



USN/USMC Commander's Quick Reference Legal Handbook



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SECTION 1:
MILITARY JUSTICE
AND
SEXUAL ASSAULT PREVENTION AND REPSONSE

NCIS REPORTING AND MILITARY JUSTICE INVESTIGATIONS

REFERENCES:

- (a) MCM (RCM 303)
- (b) JAGMAN (Chapter II)
- (c) SECNAVINST 5430.107 (series)
- (d) SECNAVINST 1752.4 (series)
- (e) DODI 6495.02

COMMAND INQUIRY:

Suspected offenses may come to command attention in a variety of ways (e.g., shore patrol, civil law enforcement, or phone call, etc.) The commanding officer (CO) must conduct some form of inquiry into reported offenses that may be tried by court-martial per reference (a). The degree of inquiry will depend on the nature, validity, and seriousness of the complaint. See reference (b).

MANDATORY REFERRAL TO NCIS:

Reference (c) mandates that certain incidents be referred to NCIS whether occurring on or off base and regardless of civilian investigation involvement. These incidents include:

- Actual, suspected, or alleged major criminal offenses (punishable under the Uniform Code of Military Justice (UCMJ) by more than 1 year of confinement);
- Non-combat deaths when the cause of death is not medically attributable to disease or natural causes;
- Fires or explosions of unknown origin affecting Department of the Navy (DON) property or property under DON control;
- Theft or loss of ordnance or controlled substances;
- Disappearance of a command member;
- All instances of suspected fraud against the government within DON (e.g., theft of government property, bribery, false claims for pay, etc.); actual or suspected acts of espionage, terrorism, sabotage, assassination, and actual, suspected, or attempted defection of DON personnel;
- Internal security incidents, such as loss, compromise, or suspected compromise of classified information and national security cases; and
- Suspected sex-related offenses as defined under Articles 120 and 125 of the UCMJ.

WHEN NCIS DECLINES TO INVESTIGATE:

NCIS may, at its discretion, decline to conduct or continue any investigation, but shall expeditiously inform the effected command. A command may then request assistance from the local base security department or appropriate authority or pursue a command investigation pursuant to reference (a).

PROCESSING SEXUAL ASSAULT ALLEGATIONS

REFERENCES:

- (a) SECNAVINST 1752.4 (series)
- (b) MCO 1752.5 (series)
- (c) MCO 3504.2 (series)
- (d) OPNAVINST 1752.1 (series)
- (e) SAPR CO Checklist (www.sapr.mil)
- (f) DoDD 6495.01
- (g) DoDI 6495.02
- (h) NAVADMIN 272/12 and MARADMIN 624/12
- (i) MCO 5800.16A
- (j) SECDEF Memo of 14 Aug 2013
- (k) 10 U.S.C. § 1565(b)
- (l) MARADMIN 583/13
- (m) NAVADMIN 014/15
- (n) ALNAV 061/14
- (o) MARADMIN 607/15

GENERAL INFORMATION:

- The Department of Defense defines “sexual assault” as the intentional sexual contact, characterized by use of force, physical threat, abuse of authority, or when such sexual contact is made when the victim does not or cannot consent. It includes rape, nonconsensual sodomy, and indecent assault regardless of gender or spousal relationship [see reference (g)]. References (b) and (c) provide specific detail specific policies, provide guidance, and identify command responsibilities for handling sexual assault allegations.
- Sex-related crimes are prescribed under the Uniform Code of Military Justice in Articles 120-120c and 125. Understand that the definition of “sexual assault” from the Sexual Assault and Prevention (SAPR) program is not the same as the legal definition of sexual offenses as punishable crimes under the UCMJ.

COMMANDER’S RESPONSIBILITIES: Commanders must have a thorough knowledge of reference (a) and reference (d) to fully understand the scope of their responsibilities, and those of the personnel under their command, when handling sexual assault allegations.

- Leadership is the key to sexual assault prevention and response;
- The commander’s role in prevention is to establish a climate that confronts the beliefs and values that contribute to behaviors which facilitate sexual assault, to establish clear standards for personal behavior, and to hold offenders accountable;
- As leaders commanders must be keenly aware of and sensitive to the climate of their units;
- Commanders must continuously educate their personnel on how to prevent incidents of sexual assault, while also encouraging victims and witnesses to report these incidents when they occur; and
- Be aware that sexual assault victims are physically, mentally, and emotionally traumatized and wounded.
- See Sexual Assault Initial Disposition Authority section below for additional command responsibilities.

REPORTING REQUIREMENTS FOR SEXUAL ASSAULT INCIDENTS: Commanders shall immediately report all actual, suspected, or alleged sexual assaults to the Naval Criminal Investigative Service. Therefore, commanders **must not** conduct independent command investigations into alleged sexual assaults in order not to potentially compromise an NCIS investigation into any sexual assault allegations.

In addition to normal OPREP/SITREP requirements, commands must report to Echelon II commanders within 24 hours of receiving a report of an incident of sexual assault and submit follow-up reports at least monthly until resolution [see reference (f)Not included in reference f-should this cite the OPREP instruction?; monthly SITREP no long required per OPNAVINST 1752.1C]. The following types of incidents must be reported as noted:

- Sexual assaults, including rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.
- Sexual assaults occurring in areas of Navy control regardless of the victim's or perpetrator's military status, military affiliation, or nationality.
- Incidents involving sexual assault victims who are family members and victims and alleged perpetrators who are active-duty naval Service members or of another service assigned to a naval command regardless of the location of the incident.
- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program [see DOMESTIC VIOLENCE/FAMILY ADVOCACY].

Upon disposition of a sexual assault allegation, the commander of the accused must submit the Sexual Assault Disposition Report (SADR) within two (2) business days. If the accused is unknown or a civilian, the commander for the victim is responsible for the SADR.

The USMC has a requirement now to use the following form, available on the Judge Advocate Division Forms link on the SJA to the CMC website:

JMJ Practice Advisory on SADR:

<http://www.hqmc.marines.mil/Portals/135/Docs/Practice%20Advisories/PA%205-15%20SVC-SADR%209%20Mar%20With%20Encl.pdf>

ADDITIONAL REQUIREMENT FOR REPORTING SEXUAL ASSAULT INCIDENTS:

- **USN:** Per reference (m), within eight (8) days of the initial SITREP for an alleged sexual assault, the commander of the alleged victim must complete and submit a Sexual Assault Initial Response Oversight (SAIRO) report. If the alleged victim is a civilian, the commander of the accused is responsible for the SAIRO report. Per reference (h), within 30 days of a report of a sexual offense, a commander must make contact with the first flag in the chain of command in person, via video teleconference, or via phone to give the flag officer a command assessment of the situation.
- **USMC:** Per reference (h), a Sexual Assault Prevention and Response 8-day brief must be submitted electronically to the victim's commanding officer for unrestricted reports. Note: This brief need only be submitted if the victim is an active-duty adult. Reference (i) details a commander's responsibilities in further detail. Generally, commanders must ensure that sexual assault victims are treated fairly and with sensitivity, that information related to the victim is handled in a confidential manner, that the victim has access to necessary services, and that the victim receives monthly updates on the status of his/her case. Commanders should consult with their staff judge advocates and a victim advocate for further guidance.

CARE FOR SEXUAL ASSAULT VICTIMS: In cases of sexual assault, the specialized concerns and issues (physical, mental, and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. Avoiding actions or treatment that makes the victim feel re-victimized is crucial to the well-being of the individual concerned. Additionally, references (a) and (b) expressly prohibit releasing the name of any sexual assault victim to the media without the victim's consent.

VICTIM ADVOCATES: The Navy and Marine Corps have victim advocates available through the Family Services, Sexual Assault Prevention Program. Victim advocates possess specialized training in assisting victims of sexual assault. Commanders should be receptive to recommendations made by victim advocates on behalf of victims. Victim advocates may recommend that the commanding officer issue a military protective order, that the victim reside in a 'safe house' for a short period of time, or that the victim requires a level of assistance beyond what the victim advocate can provide, requiring a commander's authorization.

VICTIM'S LEGAL COUNSEL (VLC): Per reference (j), on 14 Aug 2013, the Secretary of Defense directed that each service immediately implement a victim legal advocacy program to provide legal and representation to victims of sexual assault. On 1 Jan 2014, the Navy and Marine Corps established a VLC Organization (VCLO). The mission of the VCLO is to provide legal advice and representation to the victims of certain crimes. A VLC (judge advocate) will be detailed to advocate on the victim's behalf by providing legal counsel throughout the investigation and court-martial process. References (j) through (l) provide additional guidance on a victim's eligibility for VLC services. Contact a staff judge advocate in order to determine whether a particular victim is required to meet a VLC.

ADDITIONAL CONSIDERATIONS:

- The Secretary of the Navy will provide guidance to commanders regarding their ability to take appropriate action to remove or temporarily reassign a Service member accused of committing a sex-related offense from a position of authority or from an assignment. This may not be used as a form of punishment but is intended to promote good order and discipline within the unit and to protect the victim if he/she is in the same unit as the accused. OPNAVINST 1752.1C directs: Consider a temporary or permanent reassignment of the alleged offender instead of the victim pursuant to a determination that reasonable grounds exist to believe that an offense constituting sexual assault has occurred based on the advice of the supporting judge advocate and the available evidence.
- A defense counsel must now request, via the trial counsel, to interview the victim of a sex-related offense. The victim has the right to have the trial counsel or a VLC present for the interview with the defense counsel.
- **For the most recent USMC Sexual Assault Prevention and Response Program changes, see reference (o).**

SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY (SA-IDA)

REFERENCES:

- (a) Policy
 - i. NAVADMIN 195/12
 - ii. MARADMIN 372/12
 - iii. JMJ Practice Advisory (1-14)
- (b) Reporting requirements
 - i. NAVADMIN 272/12
 - ii. MARADMIN 624/12
- (c) Expedited transfer
 - i. NAVADMIN 132/12
 - ii. MILPERSMAN 1300-1200I
 - iii. CMC/MFC-3 LOI dtd 28 Jun 2012
 - iv. MARADMIN 227/12
- (d) Commander's Checklist (www.sapr.mil)
- (e) MCO 5800.16A
- (f) OPNAVINST 1752.1 (series)

POLICY: Per Secretary of Defense (SECDEF) policy, any report of offenses under the Uniform Code of Military Justice, Article 120 (rape, sexual assault of an adult), Article 125 (forcible sodomy), or Article 80 (attempts of rape, sexual assaults, or sodomy) shall now be referred to the O-6 Special Court-Martial Convening Authority (SPCMCA) or higher court-martial authority in the chain of command for initial disposition of the allegation(s). This person will be the SA- IDA [see reference (a)i].

USMC POLICY: While the USN follows the SECDEF policy, the USMC is broader and requires all crimes under Article 120, including sexual-contact crimes, as well as all crimes under Article 120b (all sexual crimes against children), also be elevated to the higher convening authority [see reference (a)ii].

SA-IDA RESPONSIBILITIES: If you are a SA-IDA, you have all options to direct or dispose of a case that are available pursuant to Rules for Court-Martial 306 [for USMC policy, see below and reference (a)iii]. Prior to making any disposition decision, the SA-IDA must consult with a staff judge advocate, trial counsel, or both. The following options are available to the SA-IDA:

- **Take no action:** the case will be dismissed, and the SA-IDA will work with the local Sexual Assault Response Coordinator to complete reporting requirements.
- **Court-martial warranted:** If the SA-IDA believes the case may warrant a court- martial, then the SA-IDA may convene an Article 32 investigation and then potentially forward the matter to a General Court-Martial Convening Authority (GCMCA), who will determine whether to refer charges to a court-martial. A SA-IDA may convene a special court-martial for charges other than rape or sexual assault of an adult, rape or sexual assault of a child, forcible sodomy, or attempts thereof.
- **Administrative action:** in the USMC, the SA-IDA must make the decision to initiate administrative separation proceedings when appropriate. The SA-IDA in the USMC can also direct the accused's immediate superior to notify the accused of administrative separation processing initiation. If the accused's immediate superior is also a SPCMA, the SA-IDA can direct the SPCMA to convene the administrative separation board [see reference (a)iii]. In the Navy, the SA-IDA will return the matter to the immediate commanding officer of the accused to initiate administrative separation proceedings.

- Non-judicial punishment. Forward for disposition. In the USN, the SA-IDA may determine that the matter should be forwarded to a subordinate or senior authority for disposition, to include any disposition action available to that authority under Rule for Court-Martial 306. In the USMC, the SA-IDA cannot forward a case to a subordinate command for disposition [see reference (a)iii].

SUPPORT TO THE SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM (Formerly SAVI): Commands must be prepared to prevent and respond to allegations of sexual assault. Establish an atmosphere of zero tolerance of sexual assault and rape [see enclosure (4) of reference (f)].

RESPONSIBILITIES OF THE COMMANDING OFFICER (CO): Whether the CO is the SA-IDA or not, if a CO is the immediate commander of the accused or victim, the CO must be familiar with and follow the requirements of the Commander's Checklist [see reference (d)].

- Military Protective Orders (MPOs): This is still the responsibility of the accused's and/or victim's CO, respectively, to implement if necessary. COs are encouraged to consult with a staff judge advocate and NCIS prior to issuing a MPO if feasible.
- Victim/Witness Assistance Program (VWAP): Ensure that the victim has been advised of his/her VWAP rights under Department of Defense policy and as enumerated in DD Form 2701.
- Investigations: Ensure that NCIS is immediately notified upon the receipt of an unrestricted report of sexual assault. The command is not to initiate a command investigation
- Responsibility to the victim: Ensure the victim's safety, as well as the victim's access to all needed SAPR and medical resources.
- Responsibility to the accused: Ensure that the accused's due process rights are not violated, he/she has access to appropriate legal resources, and has access to any necessary medical assistance.
- Participate in monthly sexual assault Case Management Group (CMG) meeting chaired by the installation CO. This responsibility may not be delegated. (*DoDI 6495.02*) Within 72 hours of the last CMG, provide victims of a sexual assault who filed an Unrestricted Report monthly updates regarding the current status of any ongoing investigative, medical, legal, status of an Expedited Transfer request or any other request made by the victim until the final disposition. This is a non-delegable commander duty. (*DoDI 6495.02*)
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain a customized brief and CO's toolkit from the local SARC.
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain training from a judge advocate on the Military Rules of Evidence 514 privilege, retaliation, sexual-assault initial disposition authority, and case disposition reporting requirements.
- Review the official military personnel files with the designated field code (i.e., 91) or NAVPERS 1070/887 Sex Offense Accountability Record within 30 days of permanent assignment of a Service Member

EXPEDITED TRANSFER: If a victim, who has made an unrestricted report of sexual assault, requests an expedited transfer, then the CO has 72 hours in which to make a decision as to whether the mission can support the request. For the USN, the factors to consider when making this decision can be found in reference (c)ii.

- **USN:** Per reference (c)ii, if the CO denies the request for expedited transfer, there will be an automatic appeal of the denial to the GCMCA in the chain of command.
- **USMC:** Per reference (c)iv, if the CO denies the request for expedited transfer, then the victim may appeal the decision if he/she wishes to do so. There is no automatic appeal.

MOST IMPORTANT: Always consult with a staff judge advocate, one of the USN's Region Legal Service Offices, or a USMC Legal Services Support Section as soon as possible.

OTHER CONSIDERATIONS:

- All convictions for a sex-related offense will now result in a mandatory dismissal for officers and a dishonorable discharge for enlisted personnel. Further, if an eligible sex-related offense goes to court-martial it must be tried in a general court-martial and may not be disposed of at any lesser court-martial forum. An eligible sex-related offense is defined as rape, sexual assault, rape and sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.
- Involuntary Separation of a Service member within 1 year of final disposition of a reported sexual assault requires flag/general officer review of the circumstances of and grounds for the proposed separation, and concurrence to separate law now prohibits a commander and the SA-IDA from considering the character and military service record of the accused when making an initial disposition decision for a sex-related offense. NAVPERS 1070/887 will be used to annotate the official military personnel file of any Service member who is convicted at court-martial or awarded NJP for sex-related offense(s), regardless of recommendation for retention or separation from the naval service. NAVPERS 1070/887 will remain in the official military personnel file of Service members for the duration of the applicable member's career. (OPNAVINST 1752.1C)

CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE FY-14 NATIONAL DEFENSE AUTHORIZATION ACT:

- Action on court-martial findings (guilty/not guilty):
 - The convening authority (CA) CANNOT modify court-martial findings if:
 - The offence involves rape, sexual assault, a sexual offense against a child, or forcible sodomy; or
 - The offense's maximum allowable punishment exceeds two years
 - OR the sentence actually adjudged includes a punitive discharge or confinement exceeding six months.
 - If a CA modifies a court-martial finding in any other case he/she needs to provide a written explanation for doing so.
- Action on a court-martial sentence:
 - The CA can modify a sentence for an offense unless the actual adjudged sentence includes a punitive discharge or confinement exceeding six months.
 - For such a sentence, the CA can only modify it pursuant to a written recommendation from the trial counsel indicating that the accused provided substantial assistance in another trial or if the sentence modification is pursuant to a pre-trial agreement.
 - If there is a pre-trial agreement, a mandatory minimum sentence of dishonorable discharge may only be commuted to a bad conduct discharge.

QUESTIONING/INTERROGATING SUSPECTS AND ARTICLE 31 (b) RIGHTS

REFERENCES:

- (a) MCM, MRE 301-305
- (b) UCMJ, Article 31(b)
- (c) MILPERSMAN 1620-010
- (d) JAGMAN Appendix A-1-(b-d)
- (e) JAGMAN Appendix A-1-v
- (f) JAGMAN Appendix A-1-(M-n)

MAJOR CRIMINAL OFFENSES: Do not allow anyone from your command to question or interrogate a Service member before discussing the case with a staff judge advocate and NCIS.

ALWAYS READ ARTICLE 31(b) RIGHTS: When (1) you suspect a Service member of committing an offense and (2) you are going to ask the Service member a question relating to the offense (e.g., asking questions or making statements that are likely to evoke an incriminating response).

ARTICLE 31(b) RIGHTS:

- A Service member is entitled to be informed of his/her Article 31(b) rights when suspected of violating any punitive article of the Uniform Code of Military Justice and the member is going to be questioned about the offense(s).
- Use the rights warning form [see reference (e)]. Article 31(b) rights contained on the warning form should always be read as stated before any interrogation, however informal the questioning. Do not ask the Service member any questions unless the Service member has affirmatively and in writing waived the right to remain silent and the right to a lawyer.
- Waivers of Article 31(b) rights must be made freely, knowingly, voluntarily, and intelligently. It is critical to ensure the Service member understands his/her rights and the consequences of waiving any or all of his/her rights.
- If the Service member wants to remain silent or asks for a lawyer, the command **MUST NOT** ask any questions or ask any more questions, even if the Service member had previously waived his/her right to remain silent and answered questions

PRIOR QUESTIONING WITHOUT RIGHTS WARNING: Provide a “cleansing warning” if the Service member was previously questioned and did not receive his/her Article 31(b) rights warnings. To do this, (1) advise the Service member that the prior statement cannot be used against him/her and that (2) even though he/she made the earlier statement, he/she can still choose to remain silent and request a lawyer. Finally, (3) fully advise the member of his/her rights using reference (e) and record in writing whether the member waived his/her rights.

NEW OFFENSES: If during a conversation or questioning of a Service member, a the command begins to suspect that the Service member has committed a new or different offense from the one originally asked about, the questioner must stop the questioning immediately and complete a new rights warning form inclusive of the new or different offense(s) [see reference (e)].

ARTICLE 31(b) AND NON-JUDICIAL PUNISHMENT (NJP): At mast/office hours, only part of Article 31(b) is read. Sailors always have the right to remain silent but do not have a right to an attorney during NJP. However, if it is reasonably foreseeable that an accused will make an admission or actually does make an admission that warrants court-martial punishment, the CO should provide a full reading of all Article 31(b) rights and execute a waiver if the Service member agrees to waive his/her rights at mast/office hours [see reference (e)] to protect the admissibility of such confessions in court. That said, full rights warnings must be given at all

other stages in the process (e.g., prior to any questioning by a supervisor, investigating officer, law enforcement officer, Chief's disciplinary review board, or executive officer inquiry).

SERVICE MEMBER UNDER THE INFLUENCE OF DRUGS OF ALCOHOL: A member must be in a physical and mental condition to knowingly, intelligently, and voluntarily waive his/her rights. Do not try to interrogate a Service member who is under the influence of drugs of alcohol.

FALSE PROMISES OR THREATS: A confession must be voluntary. DO NOT use threats or false promises to elicit an incriminating statement because a military judge may determine later that it is not admissible.

PROMISE OF LENIENCY: Only a General Court-Martial Convening Authority (flag and general officers) have the authority to grant immunity or leniency for testifying. Do not promise a Service member that what he/she says against his/her interests will not be used against them [see reference (f)].

SEARCH AND SEIZURE

REFERENCES:

- (a) MCM, MRE 311-316
- (b) MILPERSMAN 1620-010
- (c) SECNAVINST 5430.107 (series)
- (d) JAGMAN Appendix A-1-w
- (e) JAGMAN Appendix A-1-x

THE COMMANDING OFFICER (CO) OR OFFICER IN CHARGE (OIC) AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED: If the CO or OIC over the suspected Service member was the victim of the offense in question, he/she must refer any search authorization request to a superior in the chain of command.

NON-DELEGABLE AUTHORITY: Only the CO or OIC can issue a search authorization, unless prohibited as detailed above. The CO or OIC must personally make the probable cause determination. No one else in the chain of command can act for the CO or OIC unless they are acting as the CO or OIC in the absence of the CO or OIC.

MAJOR CRIMINAL OFFENSES: DO NOT conduct a search before referring the case to NCIS, unless the search is necessary to protect life or property or to prevent the destruction of evidence before NCIS can become involved.

SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE: Probable cause is defined as [See Appendix A – Commanding Officer Search and Seizure Checklist]:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched. The reasonable belief must be supported by a factual bases and information must be reliable and credible.

JURISDICTION:

- **PERSON (ON/OFF BASE):** With probable cause, a CO or OIC can authorize the search of persons under his/her command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a Service member of the same sex.
- **ON-BASE PROPERTY:** With probable cause, a CO or OIC can authorize the search or seizure of any property under his/her immediate control. For areas not under the CO's or OIC's immediate control contact the installation staff judge advocate as the installation commander may have jurisdiction.
- **OFF-BASE PROPERTY IN U.S.:** The CO or OIC may not authorize a search of off-base property in the United States. The CO or OIC must work with NCIS to obtain civilian authority to conduct an off-base search. (Note: a CO or OIC may not have jurisdiction to authorize a search in Public/Private Venture Housing; consult with the installation or Region staff judge advocate.)
- **OFF-BASE PROPERTY OUTSIDE THE U.S.:** The CO or OIC may authorize searches a Service member's property. (Note: some Status of Forces Agreements limits or prohibits such off-base search authorizations. Consult with a staff judge advocate for overseas search authorization issues.)

QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct an inspection (e.g., health and comfort, wellness, readiness, etc.) in the area where the evidence may be located.

- The primary purpose of the inspection must be a valid military purpose, to include: (1) security; (2) military fitness; (3) good order and discipline; and (4) readiness.
- Courts may throw out evidence seized in a search disguised as an inspection. Factors the courts will consider in evaluating whether an inspection is really an illegal search are (1) if the inspection was not previously scheduled, and it followed the report of an offense; (2) if it targeted specific individuals; or (3) if it subjected specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: May be searched anytime without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. A drug dog alert from within a common area may establish probable cause to order a search of private property (but the CO or OIC must still make the decision whether probable cause exists and whether to issue an authorization).

USE OF FORMS: Search authorization forms are found at JAGMAN A-1-w [see reference (d)]. Anyone providing information to support the request to search should be sworn and under oath.

SPECIFICITY ON THE FORMS: When authorizing a search, the CO or OIC must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found and should include the language, and “any parts, pieces, or components thereof.”

ALWAYS ASK FOR CONSENT: Before actually conducting a search or authorizing one, the owner of the property should be asked for consent to search. If it is obtained, document the consent in writing [see reference (e)]. Consent must be voluntarily obtained to be valid; meaning the individual must be told they can say no. Consent can be limited or withdrawn at any time. Limitation or withdrawal of consent cannot serve as a basis for probable cause.

COURTS-MARTIAL: TYPES AND CONVENING AUTHORITY

REFERENCES:

- (a) MCM, RCM 501-504, 704, 1003, 1107, 1301-1306
- (b) UCMJ Articles 16, 22-25
- (c) JAGMAN Section 0120

TYPES OF COURTS-MARTIAL

SUMMARY COURT-MARTIAL (SCM):

- Commanding officers (CO) and Officers in Charge (OIC) have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers, only enlisted personnel.
- All enlisted personnel (sea and shore duty) have an absolute right to refuse SCM.
- The CA appoints one officer as the SCM officer who serves as the military judge (MJ), trial counsel (TC), and defense counsel (DC) all rolled into one.
- The accused has no right to military counsel, but he/she may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at his/her own expense, if civilian representation will not unreasonably delay the proceedings.
- Punishments at a SCM are limited. [See Appendix 12 of the Manual for Courts Martial (MCM): Maximum Punishment Chart.]
- The CA takes final action on the findings and punishment awarded by the SCM within seven days.
- The Military Rules of Evidence apply at a SCM.

SPECIAL COURT-MARTIAL (SPCM):

- COs may convene SPCMs.
- Full criminal trial for officers and enlisted personnel.
- Consists of a MJ, at least three members (jurors), a TC, a DC (DC may include detailed military counsel, individual military counsel (IMC), and/or civilian counsel. Civilian counsel is at the expense of the accused).
- Maximum punishments available at a SPCM are listed in Appendix 12 of the MCM.
- The CA may approve pre-trial agreements.
- The CA takes action on the findings and sentence after the clemency period has expired.

GENERAL COURT-MARTIAL (GCM):

- A Uniform Code of Military Justice (UCMJ) Article 32 pre-trial investigation is required before any charges are referred to a GCM. A CA may order an Article 32 investigation.
- ****UPDATE** FY-14 NDAA:** Section 1702 (effective 26 Dec 2014) will change how an Article 32 hearing is conducted. A victim, whether civilian or military, may not be required to testify at the hearing. The Article 32 investigation/hearing officer must be senior in rank to the TC and DC and must be a judge advocate except in extraordinary circumstances.
- Only flag or general officers (and a very few specifically designated non-flag/general officers who are COs) may convene a GCM [see reference (c), section 0120].
- GCMs involve a MJ, at least 5 members, TC, and DC (military and/or civilian).
- GCMs have the authority to issue the maximum punishment listed for any UCMJ offense.
- GCMCAs may approve pre-trial agreements.
- GCMCAs take action on findings and sentences after the clemency period has expired.

- **OTHER CONSIDERATIONS:**

- Law now requires that all convictions for a sex-related offense result in a mandatory dismissal for officers or a dishonorable discharge for enlisted personnel. Further, all sex-related offenses must be tried at a GCM, when a court-martial is warranted, and may not be disposed of at any lesser forum when charges are appropriate for referral. A sex-related offense is defined as rape, sexual assault, rape and sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.
- Law also requires additional review if a GCMCA elects not to refer a sex-related charge to a GCM. If the GCMCA's staff judge advocate recommends referring a case to a GCM after the Article 32 investigation and the GCMCA chooses not to, this decision must be reviewed by SECNAV. However, if the SJA recommends not referring the case to a GCM and the GCMCA concurs, this decision must be reviewed by the next GCMCA in the chain of command.

MECHANICS OF CONVENING A COURT-MARTIAL: A court-martial is created anew for each individual case. A CA creates a court-martial by signing a court-martial convening order. The convening order creating the court-martial must be signed—creating the court-martial—before the CA signs the charge sheet referring the charges to the court martial. The court-martial must exist first before any charges can be referred to it. A convening order contains the following content:

- Convening order number and the date it is signed. That will be the date the court comes into existence, after which charges in a particular case can be referred to it.
- The authority to convening a court-martial.
- The type of court convened (SCM, SPCM, GCM) and the name of the members (jurors) assigned to that court-martial.
- The personal signature of the CA.

SELECTION OF MEMBERS:

- Members shall be persons who, in the opinion of the CA, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament.
- Members must be senior to the accused, unless unavoidable.
- The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified.
- Do not attempt to “stack” or directly or indirectly influence the members.
- Enlisted members are only detailed if an enlisted accused requests enlisted members.
- In such a case, absent military exigency, one-third of the final members panel must be enlisted and the members must come from a unit other than the accused's unit.

Note: Make absolutely sure both a convening order and the preferral block on the charge sheet (block 11) have been signed and dated prior to referring charges to a court-martial.

[See Appendix B – Overview of the Military Justice System]

COURT-MARTIAL BASICS

REFERENCES:

- (a) MCM, RCM 104, 504
- (b) UCMJ Articles 13, 22(b), 37
- (c) JAGMAN Section 0129

JUDICIOUS AND FAIR: Congress has entrusted commanding officers (COs) with the responsibility to administer discipline and justice in the Armed Forces. COs should be vigilant to ensure all actions are consistent with the Uniform Code of Military Justice (UCMJ) and those that are not are held accountable in accordance with law and regulation.

INFORMED DECISIONS: Ensure that independent investigations are convened to discover all the relevant evidence and information that bears on the reliability and credibility of that evidence in order to make an informed decision about how to proceed. Ensure that all decisions are fair and impartial and based on the known facts.

ACCUSER CONCEPT:

- For a Special Court-Martial (SPCM) or a General Court-Martial (GCM), the convening authority (CA) may not:
 - Sign the accuser block on a charge sheet;
 - Direct that someone else sign the accuser block on a charge sheet; or
 - Have a personal interest in the case (e.g., as a victim or witness to the underlying alleged offenses reflected in the charges).
- If such a situation exists, the current CA must forward the case to a superior to disposition.

UNLAWFUL COMMAND INFLUENCE – ACTIONS TO AVOID:

- **PUBLIC OPINIONS:** Do not express public opinions on an accused's innocence, guilt, or appropriate punishment for crimes in general or in an individual case.
- **UNLAWFUL INFLUENCE:** Do not order a subordinate commander to dispose of a case in a particular way. Each commander must be allowed to exercise independent judgment totally free of interference from a superior.
- **INFLEXIBLE POLICY:** Do not have an inflexible policy on disposition or punishment in general across all cases. Each case and each punishment must be appropriately decided based on the particular facts.
- **INFLUENCE REGARDING RESULT:** Do not censure, reprimand, or admonish the court or any member, military judge, or counsel with respect to findings or sentence adjudged.
- **INFLUENCE ON MEMBERS:** Do not select or remove court members in order to obtain a particular result. Never directly or indirectly communicate with members regarding a preference for a desired outcome. Once convened, interactions with members of a court-martial should be avoided. The Service member's primary duty is to that court-martial.
- **INFLUENCE ON MILITARY JUDGE:** Do not attempt or even appear to put pressure on a military judge, counsel, court members to obtain a particular result.
- **INFLUENCE ON WITNESSES:** Witnesses may not be intimidated or discouraged or obstructed from testifying. If a witness testifies (truthfully) on behalf of an accused, no retribution shall be taken against him merely for testifying.
- **PRETRIAL PUNISHMENTS:** A court-martial will decide the punishment. An accused may not be punished before trial. Do not use pretrial restraint as a method to punish an accused before trial.
- **THE STANDARD:** Would the ordinary American citizen lose faith in the military justice system or consider it unfair? Ensure that an accused Service member receives all the

due process rights provided under law and regulation, many of which the U.S. Constitution requires.

[See Appendix C - Court-Martial Maximum Punishment Chart]

PRETRIAL RESTRAINT

REFERENCES:

- (a) MCM, RCM 304, 305
- (b) UCMJ Articles 10, 13
- (c) JAGMAN Section 0127

FOUR TYPES OF PRETRIAL RESTRAINT (PTR) (from least to most severe):

- Conditions on liberty (e.g., orders to report periodically to specified officials; orders not to go to certain places or to associate with certain people such as the victim)
- Restriction in lieu of arrest
- Arrest
- Pretrial confinement (PTC)

AUTHORITY TO ORDER PTR:

- Who
 - Only the CO may order PTR of an officer or a civilian
 - Any commissioned officer may order PTR of an enlisted Service member. A CO may delegate the authority to order pretrial restraint of the CO's own enlisted personnel to warrant, petty, and noncommissioned officers.
- When
 - PTR is appropriate when there is a reasonable belief that:
 - A court-martial offense has been committed;
 - The person to be restrained committed the offense;
 - The restraint ordered is required by the circumstances; and
 - There is concern that the Service member will not appear at trial and/or will engage in serious misconduct, and less severe forms of restraint are inadequate
 - PTR decisions must be made on a case-by-case basis. The least severe form of PTR necessary under the circumstances should be used. PTR may not be used for offenses that are intended to be handled by NJP. PTR is appropriate only when the command intends to try the accused by general or special court martial.

PUNISHMENT BEFORE TRIAL IS PROHIBITED: PTR may be used only to ensure the presence of the accused at trial and/or to prevent future serious misconduct.

PTR (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL PROVISIONS:

When a Service member is put in PTR, the constitutional and statutory speedy trial clocks begin, necessitating swift action to ensure arraignment. Immediately notify the local USN Region Legal Service Office or USMC Legal Services Support Section when a Service member is placed in PTR.

SUICIDAL OR INTOXICATED PRISONERS: PTC is not appropriate and brigs will not accept such Service members. Service members requiring PTR who are suicidal or under the influence of drugs or alcohol should be referred to medical before commencing any type of PTR.

DOCUMENTING CO's APPROVAL OF PTC: When PTC is imposed, the CO must be notified and approve the PTC within 24 hours. A written memorandum ("48-hour letter") explaining why PTC is warranted must be prepared and signed by the CO within 48 hours and forwarded to the brig. If the CO is not "neutral and detached (e.g., a victim of the Service member in PTC), an officer who is neutral and detached must make a probable-cause decision to continue PTC within 48 hours. If continued PTC is approved, the commander shall prepare a written memorandum that states the reasoning that continued restraint is warranted within 72 hours. This memo will then be forwarded to the seven-day independent reviewing officer (IRO), who will decide at a PTC hearing whether continued PTC is appropriate.

COMMAND REPRESENTATIVE AT PTC HEARING: Within seven days of confinement, an IRO appointed by the area coordinator will conduct a hearing to review the reasons for continued confinement. The command shall send a representative to the hearing at the brig.

COMMAND VISITS: Service members in PTC should receive a weekly command visit to address any personal and professional matters that need to be handled while the Service member is in PTC.

RESERVE NOTE: The guidance above applies to reservists on active duty (AT or ADT). A reservist in a drilling status [inactive duty for training (IDT)] should not be subjected to PTR until the reservist is recalled to active duty to stand for a court-martial. A reservist who has been involuntarily recalled to active duty to stand for a court-martial or non-judicial punishment cannot be confined without the permission of the Secretary of the Navy (SECNAV).

Reservists on AT or ADT may be extended involuntarily beyond their normal release date as a result of apprehension, arrest, confinement, investigation, or filing of charges that may result in trial by court-martial and execution of any sentence adjudged by a court-martial.

Reservists on IDT (a normal reserve drilling period) may be retained in that status by an officer empowered to convene a court-martial for not more than two full working days past the end of the IDT period if: (a) there is probable cause to believe the accused committed an offense for which the maximum punishment authorized is confinement for more than 10 years or death; (b) approval, either oral or written, for a holdover period is obtained prior to the expiration of IDT from the officer empowered to convene a general court-martial; and (c) immediate action is taken to order the member to active duty for trial by court-martial.

An accused reservist held over may be placed in PTC as circumstances warrant. The order to active duty in such a case, however, must be approved by SECNAV, the Under Secretary of the Navy, or the Assistant Secretary of the Navy, no later than two full working days past the end of the IDT period. The request for an order to active duty must state the reasons why PTC is necessary.

If necessary, the request to order an accused to active duty may be made directly by message or telephone.

PRETRIAL AGREEMENTS

REFERENCES:

- (a) MCM, RCM 705
- (b) JAGMAN Section 0137

NEED FOR PRETRIAL AGREEMENTS (PTA): PTAs, when appropriate, serve the interests of both the government and the accused. In exchange for a guilty plea and a limit on the authorized punishment that may be imposed on the accused, the government is often spared the time and expense of lengthy trials, which commands must pay for with Operation and Management funds. In addition, guilty pleas with PTAs often obviate the need for the victim and witnesses to participate in a trial, saving participants the mental and emotional toll of a court-martial. A guilty plea supported by a PTA also may assist a command with maintaining normal operations and mission readiness and/or accomplishment.

CONVENING AUTHORITIES (CA) MUST APPROVE ALL PTAs: PTAs are not entered into without the express written consent of the CA and the accused. Trial counsel (TC) and staff judge advocates (SJA) for the CA may make recommendations but only the CA may approve a PTA.

SCOPE OF A PTA:

- The accused may agree to:
 - Plead guilty
 - Waive an Article 32 investigation/hearing
 - Waive members (e.g., agree to be tried by military judge (MJ) alone)
 - Waive government funding of sentencing witnesses
 - Be tried no later than a specific date
 - Stipulate to facts or testimony that establish guilt
 - Make restitution to the victim
 - Testify against others
 - Conform behavior as conditions of probation or any form of leniency
 - Waive the rights to an administrative separation board after trial
 - A particular form for court-martial
- The CA may agree to:
 - Protect the accused from part or all of any part of the adjudged sentence
 - Drop, reduce, or not to proceed with certain charges
 - Protect the accused from potential automatic sentencing provisions

PTA NEGOTIATION PROCEDURES: Negotiations may originate with the accused, the defense counsel (DC), TC, SJA, or the CA. Any proposals that do not originate with the CA must be forwarded to the CA for consideration. As part of the negotiation:

- Counteroffers are permissible
- The final agreement must be in writing
- The PTA must contain all aspects of the agreement, Under-the-table agreements, or any side agreements not contained in the PTA, may render the entire written PTA agreement invalid
- Authority to sign the PTA may be delegated by the CA to the TC. Any such delegation should be in writing to satisfy a court-martial that the TC has the authority to sign on behalf of the CA.

WITHDRAWAL FROM THE PTA:

- The CA may withdraw:
 - At any time before performance by the accused begins; If the accused fails to fulfill a material term of the PTA;
 - If the MJ finds disagreement as to a material term; and/or
 - If the court-martial's findings are set aside by a court of appeals

POST-TRIAL REVIEW

REFERENCE:

- (a) MCM, RCM 1101, 1103-1107, 1113
- (b) UCMJ Articles 57, 58, 58a, 58b, 60
- (c) JAGMAN Sections 0151, 0152
- (d) JAGINST 5814.1A

POST-TRIAL PROCEDURES: The government has the duty to ensure timely post-trial processing of military justice cases. The government must meet strict guidelines in disposing of a case after a sentence is adjudged at trial. This is important to convening authorities (CA) since a failure to adhere to proper processing of records of trial (ROT) could result in an overturned conviction [see reference (d)]. [See also Convening Authority's Action Checklist in enclosure (4) of reference (d).]

CA ACTION: Review of the court-martial by the CA after the trial is a crucial but often neglected step in the court-martial process that may cause serious legal consequences and accountability action against the CA.

EFFECTIVE DATE OF ADJUDGED PUNISHMENTS: Most punishments do not take effect until the CA takes action on the sentence adjudged at a court-martial. Exceptions to this are confinement, which starts immediately, and forfeiture of pay and reduction in pay grade, which start 14 days after trial [see reference (c)]. Other punishments (e.g., restriction, hard labor without confinement, etc.) will not go into effect until the CA acts on the adjudged sentence. Dismissal, dishonorable discharge (DD), and bad conduct discharge (BCD) will not take effect until appellate review is complete.

AUTOMATIC PUNISHMENTS: In addition to adjudged punishments, there are two types of

- **AUTOMATIC REDUCTION:** When an enlisted Service member's court-martial sentence, as approved by the CA, includes (1) a discharge or (2) more than 90 days of confinement, the Service member will automatically be reduced to the paygrade of E-1 upon the date of the CA's action.
 - o **CA's OPTIONS:** In a PTA, The CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow automatic reduction all the way down to E-1 to occur. Please note restrictions listed below pursuant to the FY 14 NDAA.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes (1) confinement for more than 6 months or death, or (2) a BCD or DD plus any amount of confinement, the member will automatically forfeit two-thirds pay and allowances in the case of a special court-martial or all pay and allowances in the case of a general court-martial (GCM) starting at the earlier of the CA's action on the adjudged sentence or 14 days after the sentence is adjudged. The automatic forfeiture will be taken throughout the period of confinement and parole.
 - o **CA's OPTIONS:** The CA can defer automatic forfeiture until CA's action. This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after trial. Deferment changes the effective date to the date of the CA's action. At CA's action, the CA can approve the automatic forfeiture, or the CA may waive the forfeiture for a maximum of six months and direct the amount of money to be forfeited to the accused's dependents. Usually, the accused sets up an allotment for a dependent in the amount of the automatic forfeiture.

WHEN THE CA MAY TAKE ACTION: Before the CA's action, the ROT must be prepared by the USN Region Legal Service Office or the USMC Legal Services Support Section, authenticated by the trial counsel and military judge, and served on the accused and his/her defense counsel (DC). For all GCMs that result in a finding of guilty in any cases involving punitive discharge, a staff judge advocate or legal officer must review the ROT and prepare a memorandum to be served on the accused and his/her DC. Finally the accused must be given the opportunity to seek clemency from the CA. An accused seeks clemency by "submitting matters" (such as letters from family members, friends, command members, or even the victim and members of the court-martial) that explain to the CA why he should approve a lower sentence than the sentence adjudged at trial. CAs must also consider any victim input and victims have a right to provide information for the CA to consider.

ATTENTION TO DETAIL: CA's action letters must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and JAGMAN is crucial.

****FINDINGS OF THE COURT:** For offenses that occurred prior to 24 June 2014, the CA is not required to take any action on findings. However, the CA has the following options:

- The CA may approve or disapprove the court's findings
- The CA may disapprove a finding of guilty on an original, more serious charge but approve a finding of guilty for a lesser included offense.
- The CA may not change a finding of not guilty to a finding of guilty; however, a finding of guilty may be changed to a finding of not guilty.
- If the CA says nothing about the findings, it is presumed that the CA approves the findings of the court-martial.

****SENTENCE OF THE COURT:** The CA must take action on the sentence. For offenses that occurred prior to 24 June 2014 the CA has the following options:

- The CA may approve any punishment as adjudged by the court-martial.
- The CA may disapprove any punishment in whole or in part.

**** THE DISCRETION THE CA HAS TO APPROVE OR DISAPPROVE FINDINGS AND SENTENCES IS NOW LIMITED AS A RESULT OF RECENT CONGRESSIONAL ACTION.**

CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE FY-14 NATIONAL DEFENSE AUTHORIZATION ACT:

o on court-martial findings (guilty/not guilty) For offenses that occurred after 24 June 2014

- The convening authority (CA) CANNOT modify court-martial findings if:
 - The offence involves rape, sexual assault, a sexual offense against a child, or forcible sodomy; or
 - The offense's maximum allowable punishment exceeds two years OR the sentence actually adjudged includes a punitive discharge or confinement exceeding six months.
 - If a CA modifies a court-martial finding in any other case he/she needs to provide a written explanation for doing so.
- o Action on a court-martial sentence For offenses that occurred after 24 June 2014:
- The CA can modify a sentence for an offense unless the actual adjudged sentence includes a punitive discharge or confinement exceeding six months.
 - For such a sentence, the CA can only modify it pursuant to a written recommendation from the trial counsel indicating that the accused provided substantial assistance in another trial or if the sentence modification is pursuant to a pre-trial agreement.

- If there is a pre-trial agreement, a mandatory minimum sentence of dishonorable discharge may only be commuted to a bad conduct discharge.

APPENDIX D – CONVENING AUTHORITY LIMITATIONS ON FINDINGS MODIFICATIONS;
AND **APPENDIX E** – CONVENING AUTHORITY LIMITATIONS ON SENTENCING
MODIFICATIONS, DETAIL WHERE CA DISCRETION IS CONSTRAINED DEPENDING ON
THE TYPE OF CASE AND/OR THE TYPE AND AMOUNT OF PUNISHMENT ADJUDGED

VICTIM/WITNESS ISSUES

REFERENCES:

- (a) DODD 1030.01
- (b) SECNAVINST 5800.11 (series)
- (c) OPNAVINST 5800.7 (series)
- (d) SECNAVINST 17524 (series)
- (e) OPNAVINST 17521 (series)
- (f) NAVADMIN 128/05
- (g) MCO-P5800.16 (series)
- (h) MCO 5300.17 (series)
- (i) MCO 17525 (series)
- (j) DODI 1342.24 (series)
- (k) DoDI 6400.01
- (l) OPNAVINST 3100.6 (series)
- (m) SECDEF Memo of 14 Aug 2013
- (n) MARADMIN 583/13

DEFINITIONS

- Victim: A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.
- Witness: A person who has information or evidence about a crime within the investigative jurisdiction of the Department of the Navy (DON), and who provides that knowledge to an appropriate DON representative.

APPOINT A COMMAND VICTIM AND WITNESS ASSISTANCE COORDINATOR: A

responsible individual should be appointed in writing to coordinate victims'/witnesses' issues and to act as a Data Collection Officer for victims and witness issues in the command.

BASIC REQUIREMENTS: Upon notification of an incident where a victim or a witness of a crime is identified, ensure that victim and/or witness advisement of rights is made using DOD Form 2701 [see reference (d), enclosure (1)].

COUNSELING AND TREATMENT: Victims of sexual assault and rape should immediately be referred to medical treatment and counseling [see reference (c)]. Refer victims of domestic or child abuse to the Family Advocacy Program for support services.[see reference (k)].

PREVENT REPRISAL: Protect victims and witnesses. Remove the alleged offender from the workspace as necessary. For an alleged military offender consider the necessity of issuing a military protective order (MPO). [See FAMILY ADVOCACY/DOMESTIC VIOLENCE and PRETRIAL RESTRAINT]. A MPO may also be issued in situations other than family violence (e.g., boyfriend/girlfriend disputes). Consider TAD transfers of an alleged offender or victim to ensure safety if necessary. If the victim is military or a military dependent refer them to a legal assistance attorney for specific victim's legal counseling, which is detailed below. If the alleged offender is a civilian, consider seeing a debarment order preventing him/her from accessing the base. In addition, it may be advisable for the victim of a civilian offender to seek a civilian no contact order from local authorities.

PSYCHIATRIC EVALUATION: Do not refer a victim or witness for a mental health evaluation unless it is done in compliance with the Mental Health Evaluation Instruction [see Mental Health Evaluations].

FOLLOW-UP INFORMATION: Provide information and assistance to victims and witnesses at all states of investigation, trial, and post-trial. Victims and witnesses should be informed regarding apprehension of the accused, changes in confinement status, investigation status, decisions not to prosecute, preferral and referral of charges, convictions, sentencing, and final resolution of the charges against the accused at trial and after any appellate processing [see references (a), (b), (c), and (g)].

POTENTIAL INCIDENT REPORTING REQUIREMENTS:

- OPREP-3 for major incidents and SITREPS formatted in accordance with OPNAVINST6100.6J (information from NAVPERS 1752/1).
- Major criminal offenses must be referred to NCIS.
Violent crime message.
- For incidents involving sexual assaults, immediately notify the local Sexual Assault Prevention and Response (SAPR, formerly SAVI) representative, NCIS, and the local staff judge advocate.
- Incidents involving sexual harassment [see Sexual Harassment]. Incidents involving officers in accordance with TYCOM/Second Echelon requirements [see Officer Misconduct].

FAMILY ADVOCACY PROGRAM (FAP): FAP provides clinical assessment, treatment, and services for military members and their families involved in allegations of domestic abuse or child abuse. FAP's goals are to ensure the victim's safety and well-being as well as offender accountability. These principals form the basis of the FAP clinical provider's work in responding to allegations of domestic abuse and child abuse [see reference (k) and DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS].

TRANSITIONAL COMPENSATION: Family members who were abused by a Service member who is subsequently separated from the military service because of that abuse, either by court-martial or administrative separation, are entitled to transitional compensation [see reference (j)]. Transitional compensation is not based on the financial needs of the family. The program provides monthly payments of transitional compensation and other benefits (e.g., medical, dental, etc.) to the family members as long as the family members do not reside with the abusive former Service member. The local USN and USMC family services centers can assist with the transitional compensation application process.

LEGAL ASSISTANCE: Legal assistance attorneys at USN Region Legal Service offices and USMC Legal Services Support Sections will provide the following services to victims:

- Information on the Victim/Witness assistance programs in the Fleet, including;
 - The rights and benefits of victims.
 - The role of a victim advocate and victim privileges.
 - The difference of privileged communication with a legal assistance attorney and unprivileged communications to a victim advocate.
- The difference between restricted and unrestricted reporting.
- General information concerning military justice and the roles and responsibilities of the trial counsel, defense counsel, and investigators.
- Emotional, mental health, and medical counseling services.

- The availability of protections provided by civilian and military protective orders.
- Transitional compensation and other state/federal program benefits for victims of crime.
- Traditional legal assistance services (e.g., estate planning, tax advice, powers of attorney, consumer affairs, family law advice, etc.).

VICTIMS LEGAL COUNSEL (VLC): Per reference (j), on 14 Aug 2013, the Secretary of Defense directed that each service immediately implement a victim legal advocacy program to provide legal advice and representations to victims of sexual assault. On 1 Jan 2014, the USN and USMC each created a Victims' Legal Counsel Organization (VLCO). The mission of the VLCO is to provide legal advice and representation to the victims of certain crimes. A VLC is a judge advocate who will be detailed to advocate on a victim's behalf by providing legal counsel throughout the investigation and court-martial process. References (m) through (o) provide additional guidance on a victim's eligibility for VLC representation. Contact a staff judge advocate in order to determine whether a particular victim is required to meet with a VLC.

OTHER CONSIDERATIONS:

- The Secretary of the navy will provide guidance to commanders regarding their authority to take appropriate action to remove or temporarily reassign a Service member accused of committing a sex-related offense from a position of authority or from an assignment. This may not be used as a form of punishment but is intended to promote good order and discipline within the unit and to protect the victim if he/she is in the same unit as the accused.
- Defense counsel (DC) may not interview a victim of a sex-related offense without first requesting access to the victim through the trial counsel (TC). Further, the victim now has the right to have the TC or VLC present for the interview with the DC.