



MILITARY JUSTICE ACT OF 2016

**United States Court of Appeals for the Armed Forces
Continuing Legal Education Training Program
March 2, 2016**



Background: UCMJ/MCM Milestones

- **1950:** Enactment of the UCMJ
- **1968:** Legislation includes establishment of the military judiciary
- **1980:** President issues the Military Rules of Evidence
- **1983:** Legislation includes revisions to post-trial and appellate procedures
- **1984:** President issues comprehensive rule-based Manual for Courts-Martial



The Last Decade – The Pace of Legislative Change Accelerates

- **2006:** Major revisions to Art. 120 (rape and sexual assault)
- **2009:** Legislation concerning post-trial/appellate delays
- **2011:** Further revisions to Art. 120
- **2013-2015:** Enactment of more than 60 legislative provisions concerning military justice, including substantial amendments to numerous UCMJ Articles

Legislation enacted since 2013 includes:

- Transformation of broad Article 32 pretrial investigations into a limited pretrial hearing
- Enhancement of victim rights
- Narrowing of convening authority's post-trial powers

Statutory Blue Ribbon Panels

- Response Systems Panel
- Judicial Proceedings Panel
- Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces



MJRG Establishment and Timelines

JCS REQUEST - 2013: CJCS General Martin Dempsey, on behalf of the JCS, requested that SecDef direct a “holistic review” of the military justice system to:

- Ensure the system is able to do justice effectively and efficiently
- Ensure the system provides due process and preserves good order & discipline

- JCS recommended that Services detail military justice experts to support the review
- SecDef approved and MJRG became fully operational in March 2014
- Timelines established by SecDef and GC:
 - UCMJ Report: March 25, 2015
 - MCM Report: Sept. 21, 2015



SecDef/GC Direction

- Use the current UCMJ as a point of departure for a baseline reassessment
- Consider incorporation of practices used in U.S. district courts
- To the extent practicable, apply provisions uniformly across the Services
- Consider recommendations issued by the Response Systems Panel and the Defense Legal Policy Board
- Draw upon the experience of staff members and consider a broad range of information



MJRG Guiding Principles

- Military discipline and national security
- Discipline - unique features of military law
- Justice and discipline in a democratic society
- Flexibility across a wide variety of national security environments and military personnel practices
- Periodic evaluation and recalibration



MJRG Process - Public Input

- **MJRG website**
 - <http://www.dod.mil/dodgc/mjrg.html>
- **E-mail**
 - OSD.UCMJ@mail.mil
- **Letters**
 - DoD/GC letters soliciting input from State Bar Associations, law schools, and public interest organizations
 - Military Justice Review, Room 3B747, 1600 Defense Pentagon, Washington, DC 20301–1600
- **Federal Register**
 - May 19, 2014 (79 FR 28688)
 - Sept. 3, 2014 (79 FR 52306)



Roundtable discussions

- Criminal investigative organizations
- Staff Judge Advocates
- Trial counsel & appellate government counsel
- Defense counsel & appellate defense counsel
- Military trial judges
- Military appellate judges
- Victim/Witness assistance personnel
- Criminal law instructors at Service schools
- Confinement facility, clemency & parole personnel
- Personnel administration, review boards and admin law
- Special Victims Counsel



Panel Discussions

General and Flag Officer Panel

- Participation from each Service and the Joint Staff

Commander and Senior Enlisted Panels

- Participation by students and staff from the Marine Corps University, the Judge Advocate General's School and Legal Center, and National Defense University, including those with convening authority experience



Development and Coordination

- MJRG Teams – Article-by-Article review
- Advance consultation and coordination with the Judge Advocates General, SJA to the Commandant, and the Legal Advisor to the Joint Chiefs prior to completion of the March 25, 2015 MJRG's initial UCMJ report
- Formal coordination of March 25 recommendation within DoD
- Interagency coordination of DoD Proposal
- Submission of DoD Proposal to Congress, Dec. 28, 2015



MJRG UCMJ Report

- Overview
- Executive Summary
- Legislative Report
 - Section A. Background
 - Part 1. Historical Perspective
 - Part 2. The Role of the MJRG
 - Section B. Statutory Review and Recommendations
 - Section C. Consolidated Legislative Proposal
 - Section D. Section-by-Section Analysis



MJRG UCMJ Report:

Sec. B – Statutory Review & Recommendations

Standard Format for each Article (or related Articles)

1. Summary of Proposal
2. Summary of the Current Statute
3. Historical Background
4. Contemporary Practice
5. Relationship to Federal Civilian Practice
6. Recommendation and Justification
7. Relationship to Objectives and Related Provisions
8. Legislative Proposal (if any)
9. Sectional Analysis (if legislative proposal included)



Selected DoD Legislative Proposals: Enhance Transparency and Public Access

- Mandate public access to court documents
- Increase access for all victims to records of trial
- Sentencing parameters and criteria developed through public notice and comment procedures
- Require sentencing variations to be explained on the record
- Segmented Sentencing - requirement for public record of the confinement portion of the sentence attributable to each offense
- Public disclosure of plea agreements through review of any proposed agreement by the military judge prior to sentencing
- Facilitate transparency in sentencing proceedings through use of judicial sentencing in non-capital cases
- Military justice data compilation – enhanced standards
- Publication and web access to UCMJ/MCM with prompt inclusion of all amendments
- Establish independent blue-ribbon panel of experts for periodic reviews of the UCMJ



Selected DoD Legislative Proposals: Enhance Pretrial Fairness & Efficiency

- Issuance of disposition guidance similar to US Attorneys' Manual
- Opportunity for victim input on disposition decisions at preliminary hearing stage
- Consistent treatment of all victims at defense interviews
- Authorize timely resolution of pre-referral legal issues by military judges
- Establish military magistrates program
- Standardized training for convening authorities
- Expand authority for investigative subpoenas
- Focus Article 32 preliminary hearing on probable cause determination



Selected DoD Legislative Proposals: Enhance Fairness & Efficiency at Trial

- Standardize panel member size and the percentage required to convict as well as expand options for panel composition
- Judge-alone proceedings for petty offenses
- Judicial sentencing in non-capital cases
- Require learned counsel in capital cases



Selected DoD Legislative Proposals: Enhance Fairness and Efficiency of Post-trial Procedures

- Eliminate redundant post-trial paperwork
- Replace judicial authentication of the record with targeted motions for correction
- Enhanced use of digitized records
- Streamline statutes governing post-trial processing of courts-martial
- Establish restricted authority to suspend sentences



Selected DoD Legislative Proposals: Enhance Fairness and Efficiency in Appellate Practice

- Provide opportunity to obtain judicial review in all cases
- Transform automatic appeal to appeal as of right
- Require issue identification by parties (including factual sufficiency)
- Establish harmless error review for guilty pleas
- Appellate review of sentences, including opportunity for government appeal of sentences
- Learned counsel and mandatory review in capital cases



Selected DoD Legislative Proposals: Improve Effectiveness of Punitive Articles

- Create new offenses, including:
 - Article 93a Prohibited activities with recruit or trainee by person in position of special trust
 - Article 121a Fraudulent use of credit and debit cards
 - Article 123 Offenses concerning Government computers
 - Article 132 Retaliation
- Authorize President to designate lesser included offenses
- Align “sexual acts” with federal civilian law
- Extend statute of limitations for certain offenses
- “Migrate” Article 134 offenses to enumerated articles
- Modernize offenses (ex: Stalking; robbery)



Questions?

<http://www.dod.mil/dodgc/mjrg.html>