservists when performing duties and National Guardsmen when in Federal service.
Military justice system also sometimes applies to civilians (e.g.):
Military justice system also sometimes applies to civilians (e.g.):
• Active duty retirees who are entitled to pay;
• Civilians accompanying U.S. forces in the field in time of declared war or contingency operations;
• “Persons in custody of the armed forces serving a sentence imposed by court-martial.”

Rarely used.
United States Constitution
Art. I, § 8. cl. 14:

“The Congress shall have Power . . . To make Rules for the Government and Regulation of the land and naval Forces”
Pre-UCMJ

Separate statutes governed the Army’s and Navy’s military justice systems

Army: Articles of War
Navy: Articles for the Government of the Navy ("Rocks and Shoals")
UNIFORM CODE OF MILITARY JUSTICE

Text, References and Commentary based on the Report of the Committee on a Uniform Code of Military Justice to The Secretary of Defense
Passed by Congress:
April 26, 1950
Signed by President Truman: May 5, 1950 (effective May 31, 1951)
UCMJ

- Establishes military justice system’s structure
- Enacts punitive articles
- Delegates authority to the President
VOLATILITY AHEAD
Military Justice Act of 2016

Enacted Dec. 23, 2016

Major modification of the military justice system, including to the structure of military trial courts and punitive articles

Most provisions won’t take effect until a date to be determined by the President no later than January 1, 2019
VOLATILITY BEHIND
Uniform Code of Military Justice
(excluding Military Justice Act of 2016)
Uniform Code of Military Justice

(excluding Military Justice Act of 2016)

1 new UCMJ article enacted
(amended twice)

17 existing UCMJ articles amended
(6 amended twice)

4 Executive Orders amending Manual for Courts-Martial
Military Justice System’s structure
Military Justice System’s Structure

4 levels of disposition (in addition to dismissal of charges and less formal responses, such as counseling):

1. Nonjudicial punishment
2. Summary court-martial
3. Special court-martial
4. General court-martial
Nonjudicial Punishment

Imposed by commanders.

Service member can refuse (except those attached to or embarked on vessels).

Substantial differences in procedures among the Services.

Not a criminal conviction.
Nonjudicial Punishment (UCMJ art. 15)

Maximum punishments:

Correctional custody for up to 30 days;

Restriction for up to 60 days;

Forfeiture of up to \( \frac{1}{2} \) pay per month for 2 months;

Reduction to lowest pay grade.
Nonjudicial Punishment
(UCMJ art. 15)

For those attached to or embarked in vessels, confinement on bread and water for 3 days
Summary Courts-Martial (UCMJ art. 20)

Enlisted only.

May be refused.

One-officer “court-martial.”

Substantial differences in procedures among the Services.

Not a criminal conviction.
Summary Courts-Martial (UCMJ art. 20)

Maximum punishments:

- Confinement for up to 30 days;
- Restriction for up to 2 months;
- Forfeiture of up to 2/3 pay for 1 month;
- Reduction to lowest pay grade.

(Can’t adjudge discharge)
Special Courts-Martial

Resembles federal criminal trial (though jury equivalent will adjudge the sentence if they hear the case on the merits).

Convictions are federal criminal convictions.

Accused can choose trial by military judge or trial by a panel of at least 3 members.

Procedures among the Services are fairly consistent.
Special Courts-Martial

Maximum punishments:

Bad-conduct discharge (but officers can’t be discharged);

Confinement for up to 12 months (but officers can’t be confined);

Forfeiture of 2/3 pay per month for 12 months;

Reduction to lowest pay grade (enlisted only).
General Courts-Martial

Resembles federal criminal trial (though jury equivalent will adjudge the sentence if they hear the case on the merits).

Convictions are federal criminal convictions.

Accused can choose trial by military judge or trial by a panel of at least 5 members (no trial by military judge alone in capital cases).

Procedures among the Services are fairly consistent.
General Courts-Martial

Maximum punishments:

Dishonorable discharge (or dismissal for officers);

Confinement for up to the maximum for the offense;

Total forfeiture of pay and allowances;

Reduction to lowest pay grade (enlisted only);

Death if statutorily authorized for the offense.
Special & General Courts-Martial

2/3 majority necessary to convict; less than 2/3 vote for conviction results in acquittal

2/3 majority necessary for sentences other than death (unanimity required) or confinement for more than 10 years (3/4 majority required)
“The life of the law has not been logic; it has been experience.”
<table>
<thead>
<tr>
<th>Category</th>
<th>FY 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>General courts-martial</td>
<td>1,104</td>
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<tr>
<td>Special courts-martial</td>
<td>836</td>
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<tr>
<td>Summary courts-martial</td>
<td>634</td>
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<tr>
<td>Nonjudicial punishment</td>
<td>51,792</td>
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</table>
### Military Justice Statistics
#### FY 2015

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
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</thead>
<tbody>
<tr>
<td>General courts-martial:</td>
<td>1,104</td>
</tr>
<tr>
<td>Special courts-martial:</td>
<td>836</td>
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<tr>
<td>Summary courts-martial:</td>
<td>634</td>
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<tr>
<td>Nonjudicial punishment:</td>
<td>51,792</td>
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</table>
Military Justice Statistics
FY 2015

Military personnel size dropped 4.65% from FY 2000 to FY 2015

<table>
<thead>
<tr>
<th>Type</th>
<th>FY 2015</th>
<th>(down % from FY 2000)</th>
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</thead>
<tbody>
<tr>
<td>General courts-martial:</td>
<td>1,104</td>
<td>31%</td>
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<tr>
<td>Special courts-martial:</td>
<td>836</td>
<td>73%</td>
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<tr>
<td>Summary courts-martial:</td>
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<td>76.5%</td>
</tr>
<tr>
<td>Nonjudicial punishment</td>
<td>51,792</td>
<td>35.9%</td>
</tr>
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</table>

Military personnel size dropped 4.65% from FY 2000 to FY 2015.
# Military Justice Statistics

**FY 2015**

Military personnel size dropped 36.7% from FY 1990 to FY 2015

<table>
<thead>
<tr>
<th>Type</th>
<th>FY 2015</th>
<th>FY 1990</th>
<th>Change from FY 1990</th>
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</thead>
<tbody>
<tr>
<td>General courts-martial</td>
<td>1,104</td>
<td>3,202</td>
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<tr>
<td>Special courts-martial</td>
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<td>6,705</td>
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<td>Summary courts-martial</td>
<td>634</td>
<td>4,104</td>
<td>84.5%</td>
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<tr>
<td>Nonjudicial punishment</td>
<td>51,792</td>
<td>146,527</td>
<td>64.8%</td>
</tr>
</tbody>
</table>
General Court-Martial Process
(USMC example, assuming a conviction and sentence including either a punitive discharge or a year or more of confinement)

Convening authority’s action
(by Division Commanding General)

General court-martial
(referred by Division Commanding General)

Article 32 investigation
(orderd by Regiment Commanding Officer)

Charges preferred

Naval Criminal Investigative Service investigates

Automatic appeal to Navy-Marine Corps Court of Criminal Appeals

Discretionary (usually) review by Court of Appeals for the Armed Forces

Discretionary review by United States Supreme Court
(but only if reviewed by CAAF)

VLC offered

Sexual assault reported
Punitive articles
Punitive Articles

65 punitive articles (many include more than one offense)
Punitive Articles

Many military specific offenses, such as:

• absence without leave;
• desertion;
• violation of a lawful order; and
• misbehavior before the enemy.
Punitive Articles

Many common law offenses, such as:

- murder;
- rape;
- burglary; and
- robbery.
Punitive Articles

Article 134: “The General Article”

Includes three theories of liability:

(1) “[A]ll disorders and neglects to the prejudice of good order and discipline in the armed forces.”

(2) “[C]onduct of a nature to bring discredit upon the armed forces.”

(3) “[C]rimes and offenses not capital.”
Punitive Articles

Article 134: “The General Article”

The President has identified 53 non-exclusive offenses under Article 134, including:

1. Adultery;
2. False or unauthorized pass offenses;
3. Fraternization;
4. Breaking restriction;
5. Negligent homicide;
6. Kidnapping;
7. Obstructing justice;
8. Pandering and prostitution; and
9. Communicating a threat.
Delegation of authority to the president
Delegation of Authority to the President

Article 36:

• Delegates to the President authority to prescribe pretrial, trial, and post-trial procedures, including rules of evidence.

• The President is directed to “apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts” to the extent practicable and not in conflict with the UCMJ.
Delegation of Authority to the President

Article 56:

- Delegates to the President authority to prescribe maximum punishments for court-martial offenses (except for death-eligible offenses).
MANUAL FOR COURTS-MARTIAL UNITED STATES
(2016 EDITION)
Manual for Courts-Martial

Five parts:

I. Preamble

II. Rules for Courts-Martial

III. Military Rules of Evidence

IV. Punitive Articles (including maximum punishments)

V. Nonjudicial Punishment Procedure